

EXHIBIT 13

Public Hearing

before

SENATE JUDICIARY COMMITTEE

"Review of racial profiling"

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

DATE: March 19, 2001
10:00 a.m.

MEMBERS OF COMMITTEE PRESENT:

Senator William L. Gormley, Chairman
Senator James S. Cafiero, Vice-Chairman
Senator Louis F. Kosco
Senator Robert J. Martin
Senator John J. Matheussen
Senator Norman M. Robertson
Senator Raymond J. Zane
Senator Garry J. Furnari
Senator John A. Girgenti
Senator John A. Lynch
Senator Edward T. O'Connor Jr.



ALSO PRESENT:

John J. Tumulty
*Office of Legislative Services
Committee Aide*

Michael Chertoff, Esq.
Special Counsel to the Committee

Scott L. Weber, Esq.
Assistant Special Counsel to the Committee

Christine Shipley, Esq.
*Senate Majority
Staff Counsel*

Jo Astrid Glading, Esq.
*Senate Democratic
Staff Counsel*

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

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Appendix material, including documents, previous interviews and depositions referenced in the hearing, is available from the Office of Legislative Services, Office of Public Information.

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SENATOR WILLIAM L. GORMLEY (Chairman): Call to order, please.

I would first like to welcome a new member to the Committee. Senator Furnari, thank you. Welcome. It's a pleasure to have you here.

Excuse me, all cell phones off. I just heard "Take Me Out to the Ball Game" being played in my left ear, okay.

The hearing dates that are scheduled represent the start of the hearing process as it pertains to racial profiling. This Committee did a review of racial profiling in 1999, approximately 20, 22, 23 months ago. Since that time, approximately 100,000 documents have been released that relate to the history and chronology of events as it pertains to racial profiling. It was an obvious continuation of our obligation to review racial profiling that we commence a review of those documents. As a result of that, the Committee and staff and special counsel have reviewed those 100,000 documents. Subsequently, there were both interviews and depositions related to those documents, and today's start of the hearing process will be as a result of the overviews that have been taking place both through document review and the depositions.

The goal is, one, to instill public confidence in the people of this state that we've conducted as thorough a review as anyone would expect in terms of what is a very delicate matter...Number two, once we complete that review, it would be to make recommendations in terms of legislative or procedural reforms and at the same time to set forth other recommendations we feel are germane and relate to what is necessary to fulfill our obligations as Senators and to instill appropriate public confidence in the people of the State of New Jersey.

I want to thank the staff on both sides of the aisle for the work done to date and the amount of time put in by the Senators to date. I want to thank special counsel Michael Chertoff and Scott Weber for the time that they have put into this matter.

We will now commence with the first witness. Would staff -- First Sergeant Thomas Gilbert please come forward to be sworn.

(Oath administered)

The questioning will commence by special counsel Michael Chertoff.

MR. CHERTOFF (Special Counsel to the Committee): Thank you, Mr. Chairman.

SENATOR GORMLEY: Red light. (referring to PA microphone)

MR. CHERTOFF: Thank you, Mr. Chairman.

If I could ask for the record, Sergeant Gilbert, I guess you have representation as a member of the State Police by the Attorney General's Office. If I could just ask to have counsel from the Attorney General's Office appear on the record and state your name.

A S S T. A T T Y. G E N E R A L J E F F R E Y J. M I L L E R:
Senator Gormley, members of the Committee, I'm Jeffrey Miller, Assistant Attorney General. Along with Assistant Attorney General Allison Accurso and Deputy Attorney General Brian Flanagan, we will be providing representation to the extent that it's needed to the witnesses who have accepted representation from the Attorney General.

MR. CHERTOFF: Thank you.

Sergeant Gilbert, just to begin, how old are you?

S E R G E A N T F I R S T C L A S S T H O M A S G I L B E R T:
I'm 42 years old, sir.

MR. CHERTOFF: And how long have you been with the State Police?

SERGEANT GILBERT: Nineteen years.

MR. CHERTOFF: What's your current rank?

SERGEANT GILBERT: Sergeant First Class.

SENATOR GORMLEY: Is your red light on? (referring to PA microphone)

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: All right. And how long have you been a Sergeant First Class?

SERGEANT GILBERT: Approximately three years, sir.

MR. CHERTOFF: What's your current assignment?

SERGEANT GILBERT: I'm the Supervisor of the Division Services Unit within the Human Resource Management Bureau.

MR. CHERTOFF: And can you just tell us how far you went in school?

SERGEANT GILBERT: I have a master's degree from St. Joseph's University.

MR. CHERTOFF: I want to take you back to the period of time from 1996 up through 2000. During that period of time, did you have an assignment in connection with the issue generally known as racial profiling on behalf of the State Police?

SERGEANT GILBERT: Yes, sir, I did.

MR. CHERTOFF: And generally speaking, what was that assignment?

SERGEANT GILBERT: Originally, after the decision had come out in Gloucester County in March of 1996, I had been asked by my then supervisor, Sergeant First Class David Blaker, to take a look at the decision that had been rendered by Judge Francis and to basically report back to him and the superintendent with an unbiased and honest as I could analysis of what had taken place.

MR. CHERTOFF: And then after that, did you -- did your assignment broaden to include actually getting involved in gathering information and statistics that would be pertinent to the *Soto* case?

SERGEANT GILBERT: Yes, sir, it did.

MR. CHERTOFF: And did it then also wind up including gathering statistics and information in connection with a U.S. Department of Justice inquiry which began in late 1996?

SERGEANT GILBERT: Yes, sir, that's correct.

MR. CHERTOFF: And did you continue in that role at least into the spring of 1999?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: Now, who did you principally work with at the Office of the Attorney General in dealing with these matters?

SERGEANT GILBERT: In the early phases of 1996, primary dealings would have been with Mr. Jack Fahy, who is a supervisor -- Deputy Attorney General. As time progressed, it would have been with him, and also additionally, Deputy Attorney General George Rover.

MR. CHERTOFF: And was it -- did you have an understanding about who Mr. Fahy and Mr. Rover reported to within the Office of the Attorney General?

SERGEANT GILBERT: Yes, sir, I did.

MR. CHERTOFF: And tell us what that was.

SERGEANT GILBERT: My understanding was that as time went on, with respect to Mr. Rover, that he was reporting to Alex Waugh, who I believe was the Assistant Executive Attorney General, who in turn reported to the Attorney General himself.

MR. CHERTOFF: Now, I want to actually kind of begin at the end, if I can. We're going to then go back and cover this in more detail. But I want to give you an opportunity to go on the record with respect to an issue which was raised in 1999 in connection with the interim report. Are you familiar with the interim report of the State Police Review Team regarding allegations of racial profiling?

SERGEANT GILBERT: Yes, sir, I am.

MR. CHERTOFF: Have you ever read it?

SERGEANT GILBERT: Yes, I have.

MR. CHERTOFF: Now, there's a passage in the report at Page 23 which indicates that, and I'm quoting, "In mid-March the Review Team began to receive documents from the State Police pertaining to audits, compilations of data, and analyses of data about the racial characteristics of detained motorists, some of which had not previously been provided to the Office of the Attorney General or the Division of Criminal Justice." Do you remember reading that passage?

SERGEANT GILBERT: Yes, sir, I do.

MR. CHERTOFF: I also want to tell you there is a draft version of that passage, which was in somewhat stronger language, and I want to ask you if you ever saw this. This is in Page 2 of a draft of April 7th, 1999, and I'm

quoting: "We feel constrained to comment that some of the statistical information we rely upon, including particularly revealing data concerning consent searches, were only recently disclosed by the State Police to the Office of the Attorney General. Certain internal studies and audits prepared at the request of the superintendent were not made known to the Deputy Attorneys General who were representing the State in the *Soto* litigation. This circumstance has seriously compromised the State's litigation posture and also has needlessly delayed initiating appropriate remedies and reforms." Did you ever see that passage in the draft?

SERGEANT GILBERT: No, I did not, sir.

MR. CHERTOFF: Now, let me ask you this: In general and in substance, is the statement of this draft true? Is it the case that the State Police withheld the substance of what was being developed in terms of audits and statistical data from the Deputy Attorneys General who were being -- the State Police were dealing with in terms of the *Soto* litigation and the Department of Justice?

SERGEANT GILBERT: No, sir, that would be incorrect.

MR. CHERTOFF: Is it the fact that in substance you regularly conveyed to your contact at the Office of the Attorney General the broad nature of the statistical information you were gathering from 1996 up through 1999?

SERGEANT GILBERT: That would be correct, sir.

MR. CHERTOFF: And was that at the direction of the superintendent?

SERGEANT GILBERT: Yes, it was.

MR. CHERTOFF: Now, in connection with that, I want to actually just also make clear who you personally dealt with in the Office of the Attorney

General. You indicated you dealt with Mr. Fahy and Mr. Rover. Who else from the Office of the Attorney General did you deal with in this time frame, 1996 to 1999?

SERGEANT GILBERT: For the majority of time, it would have been those two individuals, but I also did have contact with Mr. Waugh on several occasions and also the Attorney General himself on several occasions.

MR. CHERTOFF: And that would be now Justice Verniero.

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: At any point in time did you make a decision to conceal any material information from any of those men in terms of what you were doing gathering this information for the State Police?

SERGEANT GILBERT: No, sir, I had an obligation not to do that.

MR. CHERTOFF: Was it, in fact, your intent and your action to convey to the people you were dealing with at the Office of the Attorney General the substance of what you were finding?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: As far as you know, did you do anything that would have hindered or would have interfered with either the litigation or the effort to inaugurate improvements in the issue of racial profiling in the State Police?

SERGEANT GILBERT: No, sir, I did not.

MR. CHERTOFF: Let me go back to the beginning now. When did you first get assigned to work on the *Soto* mess?

SERGEANT GILBERT: Actually, sir, it would have been post --the post-determination of *Soto*, when Judge Francis had issued his decision, which I believe was the beginning of March in 1996.

MR. CHERTOFF: And again, tell us who assigned you to work on that.

SERGEANT GILBERT: Sergeant Blaker, who was then the administrative assistant to the superintendent -- come back to me. He had a copy of the decision. He asked me to read the decision over and to basically initiate an analysis of the decision and what implications I thought it had upon the Division.

MR. CHERTOFF: And did you do that?

SERGEANT GILBERT: Yes, sir, I did.

MR. CHERTOFF: Did you actually ultimately write a memorandum to the superintendent through your superiors with that analysis?

SERGEANT GILBERT: Yes, sir, I did.

MR. CHERTOFF: Let me show you-- I'm going to have someone from the Committee actually give you a copy of the exhibit, which I think you've seen before, something that we have previously marked as G-1 in your deposition, which is a memo -- an interoffice communication, dated March 28th, 1996, from you. Yeah, let me see if you recognize that.

SERGEANT GILBERT: Yes, sir, I do.

MR. CHERTOFF: Is this the memo that you had prepared based upon your review of the decision?

SERGEANT GILBERT: That's correct, sir.

MR. CHERTOFF: Did you make a series of recommendations in this memo?

SERGEANT GILBERT: Yes, sir, I did.

MR. CHERTOFF: And very briefly, can you summarize what those were?

SERGEANT GILBERT: It rated a decision that Judge Francis had rendered. He had leveled some pretty significant criticisms against the Division. Although within the Division we had concerns as to whether the decision itself was on target with the issues that it was addressing, it seemed prudent that some of the issues that Judge Francis had raised were things that we had to take a serious look at as a Division, see if we could make improvements, and where should we move forward to from that point in time.

MR. CHERTOFF: Now, do you remember that Judge Francis's decision was basically concerned with the issue of motorists' stops on the southern part of the Turnpike?

SERGEANT GILBERT: Yes, sir, that's correct.

MR. CHERTOFF: And just so the record is clear for everybody on the Committee, could you explain very briefly what a stop is?

SERGEANT GILBERT: A stop would be an action that would be initiated by a trooper out on the roadway, normally on the basis of the motor vehicle violation or something that he had observed specifically out on the roadway that would give rise to justification for that stop.

MR. CHERTOFF: Now, after a stop, are there other things that a State Trooper can do or does do that leads to other kinds of decisions?

SERGEANT GILBERT: Yes, sir, depending on the circumstances that he or she would encounter.

MR. CHERTOFF: And what would those be?

SERGEANT GILBERT: Potentially, that you could have a plain view situation, where, for example, guns or narcotics or a stolen car might be detected. A trooper might take action at that point. There may be a situation where the trooper encounters some indicators of deception, irregularities which

might give rise to the level where they would ask for consent to search of a vehicle. It would be very dependent on the individual circumstances of the encounter.

MR. CHERTOFF: All right. Let me break this down and just very briefly see if I'm correct in what I'm explaining about the process. A motorist is stopped. That's the first decision a trooper has to make, whether to stop a motorist for a violation, correct?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: And then if the trooper does do the stop, depending on the interaction of the motorist, the trooper could decide, for example, to try to search that car, right?

SERGEANT GILBERT: That's correct, sir.

MR. CHERTOFF: And I take it there are two ways to go. There is, for example, probable cause to search, which would allow you to search a car without asking for permission, correct?

SERGEANT GILBERT: Correct, sir.

MR. CHERTOFF: And that would be if, let's say for example, you saw a machine gun on the front seat, that would probably be considered a base to go search the car, right?

SERGEANT GILBERT: Yes, sir, it would.

MR. CHERTOFF: There's also what they call a consent to search, correct?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: And that's where you ask the driver if that person is willing to allow the car to be searched voluntarily?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: And at this time in 1996, was there a policy that the State Police had regarding what was the threshold before you could ask the motorist to consent to search?

SERGEANT GILBERT: Yes, sir, there was.

MR. CHERTOFF: What was that?

SERGEANT GILBERT: I believe it would have been reasonable suspicion.

MR. CHERTOFF: And that is more than just willy-nilly arbitrariness -- it requires some articulable basis as to why you want to search the car?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: Now then, there's also the possibility of making an arrest if you find something in the car, right?

SERGEANT GILBERT: Correct, sir.

MR. CHERTOFF: So those are all decisions that a trooper makes on the road every time a car is stopped?

SERGEANT GILBERT: That's correct.

MR. CHERTOFF: Now, as a consequence of the work that you did, was a committee set up at the State Police to deal with the issue of racial profiling?

SERGEANT GILBERT: Yes, sir, it was.

MR. CHERTOFF: And who set that up?

SERGEANT GILBERT: I believe that, preliminarily, Sergeant Blaker and I had conversations about the need to try and get some people together, both from within the Division and also get some outside input and guidance from downtown -- that being the Attorney General's Office and the Division of

Criminal Justice -- again to see where we could improve our operations. That we could take an honest look at the criticisms that had been leveled at the Division by Judge Francis and decide what appropriate action should be taken in response to those criticisms.

MR. CHERTOFF: Now, in April of '96, was a committee set up?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: And maybe to help again with your memory, I'm going to show you what we've previously marked as G-4 for identification, which is a memo you wrote to Colonel Williams on the issue of racial profiling issues.

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: You recognize this to be yours, right?

SERGEANT GILBERT: Yes, sir, I do.

MR. CHERTOFF: And does it also, among other things on Page 2, talk about this committee that had been set up to deal with the issue of racial profiling?

SERGEANT GILBERT: Yes, sir, it does.

MR. CHERTOFF: Now, who is on the committee?

SERGEANT GILBERT: Sir, myself, Sergeant Blaker, Colonel Littles, who is our supervisor -- Lieutenant Colonel Littles was the -- had overall authority over the committee. Went down from him, as again, Sergeant Blaker, myself, Captain Brennan, Captain Touw, who is in charge of Internal Affairs, Kevin DiPatri, who was a trooper from one of our road stations. We had also Pat Reilly, who was an instructor at the academy. We also had Mr. Fahy come over from the Division of Criminal Justice, as well as Mr. Susswein from the Division of Criminal Justice.

MR. CHERTOFF: All right. I just want to make sure we understand everybody's role and why they were on the committee.

Lieutenant Colonel Littles was the chairperson of the committee, right?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: And Captain Brennan, what was his position at this time, and what was his reason for being on the committee, if you know?

SERGEANT GILBERT: He had formerly served as the advisor to the superintendent. He had then moved on to become the EEO-AA officer, and it was believed that he had a good historical working knowledge of this issue and that he would be an asset to the committee.

MR. CHERTOFF: When you say EEO, you mean Equal Opportunity Officer?

SERGEANT GILBERT: Affirmative Action Bureau. Yes, sir.

MR. CHERTOFF: What about Captain Touw? What was his purpose for being on the committee?

SERGEANT GILBERT: Captain Touw at that point was the Bureau Chief in charge of our Internal Affairs Bureau.

MR. CHERTOFF: And was that the bureau that would normally be assigned the responsibility to investigate allegations of misconduct?

SERGEANT GILBERT: Yes, sir, it would.

MR. CHERTOFF: And why were Detectives Reilly and Trooper DiPatri on the committee?

SERGEANT GILBERT: Detective Reilly had served as a contact person, a resource person, for Mr. Fahy at the Gloucester County proceedings, and had also -- at that point, he was an instructor at the training bureau or

academy, and that was one of the issues that we were going to be looking at -- were training issues -- so it was felt he would be an asset in that area. And for the purpose of the committee with Trooper DiPatri, when Sergeant Blaker and I had talked to Colonel Littles, we felt it was important to get some insight and perspective from a road trooper, so that we made sure that we incorporated their viewpoints and their concerns into where we were going with the committee.

MR. CHERTOFF: Now, Deputy Attorney Generals Fahy and Susswein, why were they on the committee?

SERGEANT GILBERT: Mr. Fahy had been dealing with the Gloucester County matter and obviously had a substantial amount of historical knowledge in that issue and the issue -- racial profiling as a whole. Mr. Susswein, again, had expertise in the background of the racial profiling issue, and in addition, I had worked with Mr. Susswein on a number of training initiatives and felt that again we had to look at training very strongly and that he would be an asset from that angle to help us devise what would be appropriate training to move forward from that point.

MR. CHERTOFF: All right. Now I want to take-- You actually prepared a report with respect to the meeting of April 12th, right?

SERGEANT GILBERT: Yes, sir, I did.

MR. CHERTOFF: And was this your habit to basically put together minutes, or a report of the meeting, after you attended the meeting?

SERGEANT GILBERT: That's correct, sir.

MR. CHERTOFF: And I take it you did the best you could to be accurate about the substance of the meeting, if not every word that was said?

SERGEANT GILBERT: That's correct.

MR. CHERTOFF: In the first paragraph, there's a -- something that's marked Gloucester County appeal. Is that the appeal from Judge Francis's decision?

SERGEANT GILBERT: Yes, sir, it is.

MR. CHERTOFF: Was that discussed at the meeting?

SERGEANT GILBERT: Yes, it was, sir.

MR. CHERTOFF: Okay. With respect to that, in that paragraph it's indicated that there was going to be a review of the individual cases that had become part of Judge Francis's decision and the individual troopers whose activities were the subject of that decision. Based upon your memo and your memory, what do you remember was the discussion concerning this issue at this meeting of April 12th, 1996?

SERGEANT GILBERT: I think one of the concerns was that if we were to take a look at the activity of the 19 troopers involved, if a decision should be made, depending on where that activity stood statistically as to whether any thought should be given with -- or towards proceeding with the Gloucester County appeal or not.

MR. CHERTOFF: Okay. Now, I'm going to make sure that I understand this. At this meeting, there was a discussion about the fact that if the appeal went forward, and let's say the State was successful, they would eventually have to have further court proceedings regarding the actual activities of the troopers in question, right?

SERGEANT GILBERT: That's correct, sir.

MR. CHERTOFF: And is it fair to say that what was discussed at the meeting was the desire to understand whether the troopers, in fact, had a problem, so that the Attorney General's Office would understand whether at the

end of the day waiting on the appeal would simply put them back into a situation where they would be dealing with bad facts?

SERGEANT GILBERT: That's correct, sir. That was one of the issues that was addressed.

MR. CHERTOFF: So that from the standpoint of the people who were at the meeting from the Office of the Attorney General, they needed to know what the underlying facts were regarding the troopers to make a decision about how the appeal ought to be pursued?

SERGEANT GILBERT: That was one of the factors, yes, sir.

MR. CHERTOFF: And was it your undertaking or your indication that you would handle that review of the trooper cases?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: Did you eventually do that?

SERGEANT GILBERT: Yes, sir, I did.

MR. CHERTOFF: And that was consistent with your promise at this meeting, right?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: Now again, I want to be quite clear. Was it discussed at this meeting that if the review uncovered substantial problems with the individual cases, that there would be consideration given to recommending that the appeal, perhaps, not be pursued any further?

SERGEANT GILBERT: I believe at that point that was the discussion.

MR. CHERTOFF: I'm just going to ask, for ease of this witness and other witnesses -- we've put up like a little easel, and I'm going to ask one of the committee personnel to just mark down the April 12th, 1996 date, because I

think it's a date we're going to come back to. So, if I could ask somebody to do that, sort of, we'll keep track of it.

And while it's being done, I want to continue with April 12th. There was other discussion on April 12th about other cases going on besides the Gloucester County case, right?

SERGEANT GILBERT: Yes, sir, that's correct.

MR. CHERTOFF: Is it fair to say that there were other challenges being raised by criminal defense attorneys in other parts of the state on the issue of profiling based upon the judge's decision in Gloucester County?

SERGEANT GILBERT: Yes, sir, it is.

MR. CHERTOFF: In particular, there was something going on in Hunterdon County, correct?

SERGEANT GILBERT: That's correct, sir.

MR. CHERTOFF: Would you tell us what was discussed about that at the meeting on April 12th?

SERGEANT GILBERT: I believe that the Division had been brought up to speed by Mr. Fahy that there was a motion pending in Hunterdon County which was being undertaken by the Public Defender's Office in that venue. And that the approach that he believed was going to be taken by the Public Defender's Office was similar to the Public Defender's Office approach that had been utilized successfully in the Gloucester County case.

MR. CHERTOFF: Now, did you indicate or did someone indicate in the meeting that again, in terms of making a judgment about how to handle the Hunterdon County case, the records section of the State Police would begin compiling a statistical overview with respect to the I-78 Perryville Station of the State Police?

SERGEANT GILBERT: Yes, sir. And that was done.

MR. CHERTOFF: Okay. Was the purpose of that again to help the Office of the Attorney General decide how to deal with this Hunterdon County motion by the defense attorneys?

SERGEANT GILBERT: Yes, it was.

MR. CHERTOFF: And was it made clear in the course of the meeting that this analysis was under way?

SERGEANT GILBERT: Yes, sir, it was.

MR. CHERTOFF: Now, was there also discussion about steps that might be taken in terms of changing operational procedures for reporting information by troopers and changing the audit process that was also discussed at the meeting?

SERGEANT GILBERT: That's correct, sir.

MR. CHERTOFF: And just very briefly give us what those were.

SERGEANT GILBERT: One of the criticisms that had been leveled by Judge Francis in the Gloucester County decision was our compliance with the process by which troopers would call in a stop, one of the requirements of which was for them to identify the race of the occupants of the vehicle that was stopped. And by the tone of the judge's decision, it appeared from my perspective that he placed a great importance on that issue, and we felt that where we had basically been disadvantaged by having a full set of statistics to deal with to analyze during the Gloucester County proceedings, that as we moved forward from that point, it was necessary for the Division to enhance its abilities to collect that data and to make sure that it was complete, as far as the full information being called in on motor vehicle stops by our troopers out on the road.

MR. CHERTOFF: Is it fair to say that you needed to have accurate data because, both in terms of the cases that were going on at that time and future cases, you needed to be able to (a) figure out if there's a problem that needed to be fixed and (b) respond to these various motions.

SERGEANT GILBERT: Yes, sir, that would be correct.

MR. CHERTOFF: And what was the discussion concerning audits -- having ongoing audits?

SERGEANT GILBERT: Captain Touw, who was then the Bureau Chief of the Internal Affairs Bureau, he had got into Internal Affairs, and I believe at around the same time with the Gloucester County case, but I think even beyond that. I think Captain Touw was somewhat innovative in identifying a need to come up with the process where you could look not only at an individual incident that might be alleged to have some impropriety to it, but to also look at the surrounding information as far as what the activity levels were at a given station, a given road environment, and also to look at a more encompassing view of an individual trooper's activity.

MR. CHERTOFF: Finally, let me ask you this: Was there discussion about the Division Awards Program?

SERGEANT GILBERT: Yes, sir, there was.

MR. CHERTOFF: What was that?

SERGEANT GILBERT: There had been overtime ebbing and flowing -- some criticism of the Division's Awards Program as to whether there might be some validity to the fact that individuals seeking to procure Division awards-- We wanted to make sure that the tone of the Awards Program was that not only were individuals going to be rewarded for the statistics that they generated, but also the nature by which those statistics were generated first.

Basically looking -- combining both quality and quantity, not just looking at it from a strict quantity standpoint.

MR. CHERTOFF: All right. Now, just to make sure everybody understands how significant this was, this meeting took place in an environment in which you had a judge who was at least raising the possibility of throwing out a bunch of criminal cases because of racial profiling, right?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: And is it fair to say that it was understood at the meeting, and discussed at the meeting, that racial profiling motions by defense attorneys could raise questions about a fairly significant number of criminal narcotics cases that were then being prosecuted?

SERGEANT GILBERT: That's correct, sir.

MR. CHERTOFF: And I also take it, it's a fairly drastic and bad thing when judges throw out cases that would otherwise demonstrate people committing crimes, because there was some problem in the process of arresting those people.

SERGEANT GILBERT: We would have had great concerns about that. Yes, sir.

MR. CHERTOFF: Okay.

Now, in fact, with respect to this Hunterdon County matter, there was a report put together by the Records and Identification Section, correct?

SERGEANT GILBERT: That's correct, sir.

MR. CHERTOFF: I'm going to show you what's been marked as G-5 -- what we're going to put in front of you, which is a memo, dated April 24th, 1996, very shortly after this meeting.

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: And do you remember this as a memo you prepared?

SERGEANT GILBERT: Yes, sir, it is.

MR. CHERTOFF: And did it transmit information concerning the Perryville Station in Hunterdon County?

SERGEANT GILBERT: Yes, sir, it did.

MR. CHERTOFF: Now, was there a tabulation that was done -- a statistical breakdown that was done regarding stops in Perryville, right?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: And again, at this point, the focus was on stops, it wasn't on searches, and it wasn't on arrests, right?

SERGEANT GILBERT: That's correct, sir.

MR. CHERTOFF: And is that because, at this point, Judge Francis's decision had really been focused on stops?

SERGEANT GILBERT: It had. Yes, sir. And it basically stopped at that point in the process. And that's where the ruling had been based.

MR. CHERTOFF: Okay. Now, did you, on, I guess-- The page that we've marked is GC-1403. Was there a statistical breakdown that was prepared based on the report that you had received?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: And would you just indicate to us what it indicated regarding percentages of stops of whites and nonwhites at that station for the relevant period?

SERGEANT GILBERT: Well, on the basis of the figures in which they were presented to me by Sergeant Farhat, the percentages had been 60 percent White, 39 percent Black, and 1 percent Asian.

MR. CHERTOFF: Now, that's actually with Hispanics being allocated among Whites and Blacks. Did you reconfigure it, subsequently, with Hispanics as a separate category?

SERGEANT GILBERT: Yes, sir, I did.

MR. CHERTOFF: And give us the statistics with that reconfiguration.

SERGEANT GILBERT: That ended up being 45 percent White, 38 percent Black, 16 percent Hispanic, and 1 percent Asian.

MR. CHERTOFF: All right. Now, let me stop here and talk a little bit about statistics with you. Did you understand that from Judge Francis's decision -- that in analyzing allegations of this, there's kind of a multistep process that goes on?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: Okay. And the first step is to see whether the statistics or the numbers show disproportionate numbers of stops of minorities as opposed to the general population, right?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: Is it fair to say that there were questions raised, in your mind, with respect to Judge Francis's decision about how easy it would be to make those statistical statements if you don't really know the percentage of traffic or the breakdown of the traffic on the Turnpike?

SERGEANT GILBERT: We felt it would be very difficult to draw that comparison.

MR. CHERTOFF: Nevertheless, is it fair to say you also understood that at some point, if the percentage of minorities being stopped is much larger

than the population of minorities as a whole in the country or in the state, it certainly raises a red flag?

SERGEANT GILBERT: And it obviously creates a very troublesome perception issue.

MR. CHERTOFF: And then you'd have to go to the next level, and you have to start to look at the individual cases, right?

SERGEANT GILBERT: Yes, sir, that's correct.

MR. CHERTOFF: With that in mind, is it fair to say that although the statistical breakdown you put together does not prove, one way or the other, conclusively, whether there was profiling, it certainly raised a red flag that you thought was a matter of serious concern?

SERGEANT GILBERT: I believe I had an obligation to compile this information and pass it on up the chain to my superiors. Yes, sir.

MR. CHERTOFF: Now, who did you pass this information along to?

SERGEANT GILBERT: This information, I believe, would have been passed on through then Sergeant Blaker up to the superintendent, also outside the Division to Mr. Fahy in the Division of Criminal Justice.

MR. CHERTOFF: Okay. Now, I want to be quite clear about this. Was this -- the information in this report -- provided to Deputy Attorney General Fahy at some point after you got it?

SERGEANT GILBERT: Yes, sir, it was.

MR. CHERTOFF: And to be clear, you had indicated at the meeting of April 12th, that this information was going to be available. And you had said that to Mr. Fahy, right?

SERGEANT GILBERT: Yes, sir, that's correct.

MR. CHERTOFF: And Mr. Fahy was the person responsible for the Hunterdon County matter involving the challenge to racial profiling in that county, right?

SERGEANT GILBERT: That's correct, sir.

MR. CHERTOFF: So is it fair to say that it made sense to you that this would be important information to give him so he could do his job in deciding how to handle the Hunterdon County case?

SERGEANT GILBERT: That's correct.

MR. CHERTOFF: Do you know whether you actually, at a point in time, gave him a copy of this memo?

SERGEANT GILBERT: I am not sure if I did or not, sir. I know I relayed the information to him.

MR. CHERTOFF: So, whether you gave him the document or not, you certainly gave him the information.

SERGEANT GILBERT: Yes, sir, I did.

MR. CHERTOFF: Now, was there a subsequent meeting in May of the committee -- on May 16th?

SERGEANT GILBERT: I believe that there was, sir.

MR. CHERTOFF: All right.

I'm going to show you now what we have marked as CW-6, which we'll give to you.

SENATOR ROBERTSON: Mr. Chairman, may I make the suggestion-- There are also page numbers here. We have a chronological binder that's not separated by witness. So it becomes difficult for us to follow.

MR. CHERTOFF: Okay. Great. I'm going to-- What I'll do is I'll give the page numbers, as well.

SENATOR ROBERTSON: Yeah. There's no AG page number that would be helpful.

MR. CHERTOFF: Actually, we have a-- Ours is a GC page number, GC-3983. It's a document-- It's a cover page, dated May 24, 1996. It's headed Superintendent's Action Memo from Colonel Williams. And it has attached to it a memo from then Detective Gilbert, May 21.

SENATOR ROBERTSON: What was the page number for the previous exhibit?

MR. CHERTOFF: The previous exhibit was an exhibit marked April 24th, 1996, and it was GC-1399.

SENATOR ROBERTSON: Thank you.

MR. CHERTOFF: All right.

Sergeant, you have this document of May 21 before you, right?

SERGEANT GILBERT: Yes, sir, I do.

MR. CHERTOFF: And first of all, the cover page is from Colonel Williams. And it indicates, in his writing, that he's approved certain things you had suggested, correct?

SERGEANT GILBERT: That's correct, sir.

MR. CHERTOFF: All right.

And I'm going to ask, again, we put May 21 on the board so we have a record of this.

At this meeting, again, who was in attendance?

SERGEANT GILBERT: According to what I had written, sir, Lieutenant Colonel Littles, who was the deputy superintendent; Captains Touw and Brennan; Sergeant First Class Blaker; myself; Trooper Kevin DiPatri;

Assistant Attorney General Ronald Susswein; and Senior Deputy Attorney General Jack Fahy.

MR. CHERTOFF: Now, I want to go through the highlights of this. In the first -- second paragraph, it indicates that although some people had the sentiment that this was an isolated decision and shouldn't be a tail that was allowed to wag the dog, Deputy Attorney General Fahy indicated that there were seven motions now pending in various courts which focused on profiling.

SERGEANT GILBERT: That's correct, sir.

MR. CHERTOFF: What did he say about that, briefly?

SERGEANT GILBERT: Basically, that the issue was not going to go away, and it was something that we were going to collectively have to deal with between the Attorney General's Office and the State Police.

MR. CHERTOFF: Now, was there discussion about the wisdom of trying to get better statistics and do audits to find out what the real facts were?

SERGEANT GILBERT: I believe that there was. Yes, sir.

MR. CHERTOFF: Tell us what that discussion was.

SERGEANT GILBERT: Reviewing over the document, I remember that one of the issues was that we had to get our compliance rate much higher, as far as if one of our primary collective vehicles was going to be the information being called in by the troopers while they were conducting stops. We had to take some proactive measures to make sure that compliance rates -- that compliance rates raised significantly so that come the time that we were going to rely on statistics, we wanted to be able to show the court -- show the public that we were, in fact, making a conscious effort to raise that level. And that way, we could produce, when needed, accurate and verifiable statistics.

MR. CHERTOFF: All right. Now again, let's, for the -- to be clear--
Let's explain how this comes up.

At the time, what was the practice, when a trooper stopped somebody on the road, about recording, in some way, the race and sex of the occupant in the vehicle?

SERGEANT GILBERT: For the purposes of safety, going back a number of years, they were components of the things that would need to be called in. For example, the location of the stop, what type of vehicle it was, where the car was from, the exact license plate number, the description of the occupants, as far as race, skin color -- basically, any identifiers a trooper could call in. That way, if, per se, anything -- we ran into any form of a critical incident, we would be able to put information out accurately, based on what the trooper had reported in. So, if we had to respond to the scene -- that the responding troopers, other agencies would basically know what type of vehicle they might be looking for, what type of individuals, so that we could respond in a prompt and fair fashion.

MR. CHERTOFF: Was there criticism in Judge Francis's decision about the lack of comprehensiveness of recording the race of people stopped, such that it was impossible to really get a good statistical picture?

SERGEANT GILBERT: Yes, sir, that's correct.

MR. CHERTOFF: And was there debate about whether it would be a good idea to be more accurate in recording this and recording it in different places?

SERGEANT GILBERT: I don't think there was any debate about it. I think everybody, all the way through, agreed that that was something we had to move forward to.

MR. CHERTOFF: And did you-- Were there suggestions made in this meeting about how to improve keeping these statistics?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: And what were those suggestions?

SERGEANT GILBERT: If you can-- If you don't mind-- If I could just review real quick--

MR. CHERTOFF: Sure.

SERGEANT GILBERT: --one of the things that we had talked about was which would be -- where would be the best repository of information to generate that information for later statistical analysis. And we had basically two ways to go. One was the patrol chart, and one was the radio logs. The patrol chart is what the trooper fills out for each individual encounter he has during his shift, whether it be a motor vehicle stop or some other form of activity.

But on a motor vehicle stop, at that point, they did have to put down the location, description of the vehicle, and the tag number. But we didn't have a description of the individuals. That would show up on the transmission that would be radioed in by the trooper. And that would then be recorded by the people that were, as we called it, on the book or on the radio log. They would note that in the radio logs.

So there was discussion as to whether it would be best to go with the patrol chart, would it be best to go with the radio log, and ultimately, where were we going to head, and in what direction, because we knew that we had to enhance our ability to accurately capture and then analyze that information.

MR. CHERTOFF: And what was the conclusion at the meeting?

SERGEANT GILBERT: I believe, at that point, that we had talked about both the patrol charts and the radio logs. I don't know if we reached an exact decision on which of the two it was going to be, but that we knew that we had to move forward and collect the information. I know that, ultimately, what happened is that we focused on the radio procedures and the radio logs at that point in time.

MR. CHERTOFF: Now, was there also a discussion about better training and better guidance about what the rules were?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: Now, at the end of this memo, there's discussion. In the last paragraph, the following passage appears: "The Gloucester County appeal is proceeding as planned. The Records and Identification Section has prepared an analysis of the arrest statistics for those troopers whose cases are the subject of the appeal. If preliminary analysis of enforcement activity for I-78, Perryville Station, for the period October '94 to October '95 has also been completed--"

Now, let me ask you this. Was this something that was discussed at the meeting?

SERGEANT GILBERT: I don't believe that that was discussed at the meeting. I think that that was interaction that I had after that. I'm not sure if we discussed that at that meeting, per se, or that I had passed that information on either before or after the meeting. I'm not really sure.

MR. CHERTOFF: To whom did you pass that information on?

SERGEANT GILBERT: That would have been to Mr. Fahy.

MR. CHERTOFF: So you would have had a discussion with Mr. Fahy at some point, telling him two things, that there had been an analysis of

the arrest statistics of the 19 troopers who were the subject of the Gloucester County case, right?

SERGEANT GILBERT: That's correct.

MR. CHERTOFF: And secondly, you would have told them about this Hunterdon County preliminary statistical report, which we've talked about a few moments ago.

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: And that was your way of recording this in your memorandum, right--

SERGEANT GILBERT: That's correct, sir.

MR. CHERTOFF: --because you wanted to have-- In general, you wanted to report up that you were transmitting the relevant information to Mr. Fahy, correct?

SERGEANT GILBERT: Yes, sir, that's accurate.

MR. CHERTOFF: Now, we've talked a little bit about the Perryville analysis. We've talked a little bit about the analysis of the Moorestown troopers who were the subject of the Gloucester County appeal. Was there also-- Did there come a point in time in 1996 -- you became aware of another issue at the Moorestown Station regarding the issue of profiling that had been raised by some minority troopers earlier in '96? ..

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: How did you become aware of that?

SERGEANT GILBERT: I believe through conversations with Captain Touw, who was the Bureau Chief of Internal Affairs.

MR. CHERTOFF: And what did you learn about that?

SERGEANT GILBERT: I had learned that the-- Well, I believe, originally, some issues had been raised by some of the troopers at the station. I think that originally they had been dealt with by -- or looked at pretty comprehensively by the station commander at Moorestown. I believe that a directive was issued, and I'm not exactly sure by whom within the Division, that Internal Affairs was to follow up even further on that and conduct an analysis of the situation, as it related to the issues they had raised and the statistics that had been looked at, at that point.

MR. CHERTOFF: All right. I'm going to show you a document, which is-- It has the number -- the page number GC-1718, and we previously marked it as exhibit CW-8. And it's a memo to Major Fedorko, dated October 4th, 1996, on the subject of Internal Affairs recommendations to the patrol issues, concerns at Moorestown Station.

SERGEANT GILBERT: Yes, sir, I have that.

MR. CHERTOFF: Okay. Have you seen this before?

SERGEANT GILBERT: Yes, sir, I have.

MR. CHERTOFF: Okay. I'm going to give everybody an opportunity to find it.

While we do, let me just, again, for clarity-- The Turnpike is divided -- is a particular troop of the State Police, correct?

SERGEANT GILBERT: Yes, sir, that's accurate.

MR. CHERTOFF: And what troop is that?

SERGEANT GILBERT: Troop D.

MR. CHERTOFF: And are there three barracks along the Turnpike that basically cover the north, central, and south part?

SERGEANT GILBERT: Yes, sir. When going north, you would have had Newark; central, you would have had what was originally New Brunswick -- what is now called Cranbury, since the opening of the new station. And then the southern portion of the Turnpike is patrolled by the Moorestown Barracks.

MR. CHERTOFF: Okay. Now, the Moorestown Barracks was the subject of the original Gloucester County appeal, right?

SERGEANT GILBERT: Yes, sir, that's correct.

MR. CHERTOFF: And then, when we talked about Perryville, that would be a barracks on I-78. That would be a different troop, right?

SERGEANT GILBERT: That would be in Troop B, sir.

MR. CHERTOFF: So there would be three barracks for Troop D covering the north, central, and south of the Turnpike.

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: So this memo here deals with an issue in Moorestown that was separate from the cases that were part of the Gloucester County appeal, right?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: All right. Would you tell us what you learned about what happened in Moorestown and what the allegations were and how that was dealt with?

SERGEANT GILBERT: I believe that allegations were originally raised by a number of minority troopers at the station. Those individuals had brought their concerns to Sergeant James Smith, who was one of the squad sergeants at the station. He, in turn, had brought that information to Lieutenant Bernie Gilbert, who was the station commander at Moorestown. I believe that

Lieutenant Gilbert had conducted an analysis of statistical information that was available in and around that period of time, and also had directed that Sergeant Smith try to collect as much information as he could from the troopers who had raised the issues.

That was put into a package of a report by Lieutenant Gilbert, and I believe he, in turn, forwarded up through his chain of command, ultimately finding its way to Internal Affairs. And I think Internal Affairs -- the bureau there, at the direction of Captain Touw, had done some follow-up inquiries, as far as some additional statistical analysis.

MR. CHERTOFF: All right. I understand. As we go through this memo here, I just want to make sure I'm clear. There's a memo here from Captain Touw to Major Fedorko. And underneath that, there's a special report from a Lieutenant Hinkle from Internal Affairs to Captain Touw.

Had you seen this in 1996?

SERGEANT GILBERT: I believe that I did, sir.

MR. CHERTOFF: And it had certain charts attached to it, as well. Do you remember those?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: Okay. Now, what is-- With respect to the breakdown of stops, and again this is focused, at this point, still on the issue of stops--

If you look at the bottom of Page 1466, does it tell you the percentage of minorities stopped and the percentage of whites that are stopped, and then there are some unknowns?

SERGEANT GILBERT: Yes, sir, it does.

MR. CHERTOFF: And again, it was broken down by which -- what the race was of the trooper who made the stop, correct?

SERGEANT GILBERT: That's correct, sir.

MR. CHERTOFF: And is it fair to say that as between minority troopers and white troopers, there's not that much of a difference in the percentages?

SERGEANT GILBERT: No, several points.

MR. CHERTOFF: But is it also fair to say that as a whole, basically, the whites stopped between 55 and 59 percent, and minorities would generally run around 33 percent, with the rest unknown?

SERGEANT GILBERT: Yes, sir. That's accurate.

MR. CHERTOFF: Now, did you ever see Captain-- Had you previously seen Captain Touw's memo to Major Fedorko?

SERGEANT GILBERT: Yes, sir, I have.

MR. CHERTOFF: Okay. And if you look at the second page, it talks about additional facts established during the Moorestown audit. And the first point says, "The percentage of minorities stopped by both minority and nonminority troopers was dramatically higher than the expert testified to in the Gloucester County trial."

Do you remember seeing that?

SERGEANT GILBERT: Yes, sir, I do.

MR. CHERTOFF: And then it goes on to say, "The preliminary evaluation," and preliminary is in bold print, "does not support the allegations by minority troopers that nonminority troopers at the Moorestown Station are conducting racially motivated stops."

Do you know on what basis Captain Touw reached that conclusion?

SERGEANT GILBERT: No, I don't, sir.

MR. CHERTOFF: Do you know whether that's based upon the fact that the relationship between the minority troopers' behavior and the nonminority troopers' behavior was basically the same?

SERGEANT GILBERT: I think it did. That may have had some bearing on his opinion. Yes, sir.

MR. CHERTOFF: Now, was this report something that you discussed with Mr. Fahy?

SERGEANT GILBERT: I believe that I did. Yes, sir.

MR. CHERTOFF: And do you know if he actually got a copy of this?

SERGEANT GILBERT: I don't recall if I specifically gave Mr. Fahy a copy of this report. I know that it ultimately -- was downtown, but I don't remember the exact vehicle by which it got there.

MR. CHERTOFF: Okay. You remember discussing it with him.

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: Is it fair to say that as you understood your assignment, it was to make sure that Mr. Fahy was kept aware of any significant developments in terms of audits or data, things of that sort?

SERGEANT GILBERT: Yes, sir, that's correct.

MR. CHERTOFF: And again, you used the phrase earlier, downtown. Is that the -- one of the expressions troopers use to talk about the Attorney General's Office in downtown Trenton?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: Now, I want to go to--

By the way, in this period of time in 1996, did you become aware that there was going to be a meeting at some point between Mr. Fahy and the Hunterdon County prosecutor concerning whether certain cases would need to be dropped because of this challenge based on racial profiling in Hunterdon County?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: Did you attend that meeting?

SERGEANT GILBERT: No, I did not.

MR. CHERTOFF: Okay. Where-- How did you learn about that meeting?

SERGEANT GILBERT: I believe, after the fact, from Mr. Fahy, and I believe, also, that Captain Touw had attended that meeting.

MR. CHERTOFF: What did Mr. Fahy tell you about the meeting?

SERGEANT GILBERT: My understanding was that a decision had been reached that I believe there were two active cases that were on the docket in Hunterdon County, and that a decision had been reached, through Mr. Fahy's chain of command, that those two cases were going to be-- I believe they were downgraded to lower-level cases, and I believe that they were pled out.

MR. CHERTOFF: Now, I want to just make sure, again, we understand the significance of this.

Am I correct that these two cases involved-- The original charges were very serious narcotics charges.

SERGEANT GILBERT: That would be correct, sir.

MR. CHERTOFF: Do you remember if they were first-degree felonies or second degree?

SERGEANT GILBERT: My recollection is that they were first-degree cases.

MR. CHERTOFF: And that again, for those who were uninitiated, that's the most serious kind of felony -- the highest type of felony you can have, right -- first degree?

SERGEANT GILBERT: That's correct, sir.

MR. CHERTOFF: So, in order to resolve these challenges on profiling relating to these troopers, it was necessary to really drop them to much less serious charges.

SERGEANT GILBERT: I believe that was the case. Yes, sir.

MR. CHERTOFF: Is it fair to say, again, based on your experience, that in the nature of things that would command the attention of people in law enforcement, problems in investigations that require very heavy-duty cases to be dropped down to lower cases-- That's a very big problem.

SERGEANT GILBERT: Yes, it is.

MR. CHERTOFF: And it's something that you would normally expect to command the attention of people responsible for prosecuting and investigating crimes in the State of New Jersey.

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: And is it fair to say your understanding is that Deputy Attorney General Fahy took this very seriously?

SERGEANT GILBERT: I believe so. Yes, sir.

MR. CHERTOFF: Did there also come a point in time, again in 1996, that you and Mr. Fahy attended a meeting with the Maryland State Police?

SERGEANT GILBERT: Yes, sir. We did.

MR. CHERTOFF: And do you remember approximately when that was?

SERGEANT GILBERT: I believe it would have been in the early fall of 1996.

MR. CHERTOFF: And where was it?

SERGEANT GILBERT: At the Moorestown State Police Barracks on the Turnpike.

MR. CHERTOFF: Do you remember how that came about?

SERGEANT GILBERT: Mr. Fahy had called me up, indicated that he had had some communication from representatives of the Maryland State Police and the attorney general's office in Maryland -- being that they were dealing with some parallel issues -- that he had extended an invitation to them to travel to New Jersey to sit down for some discussions. He asked for me to make some logistical arrangements to set up the meeting. And I did so at the Moorestown Barracks.

MR. CHERTOFF: Did you attend the meeting?

SERGEANT GILBERT: Yes, sir, I did.

MR. CHERTOFF: What was the purpose of the meeting?

SERGEANT GILBERT: I believe the purpose of the meeting was for us to get an overview of what the Maryland State Police, in dealing with their ongoing litigation on the issue of profiling, had been dealing with. I believe conversely, for Mr. Fahy to relate what the experiences were up here so that we could be better prepared for what lay ahead.

MR. CHERTOFF: Now, do you remember the meeting?

SERGEANT GILBERT: Yes, sir. I do.

MR. CHERTOFF: What was discussed at the meeting?

SERGEANT GILBERT: I believe that we received an overview from the Maryland State Police representatives about an overview of their situation which-- There had been challenges raised on the basis of a statistical analysis on the profiling issue on Interstate 95 -- the I-95 corridor, and that they had ultimately gotten involved in a consent decree that was sanctioned by the courts between themselves and the ACLU.

MR. CHERTOFF: Okay. Now, this was a case that had been brought by the ACLU on behalf of private people against the state of Maryland.

SERGEANT GILBERT: Yes, sir. That's correct.

MR. CHERTOFF: Now, when you say consent decree, that's a settlement in which you're, basically, in court. A judge puts an order in effect that, essentially, orders the state police to do certain things.

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: All right. So that's generally a fairly serious event for a state police organization to be under a court order.

SERGEANT GILBERT: That would be very serious. Yes, sir.

MR. CHERTOFF: In that meeting, do you remember a discussion about the nature of the evidence and the statistics that had led to this settlement and this consent decree?

SERGEANT GILBERT: I believe there was discussion about what, specifically, had been looked at with regards to the approach that had been taken by the experts that were challenging the Maryland State Police.

MR. CHERTOFF: And what was looked at in Maryland? What was-- What did they tell you had been looked at in the Maryland case?

SERGEANT GILBERT: That while-- In our discussion back and forth, New Jersey's issues, at that time, primarily were based on analysis of

search information that-- What had happened in Maryland is that the consent decree down there was primarily driven by a view of search activity.

MR. CHERTOFF: Okay. Let me-- I want to make sure you didn't misspeak. I think you said New Jersey cases up to that point had been driven by search information.

SERGEANT GILBERT: I'm sorry, by stop data and stop analysis, where the Maryland was more rooted in an analysis of search activity.

MR. CHERTOFF: Okay. And again, just to make sure it's clear-- So, in the context of the meeting, what you learned from Maryland is that, unlike in New Jersey where the focus was on initial stops, in Maryland the critical information that led to the consent judgment or the consent decree was the proportion of minorities to nonminorities that were subject to searches.

SERGEANT GILBERT: That's correct, sir.

MR. CHERTOFF: And as we indicated earlier, in terms of the spectrum of things that troopers do, a search comes after a stop, right?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: Now, I want to just try to, again, put it in context a little bit, when we talk about the statistics.

Is it fair to say that one of the issues that was continually raised in connection with the Gloucester County case is the difficulty of making a meaningful statistical analysis of stop data, because if you don't have a baseline of the proportion of people who travel the Turnpike, it's hard to know how, out of proportion, the number of stops.

SERGEANT GILBERT: That's correct, sir. That's why we had concerns with the traffic study that was utilized in Gloucester County and why we had felt it was very important, subsequent to that, that we get, in whatever

form we could, a reliable traffic study conducted so that we would have a baseline upon which we would be judging our personnel as to where they stood against that baseline.

MR. CHERTOFF: So one of the efforts in New Jersey was to develop a traffic study that could be used as a baseline to see how disproportionate the stops were, right?

SERGEANT GILBERT: That's correct, sir.

MR. CHERTOFF: But with respect to the search situation, that's different, because you have a baseline with the searches, because you know the -- you should know the race of pretty much everybody that's been stopped. And that's your baseline universe that you can use to compare the number of people stopped who were asked to agree to a search.

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: So that whatever the statistical problem is with a stop case and stop statistics, that statistical problem does not apply when you're looking at searches, correct?

SERGEANT GILBERT: No, no, it does not.

MR. CHERTOFF: Okay. And that's why, from the standpoint of the Maryland case, you understood the significance of the shift in focus away from stops to the focus on searches.

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: And is it fair to say that that shift became evident to you in approximately the fall of 1996?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: Now, you later, actually, took steps to analyze this more carefully, correct?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: And was that effort begun because you received -- or I guess Captain Brennan gave you some information off the Internet?

SERGEANT GILBERT: Yes, sir. That's correct.

MR. CHERTOFF: What was that information?

SERGEANT GILBERT: It was a report which I believe had been generated on the Internet by Dr. John Lamberth, who was the statistician that had conducted the analysis of both the Gloucester County matter, as well as the matter in which Maryland State Police and the ACLU had brokered the agreement down there. And it gave a pretty substantial analysis of the work that he had done, the results that he had generated, and the significance of those results.

MR. CHERTOFF: Now, we're going to come back to that in a minute, but do you remember when you would have gotten that information, approximately?

SERGEANT GILBERT: I believe it was later, probably somewhere in the area of November or December. I think it was relatively late in the year.

MR. CHERTOFF: Okay. Now, in the meantime in 1996, were there additional meetings of the racial profiling committee?

SERGEANT GILBERT: I believe that there was, sir, but I don't remember the exact date.

MR. CHERTOFF: Well, I'm going to say that there's an October 4th. I'm going to show you what is marked as G-7B as an exhibit. It's OAG-4229. It's an interoffice communication from you to Colonel Williams, dated, as I said, October 11, 1996.

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: Okay.

Now, at this meeting, who attended?

SERGEANT GILBERT: According to what I've written, sir, it would have been Lieutenant Colonel Littles, Captain Touw, Captain Brennan, Sergeant First Class Blaker, Detective Reilly, and myself.

MR. CHERTOFF: All right.

Now, at this meeting, Mr. Fahy and Mr. Susswein did not attend.

SERGEANT GILBERT: No, they were not there, sir.

MR. CHERTOFF: Do you know why that is?

SERGEANT GILBERT: I don't know if the Colonel wanted to have a meeting, and they weren't available. I don't really recollect as to why, specifically, they weren't there on that date.

MR. CHERTOFF: All right.

Now, there was discussion there about further training steps?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: At the bottom of the second page, it indicates, "As noted by the attached Internal Affairs Bureau documents, the audit process has proven itself and will aid in identifying troopers whose methods warrant additional scrutiny."

What was the discussion about that?

SERGEANT GILBERT: I think that Captain Touw had developed a process which, I believe, would be very responsive to criticisms that we had received in both the Gloucester County case and from other venues about the fact that we didn't have the capabilities to look at overall enforcement patterns. That we were kind of restricted to an individual event, and that in the way that

they had utilized this in the Internal Affairs Bureau, that it presented a viable way of addressing that issue as we moved it down the line.

MR. CHERTOFF: And then, going down to the next page, again the third paragraph talks about the reports submitted by Captain Touw concerning Moorestown Station.

Does that make reference to something attached to this memo, which is the previous memo we've seen from Captain Touw to Major Fedorko regarding the Moorestown problem?

SERGEANT GILBERT: Yes, sir, it does.

MR. CHERTOFF: And again, was that discussed at the meeting?

SERGEANT GILBERT: Yes, sir, it was.

MR. CHERTOFF: Was there-- Did you attach to the memo Colonel Williams's reactions or his responses to the various suggestions that Captain Touw had made in response to the Moorestown audit?

SERGEANT GILBERT: Yes, sir, I did.

MR. CHERTOFF: Okay.

Now, we're going to have Colonel Williams later, so he can speak for himself, but is it fair to say that at this meeting it was very clear that there was an audit program under way and that the audit program did produce at least some recommendations about changes in procedure?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: Do you remember whether you communicated the substance of this meeting to Mr. Fahy after the fact?

SERGEANT GILBERT: I believe, in the course of our regular conversations that we have, I would have, yes, sir.

MR. CHERTOFF: How regularly do you think you talked to Mr. Fahy at this period of time?

SERGEANT GILBERT: I can't put an exact number on it, but I know we were in conversation on a fairly regular basis about the issues that were coming up with regards to the Gloucester County case and the other issues that had been raised in other venues.

MR. CHERTOFF: Okay, let me finally end with one last section on this document in your memo.

It says, "A final recommendation would be that the search-and-seizure committee conduct a thorough review of SOP F-55, motor vehicle searches and seizures."

What was SOP F-55?

SERGEANT GILBERT: Basically, if you want to call it the -- at that point, it was the bible -- you would refer to it that way -- of making motor vehicle searches and seizures. Our SOPs delineate the everyday activities of our personnel and would be the primary reference document they would go to if they had a question about those issues.

MR. CHERTOFF: Okay.

Now, did there come a point in time in late 1996 you learned that in addition to the *Soto* matter, which was making its way through the courts, there was a Department of Justice in Washington inquiry that had begun regarding racial profiling?

SERGEANT GILBERT: Yes, sir, I did.

MR. CHERTOFF: How did you learn about that?

SERGEANT GILBERT: I learned about that on December 24th of 1996 -- Christmas Eve day.

MR. CHERTOFF: And how did you find out about it?

SERGEANT GILBERT: The Colonel had stopped by my office, which was down the hall, and told me we were going to go to a meeting downtown, and I subsequently went with him. And we attended a meeting with Attorney General Verniero.

MR. CHERTOFF: Now, that's Christmas Eve, right?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: Is that, fair to say, an unusual time for -- in your experience -- for doing, you know, significant meetings?

SERGEANT GILBERT: Being that I hadn't been to many meetings like that, I assumed that it was, because it was a pretty quiet day.

MR. CHERTOFF: Now, up to that point in time, had anybody reached out to you or asked you any questions or told you anything about this Department of Justice inquiry?

SERGEANT GILBERT: No, sir, they had not.

MR. CHERTOFF: Would you tell us, when you went down to the meeting on December 24th, where was it held?

SERGEANT GILBERT: In the Office of the Attorney General -- Mr. Verniero's office.

MR. CHERTOFF: And who was present?

SERGEANT GILBERT: My recollection would be that it was Mr. Verniero, Mr. Waugh -- who was his direct assistant -- Mr. Fahy, the Colonel -- that being Colonel Williams -- and myself.

MR. CHERTOFF: And what was the discussion?

SERGEANT GILBERT: We were advised at that point that the Attorney General's Office had in its possession a request for information. That

that request for information had been generated out of a meeting that had taken place earlier in the month between Mr. Verniero and several people from the Attorney General's Office who had traveled down to Washington, met with Justice, and that basically was where we had gotten to at that point -- as of December 24th.

MR. CHERTOFF: Now, was there any discussion of what information was actually available in that meeting?

SERGEANT GILBERT: I don't think that meeting itself took a real long time, because, again, it was Christmas Eve day. The Colonel also had to speak to the Attorney General regarding a pending promotion list.

So what I recall is that the meeting was relatively short. We had been given an overview of basically how they had gotten to that point -- that there had been a meeting earlier in the month about these issues -- and that the request for information was what had evolved out of that.

MR. CHERTOFF: Were you given a copy, at some point, of the request for information and asked to help pull this information together?

SERGEANT GILBERT: Yes, sir, I was.

MR. CHERTOFF: Okay.

I'm going to show you what is previously-- It's actually marked as W-15, and it's OAG-592, which we'll get to you.

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: If you look, attached at the end of that at about page--

SENATOR ROBERTSON: What's the date on that document?

MR. CHERTOFF: It's dated January 9, 1997. The cover is to Peter Verniero from Alex Waugh.

SENATOR ROBERTSON: Do we have that?

MR. CHERTOFF: I think it is-- It's January 9th, 1997. It's OAG-592, and it's from -- to Peter Verniero from Alexander Waugh Jr.

SENATOR FURNARI: They're not in sequence.

MR. CHERTOFF: Actually, I'll tell you what we'll use-- While we're looking for that -- it's in a different location-- There's another copy, but it's in a different location.

Why don't we give the witness W-14. It's also marked OAG-577, and it's a memo to John Fahy from Alexander Waugh, dated December 20th, 1996. And that'll have the same thing written on it.

Okay. Now, do you have that in front of you?

SERGEANT GILBERT: Yes, I have both of them, sir.

MR. CHERTOFF: Okay.

Attached to the memo of December 20th is a -- something called information request. Is that the document that you were given to develop information for the Department of Justice?

SERGEANT GILBERT: Yes, sir, it was.

MR. CHERTOFF: Okay, now I just want to focus on a couple of things. This is a fairly broad request, right?

SERGEANT GILBERT: Yes, it is.

MR. CHERTOFF: And it talks about-- For example, on the first page, 2-A, documents related to individual traffic stops, which again is the subject of what you had already been looking at in the Gloucester County case, right?

SERGEANT GILBERT: Yes, sir, that's correct.

MR. CHERTOFF: But it also goes on in *B* to ask for data relating to things like issuance of citations and/or searches, seizures, and arrests, correct?

SERGEANT GILBERT: That's correct, sir.

MR. CHERTOFF: Now, you understood that searches and seizures was the subject of the Maryland case which had led to the consent decree, right?

SERGEANT GILBERT: That's correct, sir.

MR. CHERTOFF: So is it fair to say this was a broader request than what the kind of thing you had been dealing with in the *Soto* case?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: The *Soto* case being the Gloucester County case, right?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: Okay.

So you went about the process of starting to pull this material together. Is that fair to say?

SERGEANT GILBERT: That's correct, sir.

MR. CHERTOFF: Now, I want to show you-- I want to show you something that's been marked as F-26, which is a draft letter. It says January 3rd, 1997, and then it looks like it's struck out and it looks like it's either a 7 or a 17, and it's OAG-625. And this is a draft letter to Loretta King, who was then the Deputy Assistant Attorney General of the Civil Rights Division.

SERGEANT GILBERT: Yes, sir. I have that in front of me.

MR. CHERTOFF: Do you have that?

Now, this is an important letter. I wanted you to take a moment to look at it here.

Did you ever see this draft before or a draft like this before?

SERGEANT GILBERT: In my files, I know I have one copy of the draft, but it's not marked up. It's just, I believe, a clean draft -- version of the letter, but not this one specifically.

MR. CHERTOFF: Okay.

So you were shown a copy of this without the handwriting on it?

SERGEANT GILBERT: Yeah, I believe I received a copy of it from Mr. Fahy at one point.

MR. CHERTOFF: Okay.

Now, did you understand Mr. Fahy to be working on this draft letter to go to the Civil Rights Division as part of your response to this inquiry from the Civil Rights Division?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: Now, I want to turn your attention to the next to last couple of pages in the document. I think it's Page 8 on the draft.

Now, it says here, in the typed portion of the draft, "I believe the time has come to spend sufficient resources to develop and conduct a trustworthy violator survey."

And I take it a violator survey is what we've talked about. It's your baseline for stop data.

SERGEANT GILBERT: Both. We believed what we needed -- what we felt was important to have -- was both a study which encompassed both the population and the violator issues, because they were both being raised to a real significant level of importance. But the study, from our perspective, would have to cover both of them.

MR. CHERTOFF: Okay.

Now then, there's the following theme written and typed up: "The State Police report to me that the number of stops involving black motorists on the southern portion of the Turnpike, patrolled by troopers assigned to the Moorestown Station, remains near the level reported in the *Soto* case. This figure is also higher than that reported at other State Police stations in this State, including those along the Turnpike.

"It is difficult for me to believe that despite a clear official policy prohibiting racial profiling, and repeated declarations requiring adherence to this policy, that troopers assigned to one station would continue to reject it. This is particularly true since troopers are routinely reassigned to a variety of duties, and the personnel stationed in Moorestown, including supervisors, is fluid. Perhaps the answer lies in factors which can be accounted for in a professional and unbiased violator survey.

"Therefore, I request your patience as New Jersey undertakes a costly and ambitious study of the traffic and violator patterns on the southern portion of the Turnpike."

Now, this information, where it says "the State Police report to me that the number of stops involving black motorists on the southern portion of the Turnpike remains near the level reported in the *Soto* case," is this a reference, as you understood it, to precisely the information that you were developing in the audits -- you and the State Police -- that you were regularly passing on to Mr. Fahy?

SERGEANT GILBERT: Yes, sir. That's correct.

MR. CHERTOFF: So is it fair to say when you saw this draft letter, it confirmed in your mind that the Office of the Attorney General was fully aware of your information on the audits that you were passing along in 1996?

SERGEANT GILBERT: To be fair, sir, I think when I saw the draft letter, that wouldn't have even been an issue that would have entered into my mind as to whether that was a point of contention or not. I don't recall specifically seeing this passage in the draft letter that I have. I'm sure if I read it, I would have just read right through it, because I would have known that to be the fact.

MR. CHERTOFF: Is it fair to say that the issue of whether the State Police was turning this over to the Office of the Attorney General only became a point of contention in 1999, when there was a suggestion that we heard earlier that the State Police were withholding stuff?

SERGEANT GILBERT: That would be correct.

MR. CHERTOFF: But you would agree with me that this passage in the draft prepared by the Office of the Attorney General confirms that the information that was being developed was being passed along?

SERGEANT GILBERT: Without a doubt.

MR. CHERTOFF: Now, you see it's been struck off.

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: Right

Now, we have evidence in the record that the handwriting in connection with this strike-off is that of the Attorney General.

Did you ever have any discussion with anybody about why this passage was stricken from the letter?

SERGEANT GILBERT: No, I have not.

MR. CHERTOFF: I'm showing you what is W-15, which is the next document. It's dated January 9th, OAG-592, which is a subsequent draft.

If you go back to what's Page 5 of that draft -- and I'll give you a minute to get that. And it's OAG-599 -- I'm sorry, 592, at the bottom, to Peter Verniero, from Alexander Waugh, January 9th, 1997.

SERGEANT GILBERT: Yes, sir. I have that in front of me.

MR. CHERTOFF: Okay.

If you look at Page 599, you see there's a paragraph that begins, "my office is in the process of developing a trustworthy violator survey--"

SERGEANT GILBERT: I have to apologize. I'm screwed up here. Let me--

MR. CHERTOFF: Page 599.

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: And if you look back at the draft I gave you a moment ago, the handwritten portion says, "my office is in the process of developing a trustworthy violator survey," right?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: Okay. So you see that in this draft, that handwritten portion has been put in, right?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: And then you see all the reference to the Moorestown figures being high.--all that stricken from this draft, right?

SERGEANT GILBERT: That's correct.

MR. CHERTOFF: And again, did you have any discussion with anybody about why the decision was made not to put that in the letter to the Deputy Assistant Attorney General?

SERGEANT GILBERT: No, I did not.

MR. CHERTOFF: Now, I also want to show you-- We'll move on now to -- we're now in 1997. There's a memo of January 9th, 1997, OAG-6164, and it's G-12.

And we're going to get that to you to take a look at. And it's from you -- and you're now Sergeant Gilbert.

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: Congratulations.

SERGEANT GILBERT: Thank you. (laughter)

MR. CHERTOFF: Do you remember this?

SERGEANT GILBERT: Yes, sir, I do.

MR. CHERTOFF: And again, was this a report that you did regarding your communications with Deputy Attorney General Fahy regarding collecting the data requested by the Department of Justice?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: Now there's a handwritten notation, "1/10/97, a.m., spoke to AG Verniero and AAG Waugh, reference to data requested by the Justice Department. At this time same will be restricted to the Turnpike stations at Cranbury and Moorestown."

Do you remember seeing that notation?

SERGEANT GILBERT: Yes, sir, I do.

MR. CHERTOFF: And what's your understanding about why that restriction was entered into?

SERGEANT GILBERT: I believe that the Colonel at that point was indicating to me that on that date that he had had some interaction with the Attorney General and Mr. Waugh. The Colonel had had time to digest my report about the logistical concerns that I had had. I assume that he had had

some conversation with Mr. Verniero and Mr. Waugh, and that the result of that conversation was the note that he had put on the document.

MR. CHERTOFF: Okay.

What were the logistical concerns you had expressed?

SERGEANT GILBERT: With our division, although we're making good strides in that now with the infusion of resources that we've had-- From a computerization standpoint and a record keeping standpoint back in 1996, we were not up to snuff. We were not up to speed with where we should have been at that point.

MR. CHERTOFF: Now, I want to move on and ask you-- In early 1997, did Mr. Fahy essentially phase out as your point of contact and you had a new point to contact?

SERGEANT GILBERT: Yes, sir, that's correct.

MR. CHERTOFF: And who was that?

SERGEANT GILBERT: That would have been Deputy Attorney General George Rover.

MR. CHERTOFF: And during this period of time, which is early 1997 -- the period of January and February -- in addition to arranging to collect information for the Civil Rights Division of the Department of Justice, did you also take the information you had received from the Internet about the Maryland State Police numbers and correlate that with the New Jersey numbers to come up with an analysis of New Jersey's exposure on the issue of consent to search as opposed to the issue of stops?

SERGEANT GILBERT: Yes, sir, I did.

MR. CHERTOFF: At whose direction did you do that?

SERGEANT GILBERT: I don't know if I did it at anybody's direction. I just felt at that point that it was in my assignment to look at this and try and give the Colonel, my chain of command, and the people downtown a heads-up as to what was there. It seemed like an obvious way to go.

And I looked at the figures from Maryland and the figures that we had and put them together and then reported them up through my chain of command.

MR. CHERTOFF: By the way, before I forget, we passed a couple of dates by. If we could just put December 24th up -- 1996 -- and I think January 9th, 1997, as significant dates.

I want to establish a time frame within which you did this analysis regarding the Maryland State Police. I'm going to show you a single page. It was marked exhibit CW-10. It's a memo dated February 26th, 1997, from Colonel Williams, and it's got SP-37040 on the bottom. And it makes reference to this Maryland State Police study and the settlement agreement.

SENATOR ROBERTSON: What is it again?

MR. CHERTOFF: It's February 26th, 1997, and it's SP-37040.

Do you have a copy of this?

SERGEANT GILBERT: No. I'm sorry, I don't. I'm going to need a copy of that.

MR. CHERTOFF: Okay. We're going to get you a copy of that.

And really the relevance of this is to help you. Does this establish a time frame--

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: --by which you would have prepared your analysis of the comparison between the Maryland State Police and New Jersey?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: Now, let's get to that analysis, and it's a document which I think we're going to see a lot of. It's OAG-6225, G-13, and it's a memo to you, without a date, to Colonel Williams regarding Justice Department inquiry.

Do you have that in front of you?

SERGEANT GILBERT: No. I know which--

MR. CHERTOFF: We're about to get it for you. And I want to make sure everybody has it.

SENATOR ROBERTSON: Dated?

MR. CHERTOFF: It's undated.

SENATOR ROBERTSON: It's undated.

MR. CHERTOFF: It's plain white paper, G-225, like this.

Now, do you have that in front of you?

SERGEANT GILBERT: Yes, sir, I do.

MR. CHERTOFF: And we're going to wait until everybody gets it, because this is one of those things we're going to spend a time, I think, coming back to from time to time.

SENATOR ZANE: What are some of the numbers on the bottom, again?

MR. CHERTOFF: I beg your pardon?

SENATOR ZANE: Some of the numbers on the bottom?

MR. CHERTOFF: It's G-225, OAG-- I'm sorry, OAG-6225.

SENATOR ROBERTSON: Just for the record, Mr. Chairman, so everybody understands, we've been provided with binders that are roughly in chronological order and aren't separated by virtue of witness and aren't serially

numbered from beginning to end. So it makes it a little difficult for us to find things.

MR. CHERTOFF: I think this is--

SENATOR ROBERTSON: So, if people are wondering why we keep searching, that's really why.

MR. CHERTOFF: And I think this is in February, more or less.

SENATOR ROBERTSON: This is an undated thing, that may or may not be in the chronology?

SENATOR GORMLEY: That's why we're going to spend a lot of time on this.

SENATOR ROBERTSON: Right. So I just want to make sure I have a copy, and I'm not sure where to find it since it's undated.

SENATOR GORMLEY: Yes. Well, we're having extra copies made right now.

SENATOR ROBERTSON: Good.

SENATOR CAFIERO: Mr. Chairman, do you think we could identify Volume *A* and *B*? These two volumes -- *A* and *B* -- because some of them are in *A* and some are in *B*.

MR. CHERTOFF: This is Volume *A*, and it's about midway -- maybe about 60 percent through the volume. And if it helps, it's right after a document dated January 17th, 1997, which is the final letter to Loretta King from Peter Verniero.

SENATOR CAFIERO: Do these go by date?

SENATOR GORMLEY: There's no date on it, that's the problem.

SENATOR ROBERTSON: It's an undated memo.

SENATOR GORMLEY: That's why we're going to ask the questions.

MR. CHERTOFF: Okay.

I want to direct your attention to this, and there's actually a couple parts to this memo. Let me go back first to Page 2.

You had indicated earlier in 1996 that you had said in, I believe it was the April 12th, 1996 meeting with Mr. Fahy and Mr. Susswein, that you were going to do an analysis of the 19 troopers who were the subject of the Gloucester County case -- the *Soto* case, right?

SERGEANT GILBERT: That's correct, sir.

MR. CHERTOFF: And are your results for this -- for this analysis -- contained in this memo that's undated, that you sent up to Colonel Williams?

SERGEANT GILBERT: That's correct, sir.

MR. CHERTOFF: Okay. Now, first of all, why did you send a memo -- an undated memo -- on this format as opposed to the usual official stationery?

SERGEANT GILBERT: I've been asked that question several times. I really don't have an answer. I wanted to get the information to him. I did that. I don't really have an answer as to why it's in there. There's a couple of other things I did that were undated also that we've had to try to correlate like we did with this one. It's just something I neglected to do.

MR. CHERTOFF: Okay.

On the second page, your analysis, you said -- I think you say here, "As you've seen in Lamberth's study of Maryland State Police data, he looked at the activity of individual troopers. Although I cannot presently give you

complete data on any one trooper, here are some examples which are not promising.”

And then you talk about the arrest stats of the troopers whose cases were involved in Gloucester County, and you say, “Minority arrest percentages for those troopers were 63 percent, 80 percent, 79 percent, 84 percent, 100 percent, 90 percent, 84 percent, 92 percent.”

SERGEANT GILBERT: That’s correct.

MR. CHERTOFF: And you said, “I think it’s clear our complete numbers are probably on a par with those generated by the Maryland State Police.” And then on the next page you say, “At this point, we are in a very bad spot.”

Now let me ask you this: Had you previously communicated the substance of this information to Mr. Fahy about your review of the individual troopers at Moorestown and what their arrest statistics were?

SERGEANT GILBERT: That I had, but not the search activity yet -- at that point.

MR. CHERTOFF: Yet. I know. Not the search activity, but the arrest activity.

SERGEANT GILBERT: Yes, sir, I had.

MR. CHERTOFF: . You had communicated that.

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: Is it fair to say that it’s your recollection that in fact, at a point in time-- Well, first of all, you had told Mr. Fahy as of the May 16th meeting that this analysis of arrest activity by the Gloucester County troopers was already complete.

SERGEANT GILBERT: I believe that I did by what I wrote. Yes, sir.

MR. CHERTOFF: Okay.

And then, of course, you told them what the results were, that they were not good?

SERGEANT GILBERT: That's correct.

MR. CHERTOFF: In fact, is it the case that as a consequence -- as far as you know -- as a consequence of your discussion with Mr. Fahy that the State actually dropped defending the case with respect to one of the troopers because there was a concern about the numbers with the troopers?

SERGEANT GILBERT: I don't believe it was a concern about the numbers. There was some other issues with that individual trooper. He had since departed from the organization, and I felt on that-- I think that on that basis, the decision was made that his cases would not be carried forth in the appeal.

MR. CHERTOFF: But at the very least, you were involved in ongoing discussion with Mr. Fahy about what cases were going to be carried forward on the appeal, and in connection with that, you would have told him about these arrest figures.

SERGEANT GILBERT: That's correct, sir.

MR. CHERTOFF: Do you actually remember showing him this actual memo?

SERGEANT GILBERT: This memo that we have here?

MR. CHERTOFF: Right

SERGEANT GILBERT: No, I do not, sir.

MR. CHERTOFF: Now, let me go back to the first part of the memo.

In the first part of the memo you indicated, did you not, that you had done a comparison of search data -- not stop or arrest data -- search data in New Jersey and compared it with Maryland.

SERGEANT GILBERT: That's correct.

MR. CHERTOFF: And was your conclusion that the New Jersey data was on a par with the Maryland data?

SERGEANT GILBERT: It was just about even up. Yes, sir.

MR. CHERTOFF: So that, for example, the Maryland data showed 80 percent minority and 72.9 percent search -- 80 percent minority and 72.9 percent Black individuals who were searched -- and that was the basis for the consent decree, right?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: And in Moorestown during the period that you explored, which was January to April and December '94, and July to December '96, you had 89 percent searches minority and 67 percent Black. And at Cranbury it was 94 percent minority and 69 percent Black for the first three months of '94 and then for the last six months of '96, 79 percent minority and 55 percent Black, right?

SERGEANT GILBERT: That's accurate, yes, sir.

MR. CHERTOFF: And is it fair to say that you also, at some point, handwrote additional analysis from the Newark Barracks, and that also showed approximately 70 percent minority?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: Now, did you convey this information--

First of all, let me ask you, did you show this memo to Mr. Fahy or Mr. Rover?

SERGEANT GILBERT: No, I did not.

MR. CHERTOFF: Did you convey the information about the consents to search to Mr. Fahy or to Mr. Rover?

SERGEANT GILBERT: I believe at that point that my point of contact was Mr. Rover, so I had direct conversation with him on these issues.

MR. CHERTOFF: Okay, well let me ask you first, do you know whether Mr. Fahy -- at a point in time -- knew about-- He knew about the arrest data, correct?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: Do you know whether he knew about the consent to search data?

SERGEANT GILBERT: I know that as of May 20th of 1997 he did, but I can't state for a fact whether before that he did or not.

MR. CHERTOFF: And you know that because of the meeting that took place on May 20th?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: With respect to Mr. Rover -- Mr. Rover was your point of contact in February of '97.

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: At that point in time, when you developed this, did you orally convey to him the information -- the statistical comparison you had done between the Maryland data and the New Jersey data as it relates to consent to search?

SERGEANT GILBERT: Yes, sir. I had been ordered to do that.

MR. CHERTOFF: Who ordered you to do that?

SERGEANT GILBERT: The superintendent.

MR. CHERTOFF: Personally?

SERGEANT GILBERT: Yes.

MR. CHERTOFF: And did you carry out that order?

SERGEANT GILBERT: Yes, I did.

MR. CHERTOFF: And you have a recollection of talking to Mr. Rover?

SERGEANT GILBERT: Yes, I do.

MR. CHERTOFF: Is there any doubt in your mind you conveyed this to him?

SERGEANT GILBERT: Absolutely not.

MR. CHERTOFF: What did you say to him and what did he say to you as best as you can remember?

SERGEANT GILBERT: After I had done the comparison of the numbers-- One of the first things that had happened, because you had also put -- not to go out of order, but CW-10, the interoffice communication I had done -- that was one of the steps when I had gone to Sergeant Blaker, briefed him, and then we went to the superintendent, that gave rise to CW-10 -- which you have here -- as far as putting the information out to our road personnel, because it was very critical information.

And subsequent to that, the Colonel had directed me to make sure that I had gotten in touch with Mr. Rover and laid all this information out to him in full, because we felt it was a very significant development.

MR. CHERTOFF: Was this-- Did you give this information to Mr. Rover by telephone or in person?

SERGEANT GILBERT: By telephone, sir.

MR. CHERTOFF: Was that your regular practice to talk to him by phone as opposed to having meetings?

SERGEANT GILBERT: Most of the time, because he was situated in ABC at that point, an office down in Trenton, and we were up in West Trenton, so the easiest way for me to communicate with him in a quick nature would be to pick up the telephone and converse back and forth.

MR. CHERTOFF: And would you tell us, as best as you can remember, the conversations you had with Mr. Rover, when you conveyed this information?

SERGEANT GILBERT: I remember telling Mr. Rover that with respect to our search activity, our post-stop activity, that we were on a direct par with the state of Maryland, regarding the Maryland State Police, and that that information, I believed, was going to be critical and was going to be a focal point of where we were going.

MR. CHERTOFF: And what did he say?

SERGEANT GILBERT: I believe at that point that he had some concerns about those figures. We had discussions about making sure that everybody in both chains of command were aware of that information.

MR. CHERTOFF: Now, let's talk about both chains of command, so let's be clear. You had a chain of command whereby you would go up to the superintendent, through your various supervisors, right?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: And then there was an alternative chain of command, or chain of information, where you would talk to Mr. Rover, and he would assure that he would take it up through his chain of command?

SERGEANT GILBERT: Yes, sir, that's accurate.

MR. CHERTOFF: So you had both of those chains of command, right?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: And you reported it up to the superintendent. You also reported it to Mr. Rover?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: Sometimes, would you directly report to Williams, in fact, without going to your supervisors?

SERGEANT GILBERT: Sometimes, yes, sir.

MR. CHERTOFF: Did Mr. -- again, in the context of your conversation with Mr. Rover, was it clear to you, or did you understand that he recognized the significance of this development in terms of consent to searches?

SERGEANT GILBERT: Yes, sir, I do.

MR. CHERTOFF: And did you also have discussion with Mr. Rover, either then or at other points in time, that this -- that these statistics indicated that the consent to search issue was one of particular vulnerability for the State Police, as opposed to stops?

SERGEANT GILBERT: From a perceptual standpoint, yes, that these numbers were going to be problematic.

MR. CHERTOFF: Okay. Now, also, I just want to go through the rest of this memo -- this undated memo. On the third page, you say at the beginning: "At this point, we're in a very bad spot. Through the Gloucester County case, the Illinois State Police investigation, and the Maryland State Police study settlement, the Justice Department has a very good understanding

of how we operate and what type of numbers they can get their hands on to prove their position.

"I still believe the traffic studies in both New Jersey and Maryland were flawed, because they didn't encompass the majority of night hours. However, even if we can get any type of positive results out of a new study, the gains we might achieve will still be overshadowed by the search percentages.

"Our opponents already know this. The Maryland decree skips over initial stop data in favor of focusing on those stops which involved a search."

Now, am I correct in understanding what you're saying to be this? In the past, we've argued about -- we meaning the State Police and the Attorney General's Office -- have argued that the stop figures are not a good basis to rely upon, because it's difficult to get a baseline. But everybody now understands that you can skip over the stops and deal with the search figures, and that's a much more powerful statistical argument than the stop figures.

SERGEANT GILBERT: That's correct.

MR. CHERTOFF: And what you were expressing here was the recognition that the Justice Department would probably figure out, from the Maryland case, that they ought to move the focus away from stops and on to searches as a much more powerful way of getting into this issue.

SERGEANT GILBERT: That's correct, sir.

MR. CHERTOFF: Did you convey this concept, or did this concept come up in discussion with Mr. Rover?

SERGEANT GILBERT: Yes, it did.

MR. CHERTOFF: And, of course, that insight was also something you learned when you had your meeting with Mr. Fahy, with the Maryland State Police in 1996.

SERGEANT GILBERT: Yes, sir, that's accurate.

MR. CHERTOFF: Now, did you also, in your -- in the end of this memo -- indicate some thoughts concerning entering into an agreement with the Justice Department? And you talked about, for example, you could try to forestall being forced into an agreement if we proactively set up a database and get out in front of the issue.

SERGEANT GILBERT: Yes, sir, that's correct.

MR. CHERTOFF: Okay, what did you mean by that?

SERGEANT GILBERT: I just felt we were at the point with -- where we were moving with our computer aided dispatch system, where we were moving with the volatility of the issue that was out there, that this is something that we should do so that we could get a handle on things before somebody's coming in from the outside and pointing it out to us. I thought it would be better if we could develop that information ourselves, look at it, do any internal remediation that needed to be done. And I just felt that that -- being that we had gotten to that point, to look into the future. That was the most prudent course of action we could have undertaken.

MR. CHERTOFF: And the idea was, because the historical data would have a "bad taste," it would be better to focus on showing the Department of Justice that you were going forward with good statistical analyses and cleaning up your act. Is that kind of fair to say?

SERGEANT GILBERT: That's correct, sir.

MR. CHERTOFF: Now, you also talked about being very proactive in training of troopers, right?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: Did you indicate also that the State Police study and settlement should be communicated to troopers so that they would understand that this issue of searches was a big issue that they would have to be focused upon?

SERGEANT GILBERT: Yes, sir, I did. That's what gave rise to the other IOC that went out on February 26th.

MR. CHERTOFF: Now, going back to your having read the interim report, which was issued in '99, do you know whether your recommendations in this memo were ultimately included in the interim report, two years later?

SERGEANT GILBERT: I believe that some of them might be, but I'm not absolutely sure.

MR. CHERTOFF: Well, we'll do that comparison a little bit later. Did you discuss these general recommendations with Mr. Rover?

SERGEANT GILBERT: Yes, I did, sir.

MR. CHERTOFF: Now, I want to show you a letter or a memo dated April 22nd. I'm sorry, it's a cover sheet marked April 23rd. It's OAG-865. We're going to help everybody get that. And just for the record, it's W-27 -- OAG-865. It's a memo from the desk of Alexander Waugh, dated 4/23/97, to P.V. And it has attached to it a letter or a memorandum from George Rover to Alexander Waugh and Jack Fahy--

SERGEANT GILBERT: Yes, sir. I have that in front of me.

MR. CHERTOFF: All right. We're going to let everybody get that. It's dated April 23rd, 1997.

SENATOR GORMLEY: Okay, does everybody have it?

MR. CHERTOFF: While we're waiting, let me just go back for one last thing with this undated memo. I mean, is it fair to say that the bottom line

in this memo is -- you could almost characterize it as explosive. Is that fair to say?

SERGEANT GILBERT: I believe I was just trying to relate what I had found up to that point, up my chain of command, through my supervisors.

MR. CHERTOFF: But you'd agree with me that certainly as it relates to the consent to search stuff, clearly focuses on that as a very significant area of exposure for the State Police?

SERGEANT GILBERT: That's correct, sir.

MR. CHERTOFF: And that's what you communicated to Mr. Rover?

SERGEANT GILBERT: Yes, sir, I did.

MR. CHERTOFF: All right. Now, once everybody gets the letter, I'm going to ask you to direct your attention to Page 6 of that letter. And actually, let me just, in fairness to you, you have been asked in the deposition, at Page 218, about this memo, whether you thought the information in it was pretty explosive. And I think you said, "I believed it would be characterized that way." Is that -- as a matter of personal opinion, is that a fair statement?

SERGEANT GILBERT: Yes, sir, it is.

MR. CHERTOFF: Okay. If you turn to Page 6 of this memo, this is a memo which the record indicates, from the deposition, it was prepared by Mr. Rover to Mr. Waugh, and Mr. Waugh eventually sent it to Mr. Verniero -- Attorney General Verniero. And at Page 6 there's a discussion, Mr. Rover, that begins: "A second, unrelated issue involves NJSP consent to search data." Now, let me ask you first, did you see this letter, or this memo, before it was sent out?

SERGEANT GILBERT: No, I did not.

MR. CHERTOFF: All right. I want to take you through the next page, and I'm going to ask you whether the discussion in the page reflects the kind of things you've told us you had discussed with Mr. Rover in the last 10 minutes of your testimony, okay?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: All right. He goes on to say -- Mr. Rover does: "I'm anticipating that U.S. DOJ, while expressing interest in State Police traffic stop data, is more interested in the consent to search data. As you know, State Police requires that any driver that agrees to allow an officer to search his vehicle, must sign a written form. These forms are retained by State Police. Conceptually, I believe this information does not relate to the issue being examined by U.S. DOJ, since it addresses post-stop, law enforcement activity.

"Why, then, do I believe U.S. DOJ is interested in this data? I anticipate U.S. DOJ will attempt to follow the same course of action pursued by plaintiffs in the Maryland case, the use of consent to search statistics as evidence of selective prosecution."

Now, isn't this the same concept that you had in your undated memo?

SERGEANT GILBERT: Yes, sir, it is.

MR. CHERTOFF: . And isn't this what you had told Mr. Rover in your discussion with him?

SERGEANT GILBERT: Yes, sir, it is.

MR. CHERTOFF: So is it fair to say what you communicated to Mr. Rover is, in fact, incorporated in his memo to Mr. Waugh, and ultimately, to the Attorney General?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: Then it goes on to say, "In the Maryland action, the plaintiffs successfully argued that the percentage of minorities subjected to consent searches supported a finding that the Maryland State Police engaged in selective prosecution. As a result of this finding, the MSP and a group of plaintiffs entered into a consent order."

Again, isn't that the gist of what you communicated to Mr. Rover in your discussion with him, based on your undated memo?

SERGEANT GILBERT: Yes, sir, it is.

MR. CHERTOFF: And then it goes on to say, at the bottom of that paragraph, "What is very troubling is that the basis for the entry of the consent order was the fact that MSP requested consent to searches from what the plaintiffs claimed was a high percentage of minorities."

And again, that is information that you had conveyed?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: Now I want to be -- I also put this in context. It says, at the bottom of the page, Mr. Rover says, "It's my opinion that these figures are irrelevant to the inquiry of whether law enforcement officers are engaging in selective prosecution."

Now, had you had discussion with Mr. Rover about what conclusions could be drawn from the consent to search figures?

SERGEANT GILBERT: I think that we both had the same opinion, that the numbers from a purely statistical viewpoint, that if not permitted the opportunity to have the individual troopers explain their actions, that these numbers could become problematic with respect to how they were perceived and how they would be used in litigation.

MR. CHERTOFF: Okay, so it's fair to say that although the numbers in the consent to search are very significant in terms of raising a red flag about disparate treatment, it still is not the end of the story, because to really finish up the job, you'd have to actually look at the cases and talk to the troopers and figure out why they made their decisions.

SERGEANT GILBERT: That's correct, sir.

MR. CHERTOFF: So it would be fair to say that the consent to search numbers would be a first step to raising a red flag, but to do a proper job, someone would have to go out and actually look at the underlying data.

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: I want to jump ahead and ask you, at any point in time, from the time you first raised this issue in '96 up through 1999 -- March of 1999 -- did anybody ever say to you, "You know what, let's take this consent to search data to the next level, and let's actually go out and look at the cases and interview the troopers and examine the files and see whether, in fact, there is a problem or not?"

SERGEANT GILBERT: No, that did not happen, sir.

MR. CHERTOFF: So is it fair to say, in the vernacular, the red flag was raised, but nobody ever said, "Let's take the flag someplace and see where it goes?"

SERGEANT GILBERT: I think we had discussions about moving forward. We realized this was a significant issue, but we didn't take the exact steps you just asked me about. No, we did not put those steps into place.

MR. CHERTOFF: Were those steps discussed?

SERGEANT GILBERT: I believe, later on, once Colonel Dunlop had gotten involved with the process, as we moved, post the shooting, I believe

that that was an issue that was raised, and resources were allocated to initiate those steps you just talked about.

MR. CHERTOFF: And that was Colonel Dunlop that did that?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: Did Mr. Rover or anybody from the Attorney General's Office ever get back to you and say, "We'd like you to compile information on the underlying cases for the consent to search data so we could take a look at what actually is involved in the cases?"

SERGEANT GILBERT: No, sir.

MR. CHERTOFF: All right. And you didn't see this memo or this letter of -- memo of April 22nd?

SERGEANT GILBERT: No, sir, I didn't.

MR. CHERTOFF: Now, in response to your conversation with Mr. Rover about the issue of the consent to search, is it fair to say the next thing that happened is you learned you were going to a meeting at the Attorney General's Office on May 20th, 1997?

SERGEANT GILBERT: Yes, sir, that's correct.

MR. CHERTOFF: And was that the second time you had been in the Attorney General's Office in connection with racial profiling?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: Had you ever previously, other than these two instances, been at the Attorney General's Office for a meeting with the Attorney General?

SERGEANT GILBERT: No, sir, I had not.

MR. CHERTOFF: Were you ever at the Attorney General's Office after May 20th for a meeting with the Attorney General?

SERGEANT GILBERT: No, I was not.

MR. CHERTOFF: So these are the only two in your life, it's fair to say?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: So they'd be pretty memorable?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: Did there come a point in time, in advance of the meeting, that you got an agenda or an interoffice memo that set forth the agenda for the meeting?

SERGEANT GILBERT: Mr. Rover had faxed me over a copy of the agenda for the meeting.

MR. CHERTOFF: I'm going to show you what has been marked as W-29. And it's actually an interoffice memo -- it's got a fax line dated May 20th, 1997, and it has at the bottom, GC-2210.

SENATOR GORMLEY: And the rest of the Committee.

MR. CHERTOFF: And we'll make sure everybody has it?

SENATOR GORMLEY: The rest of the Committee has it.

MR. CHERTOFF: Do you have this agenda in front of you?

SERGEANT GILBERT: Yes, sir, I do.

MR. CHERTOFF: -- Okay, now forgetting the writing -- the handwriting -- do you remember getting this?

SERGEANT GILBERT: Yes, sir, I do.

MR. CHERTOFF: And I take it you got it so you could prepare to come to the meeting, right?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: What was the reason you understood you were being invited to the meeting?

SERGEANT GILBERT: Because I was the primary point of contact with the State Police, and that I had been involved in generating statistics.

MR. CHERTOFF: And in particular there's a bullet point here that says, "Production of consent to search documents, Maryland case, proper characterization of documents." Does this correlate to what we saw in Mr. Rover's memo where he had raised that as an issue to Mr. Waugh?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: Now tell us, when you came to the meeting, where was it?

SERGEANT GILBERT: It was in the Office of the Attorney General, in Mr. Verniero's office.

MR. CHERTOFF: And who was present?

SERGEANT GILBERT: The Attorney General, Mr. Waugh, Mr. Rover, Mr. Fahy, and then from State Police, I had accompanied Colonel Williams, and I believe Dave Blaker was still a sergeant first class at that point. He also attended the meeting.

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

SERGEANT GILBERT: My recollection of the meeting is that we discussed the bullet points that are on the agenda. There was discussion about how we had parallel statistics through the Maryland State Police as they related to search activity. I believe I had spoke a short time on that. And basically where do we go from here.

MR. CHERTOFF: All right. Now, let me direct your -- let me focus you more specifically on the agenda items. Do you remember there being

discussion of the U.S. Department of Justice inquiry status and strategy -- the first two bullet points?

SERGEANT GILBERT: I remember that there was discussion about the need -- there was a very critical need for the traffic study to be looked at and to come up with some formulation -- or a decision had to be made as far as how we were going to do that and when we were going to get that done and initiated.

MR. CHERTOFF: Who did most of the talking with respect to that?

SERGEANT GILBERT: I don't recall specifically who spoke the most on each of the issues.

MR. CHERTOFF: Now, with respect to production of consent to search documents, did you actually hand out your undated memo at the meeting?

SERGEANT GILBERT: No, I did not.

MR. CHERTOFF: What did you say concerning the content of that memo at the meeting?

SERGEANT GILBERT: My recollection is that I made it clear to everybody that we were even -- even up with Maryland as far as our statistics with consent to search. We were basically -- had parallel statistics to those statistics that we had seen generated by the Maryland State Police.

MR. CHERTOFF: Now, from the questions that you received at the meeting, or the conversation, was it your understanding that anybody at the meeting was unfamiliar with the significance of the consent to search statistics?

SERGEANT GILBERT: No, that was not my impression at all.

MR. CHERTOFF: Did anybody say, "Can you explain what you mean by consent to search statistics," or what the significance is?

SERGEANT GILBERT: Not that I recall.

MR. CHERTOFF: Was it your understanding -- did anybody ask you about specific numbers, or did you give specific numbers?

SERGEANT GILBERT: I don't believe so.

MR. CHERTOFF: But is it -- and this, I have to tell you, is of great importance. Are you absolutely confident that you made it clear to the people assembled in the meeting that the consent to search statistics for the New Jersey State Police were on a par with the Maryland State Police statistics that had led to the consent decree?

SERGEANT GILBERT: Absolutely certain.

MR. CHERTOFF: Did anybody express surprise about that?

SERGEANT GILBERT: Not that I recall.

MR. CHERTOFF: Did anybody express concern about that?

SERGEANT GILBERT: I believe there was some concern raised, yes, sir.

MR. CHERTOFF: What was the concern that was expressed, and who expressed it?

SERGEANT GILBERT: I don't recall specifically who said what, but I think that we had concerns when we went down there as far as the implications on the State Police. And I believe as a general concern that was voiced at the meeting was basically what ramifications were that statistical analysis that I had done going to have on future litigation.

MR. CHERTOFF: Was there any discussion about whether there should be resistance to turning over the consent to search data or an attempt to negotiate with the Department of Justice so that that wouldn't have to be turned over?

SERGEANT GILBERT: I believe there was discussion about were we ultimately going to end up with a consent decree, but I'm not sure -- parcelling that out, as far as what you just asked, I don't recall the specific nuts and bolts of the conversation from that angle.

MR. CHERTOFF: Was there concern about ultimately ending up with a consent decree? Was that concern voiced by the State Police?

SERGEANT GILBERT: Yes, sir, it was.

MR. CHERTOFF: And was that as part of the conversation about the comparison between the Maryland figures and the New Jersey figures?

SERGEANT GILBERT: Yes, sir, it was.

MR. CHERTOFF: Was there a response by anybody in the room to that concern about whether New Jersey would ultimately enter into a consent decree?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: What was the response, and who voiced it?

SERGEANT GILBERT: I remember that the Attorney General had voiced some very strong concerns that -- or made a very strong statement that we were not going to enter into a consent decree.

MR. CHERTOFF: Do you remember what the statement was?

SERGEANT GILBERT: My recollection was that he made a very strong comment that we weren't going to do it. Ultimately, later I had found a copy of this agenda, which has some handwriting on it, which had refreshed my memory as to what exactly had been said.

MR. CHERTOFF: What's your refreshed memory about what he said?

SERGEANT GILBERT: Placing reliance on a notation that had been made by Dave Blaker, subsequent to the meeting, he had written on his copy of this agenda that the AG advised he would not consent to signing a consent decree. And he then quoted the Attorney General, saying, "They'd have to tie me to a train and drag me along the track before I'd sign a decree."

MR. CHERTOFF: Now, was there also discussion about -- in this meeting -- about the fact that there were conflicting messages, or perception of conflicting messages from Washington, on the one hand, emphasis on drug interdiction, and on the other hand this concern, or this inquiry from the Civil Rights Division?

SERGEANT GILBERT: Yes, sir, there was.

MR. CHERTOFF: And what was the discussion about that?

SERGEANT GILBERT: We, as the State Police, felt that in looking at this issue historically, that there had been a lot of encouragement, a lot of pressure exerted from the Federal level to engage in highway interdiction, because it was part of a nationwide drug strategy. The New Jersey State Police had accepted that mission, had been tasked with doing that through both those directives from the Federal government, as well as the Statewide Narcotics Action Plan. However, we were asking our troopers to go out and do a job which -- obviously, highway interdiction was becoming a more volatile issue as time went on. And the real prime issue was, is this something that we should continue to do if we're putting our troopers at risk as far as getting these conflicting messages -- encouraging them on one hand to go out and do highway interdiction, then when the results come in for the collateral criticism that would come forth, was that a worthwhile endeavor, and was that fair to our people. And we broached that at the meeting.

MR. CHERTOFF: Was there discussion about anybody taking any steps to go to Washington to talk about this conflict in signals?

SERGEANT GILBERT: Yes, sir, there was.

MR. CHERTOFF: What was that?

SERGEANT GILBERT: Mr. Verniero had indicated that he understood the position that we were taking. He indicated that he felt that he had the opportunity to revisit Washington, arrange a face-to-face meeting with then Attorney General Reno, and address our concerns and try and get clarification on exactly where we should be going from that point forward.

MR. CHERTOFF: Do you know if that ever happened, to your knowledge?

SERGEANT GILBERT: To my knowledge, I don't think that it did.

MR. CHERTOFF: Now, in this -- in this discussion, was there a point in time that anybody asked Colonel Williams, point blank, is there racial profiling going on?

SERGEANT GILBERT: Not that I recall.

MR. CHERTOFF: In the meeting -- let me withdraw the question. What you've testified to thus far is that the meeting is principally dealing with the litigation strategy with Washington. Was there any point in the meeting that somebody turned to anybody -- the Colonel or anybody else -- and said, "Look, putting aside the litigation, do we actually have a problem, and what do we need to do to find out the answer?"

SERGEANT GILBERT: I don't believe so.

MR. CHERTOFF: Did anybody at the meeting say anything to the effect of: "Look, if there's a question about the significance of the consent to

search data, go out and look at the actual cases and come back and report as to whether, in fact, these are justifiable cases or bad cases?”

SERGEANT GILBERT: No, we weren't directed to do that.

MR. CHERTOFF: Was there any discussion in the meeting about taking any management steps, going forward, to try to address the problem in terms of curing it in the future?

SERGEANT GILBERT: I don't believe so.

MR. CHERTOFF: When you left the meeting, who did you leave the meeting with?

SERGEANT GILBERT: Colonel Williams and Sergeant Blaker.

MR. CHERTOFF: Was there any expression on their part or on your part of a reaction to what had happened at the meeting?

SERGEANT GILBERT: I think at that point that we were somewhat pleased, because we felt, again, because of the contradiction in messages that we were receiving, that we had some preliminary information in hand that we were concerned about. But we felt that further, this had to be addressed a lot further and go into it a lot further in depth. But we were pleased that the Attorney General had taken a posture of trying to clarify this. Because, again, with this, the contradictory messages that we were receiving, I believe that the Colonel was very concerned..what he was supposed to tell the personnel under his command, and I think felt pretty positive that the Attorney General had taken the approach, “Well, let me go down to Washington and address this,” you know, “basically at the source. And let's try and get to the bottom of it and see where we go from here.”

So I think from that perspective the superintendent was pleased, and I was pleased, to have heard the Attorney General say that.

MR. CHERTOFF: Was there any just, you know -- let me just try and stand back for a second. Am I basically right that the conversation here-- I mean, the State Police goes in and there's a concern that based on the consent to search numbers and the other information, that the Attorney General's Office might conclude that they better strike a deal with the Department of Justice, because it would be tough to litigate the case. Is that a fair statement about what you and the State Police were worried about?

SERGEANT GILBERT: I believe that was one of our concerns, yes, sir.

MR. CHERTOFF: And is it fair to say you left the meeting with an understanding that wasn't going to happen -- there wasn't going to be any deal?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: But the other piece I want to get to is, at some point, did anybody turn in the meeting and say, "Look, putting aside negotiations and lawyering, and now acting as managers and supervisors, we have all this audit information -- we have this stuff with the numbers, what do we need to do to see if there's a real problem or not?"

SERGEANT GILBERT: Not that I recall being discussed at the meeting, no.

MR. CHERTOFF: Was there any discussion in the meeting about things that you were suggesting about things that could improve the problem going forward?

SERGEANT GILBERT: I don't believe so.

MR. CHERTOFF: Is there anything you remember at the meeting that I haven't covered or that you haven't told us here?

SERGEANT GILBERT: No, sir.

MR. CHERTOFF: Memorable meeting?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: Particularly now, I bet.

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: I mean, is it fair to say this came up later, because just to kind of be blunt, there's a point in time in 1999 -- in March, 1999 that you come to learn that there's a suggestion coming from some quarters of the Department of Law and Public Safety that the State Police somehow had not conveyed this information previously, right?

SERGEANT GILBERT: That's correct.

MR. CHERTOFF: And in March of 1999, you actually came down with a book that you had kept -- a notebook you had kept, which contained audit information and other information, including this undated document we've talked about, right?

SERGEANT GILBERT: Yes, sir. Mr. Rover had called me up approximately a week before we had had that meeting and indicated to me that Mr. Zoubek wanted to see the statistics that I had. And a meeting was arranged for me to go down, and when I went down to that meeting, I was accompanied by Colonel Dunlop. And we went down to that meeting based upon Mr. Rover's request, on behalf of Mr. Zoubek. I went down with the documentation, and I presented it at that point.

MR. CHERTOFF: And what was Mr. Zoubek's reaction at that point in time?

SERGEANT GILBERT: At that point in time, I don't believe he had any. It was just a matter of transferring that information over. I made a

duplicate copy of the -- I had a blue binder, and I made a copy of what was in the blue binder, and I gave that to Mr. Zoubek at that point.

MR. CHERTOFF: Did you later learn that he had had a reaction -- Mr. Zoubek had had a reaction to that?

SERGEANT GILBERT: Yes, sir, I did.

MR. CHERTOFF: How did you learn that?

SERGEANT GILBERT: I believe within several days -- I believe he had taken the information home and had it -- and again, this was recounted to me by Colonel Dunlop and Colonel Fedorko -- that Mr. Zoubek had had a chance to read the information that was contained therein, and that he was very distressed about some of the statistics that was contained in the notebook.

MR. CHERTOFF: Now, was it your understanding that Mr. Zoubek -- well, let me step back and be fair to Mr. Zoubek. Mr. Zoubek was not around. You weren't dealing with Mr. Zoubek in 1997 and 1998, right?

SERGEANT GILBERT: No, the day that I went to turn the notebook over was the first day I had actually had any contact or met with Mr. Zoubek.

MR. CHERTOFF: Was it your understanding, though, after you turned the notebook over in March of 1999, that Mr. Zoubek was conveyed the impression that somehow this information had been withheld from the Attorney General's Office?

SERGEANT GILBERT: I believe at that point in time that that was his belief.

MR. CHERTOFF: And you were adamant that you had turned over at least the substance of the information on a regular basis, as you developed it yourself, from '96 going forward?

SERGEANT GILBERT: That's correct, sir.

MR. CHERTOFF: And in particular as it related to this meeting on May 20th, did you have conversation with Colonel Dunlop about whether you had communicated information about these figures in the meeting of May 20th?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: Tell us about that.

SERGEANT GILBERT: After Mr. Zoubek had had conversation with both Colonel Fedorko and Colonel Dunlop, I had further occasion to speak with Colonel Dunlop about the ongoing interaction I had with the people from the Attorney General's Office. I explained to him specifically about the meeting that we had gone to in May of 1997 because of the fact that one of the issues that had been raised from Mr. Zoubek to Colonel Dunlop was about the fact that our numbers, compared to Maryland, were actually the same or even worse. And I had become somewhat confused over that, knowing that I had been at the meeting in May of 1997, and knew it was there. So I related the particulars of that meeting to Colonel Dunlop. He, in turn, had telephonic conversation with Mr. Zoubek, reference that.

MR. CHERTOFF: So what basically happens is, you hear from Colonel Dunlop in March or so of 1999 that Mr. Zoubek is expressing surprise about this Maryland -- and the relationship between the Maryland numbers and the New Jersey numbers. And your reaction is, "Why is he surprised? I told him this-- I told people at the Attorney General's Office this over two years ago."

SERGEANT GILBERT: That's correct, sir.

MR. CHERTOFF: And you told that to Colonel Dunlop to relay back to Mr. Zoubek?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: And is it fair to say that you subsequently became aware of this issue about whether this information was withheld -- was the subject of debate, even in terms of the passage from the interim report that I read you when you started testifying?

SERGEANT GILBERT: That's correct, sir.

MR. CHERTOFF: And you are-- I really want to give you this opportunity, I guess, to publicly, you know, defend yourself or put yourself on record with respect to this. You have no doubt that, with respect to any material facts as it related to these numbers and these comparisons, that you consistently conveyed that stuff to the Attorney General's Office, including conveying the substance of the comparison between Maryland and New Jersey in that May 20th meeting in the Attorney General's Office?

SERGEANT GILBERT: No. I feel I had both personal and professional obligations to the people I was dealing with. I think I did a good job of conveying the information. I think that's borne out by the record and the testimony of the other people that have been brought before the Committee, and I don't really feel I need to go too much further into that at this point.

MR. CHERTOFF: And on May 20th, you talked about this comparison between Maryland and New Jersey at the meeting in the Attorney General's Office?

SERGEANT GILBERT: That's correct, sir.

MR. CHERTOFF: Now, I just want to move-- We're almost done. I just want to move a little bit further. After this meeting of May 20th, you continue to-- You were directed to continue to accumulate statistical information about stops, arrests, and consents to search at the Turnpike and Moorestown and Cranbury barracks, right?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: And what was the reason for that?

SERGEANT GILBERT: We were going to have ongoing contact with the Justice Department. And again, looking back, looking forward, we had chosen -- or I should say we had chosen -- but it had been agreed upon to focus on a number of sample dates during the preceding couple of years, and in doing that, segmenting out some of the activity reports, including consent to search reports and probable cause searches for those sample dates, knowing that the sample dates were going to be, you know, a primary focus of the interaction. I had felt it was prudent to try and get a handle on what the statistics for those specific sample dates reflected.

MR. CHERTOFF: All right. Now again, I want to just also put it in context. When we've talked about statistics in the Gloucester County case or the ones from Moorestown, we're talking about different periods of time. The Gloucester County case is -- really involves statistics from late '80s to '91, right?

SERGEANT GILBERT: I believe, yeah, it's 1988 to 1991.

MR. CHERTOFF: So that was very stale information by the time we come to 1996, right?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: Then when you were accumulating information about Moorestown and Perryville, that was really the '95, '96 time frame, right?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: And then now we're talking about moving forward. It's still 1995 and '96, and ultimately going forward further than that, right?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: All right. Let me show you G-25 and G-21, two exhibits. One is GC-2172, and one is GC-2300, and let's make sure everybody has it. One is dated-- One is to Colonel Williams, from you, through Lieutenant Blaker, 7/10/97, and the other is just dated motor vehicle stop rate data information, Troop D, randomly selected dates in 1995.

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: Okay. We'll get those to you.

I think we're-- Let me get you first to this G-25, which is GC-2172. This is a memo to Colonel Williams, from you, through Lieutenant Blaker, re: DOJ inquiry 7/10/97. Now, let me put the context for this. As part of the negotiations with respect to the Department of Justice, is it fair to say that you had communicated to your superiors that, because of the condition of the records, it would be very hard to pull together comprehensive data for '95 and '96 without enormous manpower and time?

SERGEANT GILBERT: Yes, sir, that's correct.

MR. CHERTOFF: So, ultimately, you came to learn that the Department of Justice in Washington agreed with this State, that they would pick 30 days in '95 and '96, and you'd pull the analysis for those days, right?

SERGEANT GILBERT: That's correct, sir.

MR. CHERTOFF: And you put together a report for Colonel Williams that basically set out what you found for those 30 sample days, right?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: And again, is it fair to say it was not from the standpoint of the State's position in the litigation, not a pretty picture?

SERGEANT GILBERT: The numbers were somewhat problematic on face value.

MR. CHERTOFF: And again, if we look at this, it says, for example, consents of 38 total files that 82 percent of the people asked to search were minority?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: Of probable cause searches where there's negative results, 89 percent of the nine files that were probable cause searches with negative results were Black?

SERGEANT GILBERT: That's correct, sir.

MR. CHERTOFF: And with respect to arrests, it was 84 percent minority, right?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: And you compared those to Maryland, and the numbers were more disproportionate or equally disproportionate to Maryland, right?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: And then you followed up with another page covering the same -- covering the period from 1997, right?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: And this shows stops at this point running about 25 percent to 30 percent Black and an additional 5 percent to 10 percent Hispanic for Cranbury-Moorestown, right?

SERGEANT GILBERT: Correct, sir.

MR. CHERTOFF: And then you also do an analysis with respect to consents that shows, for example, that at Moorestown, 10 Black, 4 Hispanic, and 5 White -- 9 Black, 2 Hispanic, and 4 White, correct?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: So you basically continue your analysis in '96 and '97, and it still shows problematic numbers, right?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: In fact, the total searches for '97, which is now -- we're really almost contemporaneous -- you show basically 43 percent White and the rest non-White with respect to searches in '97 in April and '97 in May, right?

SERGEANT GILBERT: Correct, sir.

MR. CHERTOFF: In fact, May '97 actually gets a little bit more disproportionate. It's 28 percent White searches and the balance, 69 percent or so, percent other, right?

SERGEANT GILBERT: Yeah, the numbers are there.

MR. CHERTOFF: All right. So, by the way, did you communicate this to Mr. Rover?

SERGEANT GILBERT: Yes, sir, I did.

MR. CHERTOFF: And did he actually tell you that he had shared this with Mr. Waugh?

SERGEANT GILBERT: I know that I had asked him to make sure that he passed the information on. I can't recall if he specifically mentioned passing it up to Mr. Waugh or not.

MR. CHERTOFF: Well, did he-- I'm going to refresh your memory from your deposition of February 21. You said at Line 23, "At one point with the information that I provided about the statistical analysis of the sample dates, I believe in the one report I did in July of '97, as far as where we stood statistically with the sample dates, he did, in fact, indicate that he had discussed that information with Mr. Waugh."

SERGEANT GILBERT: I believe the reason I had said that is because there came a point later where a letter was drafted to the Department of Justice, and it made reference to the consent to search reports. And in making that statement, it was in reference to me knowing that that letter was done and basically what it led to -- the development of that letter.

MR. CHERTOFF: Okay. Now again, I want to show you G-21, which we also pulled. Did you prepare this information?

SERGEANT GILBERT: Yes, sir, I did.

MR. CHERTOFF: And again, this is a tabulation with respect of randomly selected dates of stops, and I believe searches as well, with respect to these dates.

SERGEANT GILBERT: Yes, sir, that's correct.

MR. CHERTOFF: And again, was this information passed on to Mr. Rover?

SERGEANT GILBERT: Yes, sir, it was.

MR. CHERTOFF: Do you remember if you gave him the written tabulation or just orally conveyed the information?

SERGEANT GILBERT: I don't recall at this time specifically which of the reports I gave to him in hard copy, which I gave to him orally. I know that the information itself was passed on to him in its entirety.

MR. CHERTOFF: Now, this information later winds up in that blue binder that you gave Mr. Zoubek, right?

SERGEANT GILBERT: That's correct, sir.

MR. CHERTOFF: But again, the content of the information you had conveyed to him, to Mr. Rover, in 1997, right?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: Now, let me just show you the last page of G-21, the next to last page, GC-2306, just to be completely clear. Again, when you do an analysis on the consent searches, you compare it to the Maryland rates, right?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: Are these related to the very dates that the Justice Department picked, right?

SERGEANT GILBERT: The date in question, 3/06, incorporates the analysis that I had done on my own, originally, for various periods. And then as you go further down, it incorporates also the sample dates, which have been delineated later on.

MR. CHERTOFF: Okay. So this is the very issue. I mean, at this point, just so everybody knows where we are, you all know at this point that the Department of Justice is focused on these dates. You know the consent to search areas, the area of maximum exposure, and you're basically communicating to Mr. Rover that now we've looked at it and we know that when the Justice Department gets this information it's going to fit right into what was the statistical material that the Maryland people had when they had entered into that consent decree.

SERGEANT GILBERT: Yes, sir, that's accurate.

MR. CHERTOFF: I mean, again, just to be clear, staying on that page, if we look at the minority percentages, they tend-- We're talking about the searches. They basically run from Moorestown, during selected periods of '94 and '96, 89 percent minority -- in '96, 89 percent minority; New Brunswick, which would be Cranbury, 94 percent minority; and then subsequently in Cranbury, 73 percent, 79 percent, 80 percent. And then the sample days run 89 percent from Moorestown and 67 percent for Cranbury, right?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: And again by comparison, the Maryland figures were about 80 percent minority?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: Now, I want to move forward to November. We're going to ask you this. Before I get to it, let me show you one last document. Let me show you W-30. It's a memo to Peter Verniero from Alexander Waugh, OAG-975, dated July 29, 1997.

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: Okay. Have you seen the document before?

SERGEANT GILBERT: The cover itself I believe I saw during my previous depositions, and then I see that it contains most of the package that was prepared at Moorestown Station back in '96 by Lieutenant Gilbert, and then the additional information that was compiled by the Internal Affairs Bureau.

MR. CHERTOFF: All right. So now I'll put it in context. The first page, the cover page, it says, "To Peter Verniero from Alexander Waugh, July 29, 1997." You didn't see that during your deposition, right?

SERGEANT GILBERT: Not until then, no, sir.

MR. CHERTOFF: Okay. But then what's attached you had seen, because that was what we had generated in the course of this Moorestown audit in response to the complaints by some of the troopers back in '96, right?

SERGEANT GILBERT: Yes, sir, that's correct.

MR. CHERTOFF: And just to be clear, if you look at the very last page, there's a report from Lieutenant B. M. Gilbert -- no relation to you, right?

SERGEANT GILBERT: No.

MR. CHERTOFF: Where he analyzes searches in 1995 back to Moorestown, right?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: And it talks about 62 percent minority driver consent searches and 38 percent nonminority driver consent searches, correct?

SERGEANT GILBERT: That's correct, sir.

MR. CHERTOFF: It talks about other statistics of that kind, right?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: Now again, was this information -- these reports -- Is this part of the document, the blue notebook, that you turned over to Mr. Zoubek in 1999?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: And so you'd agree with me at least that this had been turned over -- this was clearly in the possession of the Attorney General's Office as of July 1997, no later than that, right?

SERGEANT GILBERT: Based on a memo from Mr. Waugh to Mr. Verniero, I would say yes, sir.

MR. CHERTOFF: Let me finally show you-- Let me finally move you to November of 1998. Did you attend a meeting in November of 1998 regarding a request by the Department of Justice to have -- a specific request to have this audit information that we've been talking about, including the Moorestown study, turned over to the Civil Rights Commission?

SERGEANT GILBERT: Yes, sir, I did.

MR. CHERTOFF: And where did that meeting occur?

SERGEANT GILBERT: At Division Headquarters.

MR. CHERTOFF: And who attended?

SERGEANT GILBERT: Colonel Williams, Colonel Fedorko, Colonel Dunlop, myself, and Mr. Rover.

MR. CHERTOFF: What was the subject of the discussion in November 1998?

SERGEANT GILBERT: It was based primarily on two sets of documents. One was the package that's contained here that was compiled about the Moorestown complaints back in 1996 and the Internal Affairs reports that went with them. The second issue was the ongoing audit reports that the Colonel had ordered -- initiated back in the early part of 1997. Specifically, there are two six-month studies. The information had been gathered and consolidated into two six-month studies about activity of both stop activity and search activity at the Moorestown and Cranbury stations.

MR. CHERTOFF: Were those six-month studies-- Were you involved in compiling those?

SERGEANT GILBERT: What I had been dispatched by Colonel Williams to do in the early part of 1997, because we did not have current ongoing information being generated and we knew that the focal point of the Justice Department's interest was those two stations -- it was felt that it was prudent to try and get a handle on what the statistics were at those two locations. So he had me go down to the major of field operations and instruct the major to start collecting the information on both stops and search activity out at Moorestown and Cranbury.

MR. CHERTOFF: So, is it fair to say-- I'm not going to go through a whole lot of numbers again, but is it fair to say that for these six-month periods now in '97 and '98, the numbers on consent searches still showed very high proportions of minorities being subject to consent searches?

SERGEANT GILBERT: I don't know what's characterized as very high, but the numbers were reflective of what other information had previously been gathered.

MR. CHERTOFF: They were consistent with what had previously happened, right?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: In fact, I'll be more specific. Why don't I show you CW-20. It's dated, I think, maybe 2/20 or 12/20/98. I can't read it, but it shows '97 data, the six months. It's GC-2312, and it shows the searches and the radio logs, which would be the stops.

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: And was it fair to say that, for example, in the searches in Moorestown it showed, you know, non-White was running about -- close to 80 percent. And in Cranbury, non-White was running essentially around 57 percent to 60 percent, right?

SERGEANT GILBERT: That's correct, sir.

MR. CHERTOFF: That was pretty much consistent with what we had discovered previously, right?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: And do you know whether the '98 data, again, were similarly consistent, right?

SERGEANT GILBERT: I don't know the exact numbers, but I believe it was in the same area. Yes, sir.

MR. CHERTOFF: Were you reporting to Mr. Rover or was somebody reporting to the OAG on these six-month snapshots of '97 and '98?

SERGEANT GILBERT: Yes, sir, I had done that.

MR. CHERTOFF: So you were keeping Mr. Rover apprised that the numbers were staying the same in '97 and '98?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: Okay. Now, you have this meeting in November about whether the original Moorestown material should be turned over and whether this ongoing material should be turned over. What was the discussion?

SERGEANT GILBERT: Mr. Rover had come over to discuss some concerns about the release of that information -- that specific information. He wanted to get the Colonel's -- Colonel Williams's viewpoint on that situation. Colonel Williams indicated to Mr. Rover that he did not have any problems with the Maryland -- not the Maryland, but the Moorestown package from 1996 being released, but that it was his viewpoint that absent the existence of a court order or a subpoena, that at that point in time on the basis of the litigation that we're involved in that he didn't want to let those things released at that point in time.

MR. CHERTOFF: In '97 and '98 then?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: Did Mr. Rover give a reaction to that?

SERGEANT GILBERT: Mr. Rover indicated he acknowledged the Colonel's position. He indicated that he was going to go back to his superiors and run that position by them. The Colonel had asked Mr. Rover if you have any problems or anybody downtown has any problems with my position, I want you to get back to me and let me know.

MR. CHERTOFF: And what was the upshot of that? What happened?

SERGEANT GILBERT: Nothing, sir.

MR. CHERTOFF: So, as far as you know, the material was not turned over?

SERGEANT GILBERT: I don't know that.

MR. CHERTOFF: You don't know one way or the other?

SERGEANT GILBERT: No, sir.

MR. CHERTOFF: You didn't hear back in any case from downtown that they disagreed with the Colonel's decision.

SERGEANT GILBERT: No, I did not.

SENATOR GORMLEY: What we're going to do is we're going to continue the questioning of the witness. We'll take a 15-minute break at this time.

(RECESS)

AFTER RECESS:

SENATOR GORMLEY: Okay. Could we continue the hearing? The witness has been previously sworn. We'll continue with the questioning by Mr. Chertoff of Sergeant Gilbert.

MR. CHERTOFF: Sergeant Gilbert, let me take you now into 1999. I want to put before you what is a document marked Z-14. It's OAG-5433, and it's a memo to Paul Zoubek from George Rover, dated February 26th, 1999.

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: Now, if you turn to the third page in this document--

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: --it indicates-- There's a statement here from Mr. Rover. I take it you never saw this before this investigation.

SERGEANT GILBERT: Actually, this is the first time I've seen this at all.

MR. CHERTOFF: All right. It says on the third page this is a memo to Paul Zoubek from George Rover about the status of various requests for documents by the Department of Justice in Washington. And on the third page it says, "These are numerous documents that I have not produced to the DOJ -- or how can we say? -- there are numerous documents. And they include the following." And I just want to just take you through these and see if you can indicate to us that these were documents which you had provided at various points in time to Mr. Rover.

One, the July 5, 1996 LAB motor vehicle stop audit at Moorestown Station, Lieutenant Gilbert.

SERGEANT GILBERT: Sir, with the records that are listed here?

MR. CHERTOFF: Yeah.

SERGEANT GILBERT: I'm sure that Mr. Rover got them since he noted that. I can't remember specifically which of these I gave to him and then went.

MR. CHERTOFF: .But he would have gotten them through you, because you were the point of contact?

SERGEANT GILBERT: I believe that he would have, but he might have had other sources to get some of these also.

MR. CHERTOFF: Okay.

SERGEANT GILBERT: I'm not really sure.

MR. CHERTOFF: Now, in March, you get called down-- You and Lieutenant Colonel Dunlop get called down by Mr. Zoubek as you told us, right?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: And you give him the blue notebook, right?

SERGEANT GILBERT: Yes, sir, that's correct.

MR. CHERTOFF: Which you have the original of before you, correct?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: I just want to go through this blue notebook. It's Exhibit G-33. It's entitled the New Jersey State Police Statistical Analysis. It's got a blue cover, which is black the way it's Xeroxed. And the first document here is, in fact, that internal audit with respect to summonses at the Perryville and Washington Stations, right?

SERGEANT GILBERT: Yes, sir, that's correct.

MR. CHERTOFF: And this is something you had previously furnished to Mr. Rover, correct?

SERGEANT GILBERT: I'm not sure. I can't put my finger on the specific documents, when I gave them to him. I mean, I know that I had orally transmitted everything. If those reports were in his files, they may well have come from me. I don't remember specifically what I gave George and when I gave it to him.

MR. CHERTOFF: Okay. If I turn your attention to the document which is-- Of course, these are not page numbered, but there's a copy of the request from the Justice Department, which is about maybe halfway through, and it says in writing-- It's after the 10/4/96 memo. It says, "Received 12/24/96 from AG." Is that your handwriting?

SERGEANT GILBERT: Yes, sir, it is.

MR. CHERTOFF: Okay. And then this is what you got at the December 24th meeting from the AG's Office, correct?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: And then does this memo-- Does this, G-33, also have that undated memo we talked about earlier?

SERGEANT GILBERT: I believe it is. Let me check, sir.

Yes, sir, it does.

MR. CHERTOFF: Just one moment. Is there a document also in yours marked patrol issues concerns at Moorestown Station, to Captain Touw from Lieutenant Hinkle, dated 9/24/96, that we've looked at earlier in this hearing?

SERGEANT GILBERT: Yes, sir, there is.

MR. CHERTOFF: And is that identical to a portion of what I've previously showed you from the July 29, 1997 memo from Alexander Waugh to Peter Verniero that also contained the same document?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: Now, we went through the discussion you had with Colonel Dunlop concerning the issue of whether things had been turned over -- just to be clear, whether or not you turned over specific documents. Is it the case that you had over the course of the years related to Mr. Rover the information about the Moorestown audit, the information about the -- either Mr. Fahy or Mr. Rover, I should say -- the information about the Moorestown audit, the Perryville audit, the information concerning the 1997 and 1998 six-month surveys, and the information concerning the statistics as it related to the sample case?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: After you told Colonel Dunlop that you had, in fact, turned this over, he indicated to you he talked to Mr. Zoubek about it. Was there any further discussion you heard from him concerning the question of whether the State Police had withheld documents from the Attorney General's Office?

SERGEANT GILBERT: We had a number of conversations on that issue.

MR. CHERTOFF: Tell us about those.

SERGEANT GILBERT: I can't remember them in specific in nature, but I think I explained in full content to Colonel Dunlop about the contact that I had had with Mr. Rover, about the contact that I had had with the Attorney General's Office, and basically that I was somewhat confused as far as the position that was being taken as to the perception that was being created that there had not been cooperation, that there had not been a flow of documents back and forth.

MR. CHERTOFF: Now, did you also get involved in some further work in 1999 concerning additional analysis of the audits that was done with, I believe, Detective Serrao?

SERGEANT GILBERT: Yes, sir, I did.

MR. CHERTOFF: And just briefly explain what that project was.

SERGEANT GILBERT: As this issue began to accelerate in predictability of what was going on, Colonel Dunlop had come on as the executive officer. He was in charge of our uniform personnel. Also, ultimately was overseeing the investigations that arose after the shooting on the Turnpike. We had had discussions about trying to generate the best statistical -- the most

accurate statistics that we could get our hands on. What I had done-- I had acknowledged that that was a starting point, that is was -- I'm not a statistician, I'm not a scientist -- that being at this had become such a critical issue. Colonel Dunlop had agreed and felt that we had to design a way to extract the most accurate information from available reports that we could. He, in turn, had Sergeant Serrao, who was an analyst in our Intelligence Section -- a detail to accomplish this task.

I had occasion to sit down with Sergeant Serrao, talk about some of the thoughts I had on what information I was looking at, before he, in conjunction with the people that worked in the Analytical Unit in the Intelligence Bureau, with some input from me, designed a template that would go back and look at a number of investigation reports, search reports, and try and come up with a consolidated database so that we could get the most accurate up-to-date numbers in designing this system, and then see what those numbers were. Colonel Dunlop's feelings were, good or bad, he wanted to have a feel that the accurate numbers -- or the numbers that he was going to be utilizing for his analysis were the most accurate numbers available at that time.

MR. CHERTOFF: Was there any kind of a report or a presentation that was put together before the interim report was issued?

SERGEANT GILBERT: Yes, sir, there was.

MR. CHERTOFF: And who was that presented to?

SERGEANT GILBERT: I wasn't present when it was presented. Again, using the word downtown, I believe it was presented to representatives of the Attorney General's Office.

MR. CHERTOFF: Do you know whether there was any decision made to include any of that information or do any further investigation before the interim report was actually issued?

SERGEANT GILBERT: I believe that that information-- There was a passing footnote to that information in the interim report.

MR. CHERTOFF: Was there any discussion-- Were you ever given any instructions that certain analytical work done by the State Police should not be released in the press?

SERGEANT GILBERT: I wasn't-- I was aware that such a directive existed. It wasn't given to me, because I didn't have control over that information.

MR. CHERTOFF: How did you become aware of that, and what did you know about it?

SERGEANT GILBERT: Just from working in the superintendent's office, I was aware of the fact that that information was not to be released by our public information staff.

MR. CHERTOFF: And by whose order was that, if you know?

SERGEANT GILBERT: I'm not really sure.

MR. CHERTOFF: Now, I want to go to the interim report, and I want to go to the final version that starts at about Page 25, stop, arrest, and search data.

Now obviously, this covers data that goes through November 1998. I want to ask you whether you had an opportunity to review this.

SERGEANT GILBERT: After it was issued?

MR. CHERTOFF: Yes.

SERGEANT GILBERT: Yes, sir, I did.

MR. CHERTOFF: To your knowledge, is the information that's contained in the tables that follow Page 25-- Is that information that was accumulated either by -- in the course of the audits that were done back in 1996, or by your work, as it was done in 1997, or by the ongoing six-month studies that were done in '97 and '98?

SERGEANT GILBERT: I believe that's what this information reflects. Yes, sir.

MR. CHERTOFF: So that for example, if you look at Footnote 2 on Page 27, when it talks about -- includes Cranbury searches from January '94 through March '94 -- January 1996 to March '96 through December '96, a good deal of that refers to the information that you had accumulated and, at least, orally passed over to Mr. Fahy and Mr. Rover.

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: And, in fact, those are, in many respects, the dates that are contained in G-13, which is that undated document that you prepared in about February of 1997, right?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: So this is not new information to you, is it?

SERGEANT GILBERT: No, it's not.

MR. CHERTOFF: Were you asked or interviewed by anyone, in connection with the preparation of the interim report, to have questions asked about how you would have gone about accumulating the data, what your methodology was?

SERGEANT GILBERT: No, I was not.

MR. CHERTOFF: Were you in any way involved in writing, or participating in the writing, of this section of the interim report, which talks about the statistical data, which is the basis of the report?

SERGEANT GILBERT: No, sir. I had no contact with the interim report at all.

MR. CHERTOFF: Now, just in terms of the significance of the consent to search data, again, as we said before the break, it was a consent to search data that you focused on as a result of the Maryland case. That really shifted your focus away from just the stops to what happens after the stop, correct?

SERGEANT GILBERT: Yes, sir, that's accurate.

MR. CHERTOFF: And am I correct that you communicated to Mr. Rover, and to the people present at the May 20th meeting, that this consent to search data was very significant data in terms of dealing with the Department of Justice?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: Now, the interim report-- It indicates here that at Page 30, areas of special concerns, interpretations of the data in the areas of special concern: One, disproportionate use of the consent to search document. The data presented to us showed that minority motorists were disproportionately subject to consent searches. I take it that was the -- what the data you prepared in February of '97 showed.

SERGEANT GILBERT: I don't know, because I didn't prepare the report. But I--

MR. CHERTOFF: But you'd agree with me that the data that you prepared in February of '97 showed disproportionate numbers of minority motorists subject to search.

SERGEANT GILBERT: They would create that perception. Yes, it would.

MR. CHERTOFF: And then it goes on to say here, "Information concerning consent searches is particularly instructive in examination in possible discriminatory practices, since, by definition, the decision to request permission to conduct a search is indiscretionary."

Do you agree with that assessment?

SERGEANT GILBERT: I believe that would be an important thing to look at, yes.

MR. CHERTOFF: And again, was that the subject of part of your presentation on May 20th, 1997?

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: Now, let me ask you, in the period more recently, going back to the fall of last year, did you have the occasion-- Were you ever asked to review documents at the Department of Law and Public Safety, or anyplace else, to ascertain whether you had seen certain documents before?

SERGEANT GILBERT: Yes, I was.

MR. CHERTOFF: Were there any documents that you saw at that point in time, that related to information you communicated to anybody in the Attorney General's Office back in '96, '97, or '98 that you haven't seen either here in the testimony today, or that you didn't see in your deposition?

SERGEANT GILBERT: Can you-- I'm not exactly sure what it is that you're asking.

MR. CHERTOFF: Was there any memo or document that you saw, when you reviewed documents at the Department of Law and Public Safety, that indicated discussion of, for example, the Maryland State Police numbers or the statistics or something of that sort that you haven't seen in the course of either your depositions or your hearing today?

SERGEANT GILBERT: No.

MR. CHERTOFF: So basically, you've seen-- What you saw then, in terms of communications with the Office of the Attorney General concerning consent to search data, is documentation you've either seen here or back in your hearing.

SERGEANT GILBERT: Yes, sir.

MR. CHERTOFF: I think, Mr. Chairman, that concludes my questions.

SENATOR GORMLEY: Okay.

Minority Counsel Jo Glading.

MS. GLADING (Senate Democratic Staff Counsel): Good afternoon, Sergeant.

SENATOR GORMLEY: Red light. (referring to PA microphone)

MS. GLADING: Sergeant, after Mr. Waugh left the Attorney General's Office, who did Mr. Rover report to, subsequent to his departure?

SERGEANT GILBERT: I know at one point that he reported to, I believe -- directly to Mr. Hespe. I don't know if there was someone in between the two.

MS. GLADING: Was it your understanding that on this -- Department of Justice matters, after Mr. Waugh left, Mr. Rover reported to Mr. Hespe on those matters?

SERGEANT GILBERT: I know at times he did, because he had mentioned it to me.

MS. GLADING: You testified earlier about your discussion with Mr. Fahy about the numbers in the October 4th Captain Touw memo regarding the statistics being dramatically higher than the expert testified to in *Soto*. Was that discussion with Mr. Fahy at about the time that you included it in the May memo that recounted the Littles committee meeting?

SERGEANT GILBERT: I don't remember exactly when it was, because we had ongoing conversations about these issues, especially as we got closer to trying to determine the feasibility of doing the traffic study. So we had a lot of ongoing conversations about that. I can't really pin down exactly when it was that we talked about those stats.

MS. GLADING: Was it Mr. Fahy who wanted you to go and gather those stats?

SERGEANT GILBERT: I believe that it was collectively from the people that were involved with the committee and looking forward to where we were going. I think that everybody realized that that was an important thing to take a look at.

MS. GLADING: Okay. So once you had gathered them, would it have been your practice to report them within a reasonable period of time to Mr. Fahy?

SERGEANT GILBERT: Yes, ma'am.

MS. GLADING: So, if you reported in your May memo that you had collected those statistics, you would have reported them to Mr. Fahy at or about that time?

SERGEANT GILBERT: Yes, ma'am.

MS. GLADING: What was your understanding of what Mr. Fahy-- You had quite a bit of interaction with him in '96. What was your understanding of what Mr. Fahy was doing with the information that you discussed with him?

SERGEANT GILBERT: I believe he was utilizing it to -- with whatever contacts he had within the Division of Criminal Justice and the Office of the Attorney General -- using that information to -- as part and parcel -- or part of the decision-making process to determine whether the appeal of the Gloucester County case would go forward and some of the other related statistics from other areas of the state -- to utilize that information, making policy determinations on other challenges that have been raised.

MS. GLADING: Okay. So is it your understanding that he was bringing that information to his superiors?

SERGEANT GILBERT: I think he had a corresponding role to what I had at State Police, so my job was to pass that on to him. I would believe that he would, in turn, prudently pass that information on in his chain of command.

MS. GLADING: Okay. And so when you discussed with him the statistical analysis of the *Soto* troopers that was conducted by the Records and Identification Unit in May of '96, your understanding is that he would have brought that information to his superiors at the Attorney General's Office.

SERGEANT GILBERT: All I can do is say that from my perspective and what my role was on the State Police side, had the situation been reversed, that's what I would have done. I don't-- I can't say specifically what he, in fact, did with that information.

MS. GLADING: Did he ever indicate to you who he was working with on his end in the Attorney General's Office concerning these matters?

SERGEANT GILBERT: Not at that point, no.

MS. GLADING: Well, was it your understanding that he was just taking the information and not sharing it with anyone?

SERGEANT GILBERT: I don't think he would have not shared it with anyone, I'm just not sure who he did, in fact, share it with.

MS. GLADING: Deposition testimony by Mr. Zoubek indicated that Mr. Rover had some-- He didn't have the undated--

Let me back-- Let me back up a bit.

As you know, Mr. Rover had a number of boxes in his possession that contained Department of Justice related information.

SERGEANT GILBERT: Yes, ma'am.

MS. GLADING: Mr. Zoubek, in his deposition, testified that when he went and looked in those boxes to determine what they had received from the State Police over the years, he found not your undated February memo, but he found the raw data and some of the statistical information that that memo was based upon. Do you recall giving that to Mr. Rover?

SERGEANT GILBERT: I know I would have given-- I haven't seen that, so I don't know if it's in my handwriting, his handwriting, if I communicated it verbally to him, or at this point, because it's a number of years ago, whether I gave him actually anything on paper. I mean, I'd have to see it to determine whose writing it is.

MS. GLADING: The bottoms on a number of the documents we've looked at have two numbers. They have the large Bates number, and they have the small Sp number. What is your understanding of what the SP indicates?

SERGEANT GILBERT: The SP would be documents that had been produced from the Division, and the other numbers, OAG, would be numbers

denoting a copy of the document that had been secured from the Office of the Attorney General.

MS. GLADING: Okay. So any document that has an SP number would have been-- Would that have been recorded on a document log at the State Police Division?

SERGEANT GILBERT: I believe that it would have been, but I know a lot of documents went over from State Police, and I didn't have control over the system with the Bates stamping and with the numbering. So the majority of the things that I have worked on, yes, they would, I believe, have the State Police number on them.

MS. GLADING: Let me back up. The meetings of the Littles committee back in 1996-- There was testimony by another witness -- by Major Touw that during those meetings he raised the issue that he was concerned about the high number of complaints that were coming in and that he felt that people-- He said, "I felt that our people probably were stopping minorities more than they should be. I mean, there's just too many complaints coming in." And he says he recalls that then, "the room grew very quiet." And that was when he began discussing the possibilities of doing new kinds -- different kinds of audits to track trooper activity.

Do you recall that statement being made at one of those meetings?

SERGEANT GILBERT: I would have no doubt if that's what Major Touw said he brought up at the meeting. I'm sure that he did. I think that was a concern. I mean, we had concerns about a lot of issues at that point. So I would find no reason to doubt him having said that.

MS. GLADING: Do you recall Jack Fahy being very supportive of the audits as a good way to get their hands around what was going on out on the road, which was also in Mr. Touw's testimony?

SERGEANT GILBERT: I don't recall him being resisted or in support of it. I would think that he would have been. Collectively, we were in support of going that way.

MS. GLADING: In your dealings with Mr. Rover regarding the Department of Justice investigation, do you recall ever giving Mr. Rover any documentation of your analysis or any raw data?

SERGEANT GILBERT: I believe that I had given him some reports, but I can't delineate exactly which reports I gave him and what raw statistics I had given him. I know that I did my very best to portray my understanding of our issues and what statistics we had in passing that on to him. I'm not sure. Are we talking about something specific?

MS. GLADING: No. I'm asking if you recall ever giving him any documentation or raw statistical analyses that you had done.

SERGEANT GILBERT: I don't think I did any of the raw statistics, but I'd have to see what is in his files, because that would be the only way he would have gotten it. It would have been from me.

MS. GLADING: The accounts-- Your accounts of the Littles committee meetings-- Did you take notes during those meetings?

SERGEANT GILBERT: I may have at the time.

MS. GLADING: So then, if you-- When you went and prepared your memos recounting those meetings afterwards, you would have based it upon contemporaneous notes you took?

SERGEANT GILBERT: I believe I would have, yes.

MS. GLADING: A couple questions about the Christmas Eve meeting on December 24th, 1996. Do you-- What was your understanding of why you were brought there?

SERGEANT GILBERT: I think the Colonel had brought me along because I had been asked by him, originally, to do an analysis of the Gloucester County case. I'd had interaction with Mr. Fahy up to that point on the different aspects of the Gloucester County case, as well as the other issues which had arisen in other jurisdictions. I was there, and I think the Colonel grabbed me. And it was, you know, "Come on. We're going to a meeting."

MS. GLADING: I beg your pardon?

SERGEANT GILBERT: He basically came back, grabbed me, and said, "We're going to a meeting." And I guess he felt that I was a good resource person, with the level of knowledge I had at that point, to go to that meeting.

MS. GLADING: Okay. And at that point in time, you'd been working for several months with Mr. Fahy on data collection around the other suppression motions that were pending around the state, right?

SERGEANT GILBERT: Yes, ma'am, that correct.

MS. GLADING: And you and Mr. Fahy had gone to Maryland to discuss the agreement that -- the settlement agreement that was reached in Maryland.

SERGEANT GILBERT: We met with them. They actually came up to New Jersey. But, yes, we had met with them.

MS. GLADING: Okay. And you and Mr. Fahy had worked together on the analysis of the troopers who were involved in the *Soto* case, right?

SERGEANT GILBERT: Yes, ma'am.

MS. GLADING: Okay. So were those issues part of the discussion at the May 24th -- at the December 24th, 1996 meeting?

SERGEANT GILBERT: Basically, what I recall of that meeting is that we were given an overview of what had taken place up to that point -- that the Attorney General and several other people from the office had gone down to Washington. They had met with Justice. There were some discussions about what was going to take place. The outcome was that we were not going to be hit with a target letter at that point, that there was going to be a cooperative working relationship, and that when we were handed that document on the 24th of December, that we were to move forward from that point and start looking at what information was available and what was going to be turned over.

MS. GLADING: When you say there was discussion about how the State was not going to be hit with a target letter, what was your understanding of what-- What was the discussion about that issue?

SERGEANT GILBERT: My understanding was some meeting that had happened -- I believe it happened earlier in the month of December -- that the interaction between the representatives of the Office of the Attorney General and the Department of Justice-- There had been some discussion as to whether a formal -- I guess you would call it a letter of investigation -- was going to be issued with regards to the racial profiling issues in New Jersey.

MS. GLADING: And was it your understanding that steps had been taken by the Attorney General's Office to ward off a target letter?

SERGEANT GILBERT: I just know that that had been part of the conversation taking place. And the final outcome of the meeting was that that was not going to happen at that point.

MS. GLADING: Okay. Was the term target letter used at that meeting?

SERGEANT GILBERT: That may be a term that I'm using because I know what that means, but I believe that the discussion was as to whether their matter was going to be kept in an informal or a formal status. And at the end of -- the conclusion of the interaction down in Washington, that at that point, it was going to be kept on an informal basis.

MS. GLADING: When you did your analyses of the consent to search data, was your methodology to look at the actual original consent to search forms?

SERGEANT GILBERT: To look at consent to search forms, as well as-- There's another form that gets completed, which is called a consent to search data form. And in a case where there's a negative finding, which means nothing is found, then a trooper would fill out a narrative that would -- have identifiers. It would also have a narrative of what had happened.

In the case where there's a positive result, where a seizure results, usually the narrative of that form would be very short, because it would refer over to the investigation report.

So what I looked at was-- We had both negative and positive finding consent to search forms, and I extracted the information off both varieties of that activity.

MS. GLADING: Okay. And I think it was your testimony that that information is actually stored at Division Headquarters and not out at the barracks.

SERGEANT GILBERT: Well--

MS. GLADING: A copy of it is stored at Division Headquarters.

SERGEANT GILBERT: Right. There would be copies forwarded into Division Headquarters to a central location.

MS. GLADING: If we can talk about the May 20th meeting for a minute, at that point in time, the 30 sample dates for 1995 and 1996 had already been selected. Is that correct?

SERGEANT GILBERT: My recollection would be yes, that they had.

MS. GLADING: Was there any discussion at that meeting? Well, if those dates had been selected, were people discussing the need to go take a look at the data on those dates?

SERGEANT GILBERT: I don't recall there being a specific discussion about that. I know that when I was putting the information together, as I went on, that I felt, basically, I was obligated to the Colonel in my chain of command, as well as downtown, that if we were going to be collecting that information, and it ultimately was going to be going somewhere, that it would be prudent for me to take a look at what the statistics were that were going to come out of those 30 sample dates.

MS. GLADING: Okay. And when you reached those conclusions in your July 10th memo-- I just want you to take a quick look at that memo. It's marked G-25.

SERGEANT GILBERT: Yes, ma'am.

MS. GLADING: That memo indicates that you had analyzed 38 total consent files. And in your blue binder-- Maybe you could take a look at your blue binder side-by-side with this. About 20 pages into this, there's a consent to search for the sample dates page that looks like this. (indicating) It's

from Sergeant Gilbert's blue binder, and it's consent to search '95-'96 sample dates, Moorestown and New Brunswick-Cranbury stations.

Are you there? It's right after these pages.

SERGEANT GILBERT: Somehow, I'm missing it. Can I see that one?

MS. GLADING: Yes.

I just want to clarify this. That indicates it was 37 files looked at. Is that correct?

SERGEANT GILBERT: Yes, ma'am, it does.

MS. GLADING: Okay. So that's a different analysis than what was contained in the July 10th, '97 memo, right?

SERGEANT GILBERT: I'm not sure if it is. That might be a mistake on my part, the difference between the 37 and 38. I have to go back and see what it is.

MS. GLADING: Well, let me get at why I'm asking.

Our understanding, based upon the testimony of several witnesses, is that all of the consent to search data and stop data that's contained in the interim report came from two sources. It came from either boxes that were in George Rover's office, which had been in the possession of the Attorney General's Office for some amount of time, or from your blue binder. And the figures in the July 10th memo, with the 38 consent to search figure, is what is reported on in the interim report. And I just want to clarify that, in fact, those that we're talking about -- numbers that came off of the July 10th memo, as opposed to numbers that came out of the blue binder.

Does that appear like that would be the case?

SERGEANT GILBERT: That could well be. I have to go back and double-check everything and see what was put in the interim report.

MS. GLADING: Okay.

Sergeant, I wonder if you could take a look at a document that's marked SJC-1?

SERGEANT GILBERT: Yes, ma'am.

MS. GLADING: Have you ever seen this document before? Take a minute to look through it.

SERGEANT GILBERT: No. I know--

No, I haven't, ma'am.

MS. GLADING: If you could look at Page GC-3555 in this document. It's a memo by Lieutenant Guida to--

SERGEANT GILBERT: Yes.

MS. GLADING: --to his file.

SERGEANT GILBERT: Yes, ma'am.

MS. GLADING: And the subject matter is Detective Sergeant First Class T. Gilbert's working papers. And it gives sequential numbers. Would that be-- Would you be that T. Gilbert that's referred to there?

SERGEANT GILBERT: Yes, I would.

MS. GLADING: Okay. If you could look at the subsequent pages, it appears to be a document log of documents that were in your possession. Is that correct?

SERGEANT GILBERT: Yes, ma'am. It appears that it is.

MS. GLADING: These are-- Just to clarify, these are not-- These are documents that may not be in the blue binder. Is that correct?

SERGEANT GILBERT: That's correct.

MS. GLADING: Can you explain how you would have come into possession of Internal -- Attorney General's Office documents? And I'm looking, for example, on Page-- If you look on Page GC-3557, there's a reference to a draft copy of the King letter. Was that sent to you at the time?

SERGEANT GILBERT: Yes, it was.

MS. GLADING: Okay. If you look at the bottom of Page GC-3558, the last two items -- confidential memo from George Rover to Alexander Waugh, and a correspondence from Rover to Mark Posner. (phonetic spelling)

SERGEANT GILBERT: Yes, ma'am.

MS. GLADING: Were those sent over to you at the time?

SERGEANT GILBERT: Yes, I believe they were.

MS. GLADING: So was Rover pretty freely sending you documents that were relevant to the work that you two were doing together?

SERGEANT GILBERT: Yes.

MS. GLADING: Okay. I just have one more document here.

Do you have a copy of G-16 in front of you? I don't think you've been given it yet.

We talked about this document in your deposition, and you represented that this was a memo that was never sent and never really finished by you.

SERGEANT GILBERT: That's correct.

MS. GLADING: Okay. And you represented, also, that it's dated on November 1st, 2000, because on your computer, when you open up an old document, it will change the date automatically.

SERGEANT GILBERT: That's correct.

MS. GLADING: And I think you also represented, if I recall correctly, this was written at some point in early March or late February. Is that correct?

SERGEANT GILBERT: Around the same time that I had done the memo to Colonel Williams with the statistics in it and the comparison to Maryland.

MS. GLADING: Right. Can you explain the meeting that-- The first paragraph represents that on Thursday, March 6th, 1997, at 10 a.m., DAG's Fahy and Rover, and possibly Alex Waugh, will be joining a meeting to address overall strategy for addressing the Justice Department inquiry.

That seems to indicate that that meeting has been scheduled and is going to happen. Is that correct?

SERGEANT GILBERT: I believe that was, but I don't know if the meeting actually took place. And that's why I didn't complete the memo. I don't recollect that we had a meeting -- specific meeting on that date.

MS. GLADING: Right. Yeah. You testified to that, too.

Is it fair to say that this meeting -- this memo being written about the time that you were preparing the undated memo -- that this meeting was addressing similar issues that were addressed in your undated memo?

SERGEANT GILBERT: Yes, ma'am.

MS. GLADING: And is it fair to say that the purpose of this meeting that would have been scheduled would have been to address those issues that were discussed in your undated memo?

SERGEANT GILBERT: Yes, ma'am.

MS. GLADING: You indicate at the bottom of the first page of this memo, "So far, DAG Rover has asked DOJ, in vague terms, about availability of

funds for the traffic survey but has not purged money for data collection or monitoring.” So apparently, you had discussed this issue with George Rover at the time. Is that correct?

SERGEANT GILBERT: Well, we had discussed the fact, as I think I mentioned earlier, that an important issue to us, outside the scope of even this, was the fact that we needed to get a traffic study conducted. We knew that it was going to be-- This was after we had gone up to NJIT, met with the consultants up there. We realized it was going to be a very costly venture, and also, with the monitoring and so forth, we viewed that that was a probability for the future. However, again, from a budgetary standpoint, these were going to be very costly endeavors. And how they were going to get paid for was going to, obviously, be an issue of concern.

MS. GLADING: Okay. So this is an issue you had had -- that had been under discussion between you and Mr. Fahy, right?

SERGEANT GILBERT: Myself-- Mr. Fahy and myself and Mr. Rover.

MS. GLADING: I’m sorry, and Mr. Rover.

SERGEANT GILBERT: Actually both.

MS. GLADING: Okay. And on the second page, you talk about the search data. “Our numbers are consistent with Maryland State Police on searches. There’s nothing to challenge or interpret here. The percentages will come from our own reports.” And you testified earlier that you had been in discussion with Mr. Rover about that fact at this time, right?

SERGEANT GILBERT: Yes, ma’am.

MS. GLADING: Okay. In two paragraphs below that, you talk about negative search data and the problem that Maryland confronted because

the individual facts of each case was outweighed by the overwhelming number of the percentages.

SERGEANT GILBERT: Yes, ma'am.

MS. GLADING: And is-- You had been discussing that issue with Mr. Rover at this period of time, right?

SERGEANT GILBERT: That's correct.

MS. GLADING: Okay. So this memo-- Is it fair to say this memo is a summary of the issues that have been under discussion on an ongoing basis between you and Mr. Rover in February--

SERGEANT GILBERT: Yes, ma'am.

MS. GLADING: --and March of 1996?

SERGEANT GILBERT: Yes, it would be.

MS. GLADING: When you were asked to come down to the Attorney General's Office to review documents in the fall of 2000-- Was it your testimony that that was the fall of 2000?

SERGEANT GILBERT: I believe, from like late summer, early fall onwards, yes, I was.

MS. GLADING: Can you recount specifically what happened?

First, let me ask you this: At this point in time, there were news stories appearing about some of these documents. Is that correct?

SERGEANT GILBERT: Yes, ma'am.

MS. GLADING: Okay. And there was a decision about to be made, or had just been made, to do this massive document release. Is that correct?

SERGEANT GILBERT: That's correct.

MS. GLADING: Okay. So when you were-- Explain the circumstances of how you ended up down in the Attorney General's Office reviewing documents.

SERGEANT GILBERT: In what context? I was--

MS. GLADING: Did you get a phone call from someone?

SERGEANT GILBERT: Yes, I did.

MS. GLADING: From who?

SERGEANT GILBERT: I believe initially, I got -- I was contacted by-- I've spoken to different people. I've spoken to people from the DeCotiis law firm on these issues. I've spoken to people from the Division of Law on these issues. I've had a number of meetings in which I've reviewed the documents -- both that I had generated and others that were generated.

MS. GLADING: Okay. So you went down to the Attorney General's Office to actually review documents. Is that correct?

SERGEANT GILBERT: Yes, ma'am. That's true.

MS. GLADING: Okay. Were you reviewing them-- Which floor of the Attorney General's Office was this review taking place at?

SERGEANT GILBERT: On the first floor.

MS. GLADING: Okay. And were you looking at what was going to be the 50,000 documents ultimately?

SERGEANT GILBERT: At some of them. I think a lot of what I looked at was more focused towards my involvement in the ongoing matters. I didn't look at every single thing that was going out in the document production.

MS. GLADING: Okay. So what were you asked to do? Why were you asked to review these documents?

SERGEANT GILBERT: Basically, to look at the documents that I had done to have -- look at other documents that were there to get an overall feel. I believe the concept was to get an overall feel, for me, as to what my involvement had been and what my level of knowledge was.

MS. GLADING: Were you ever asked to identify documents that -- to distinguish between documents you had seen versus documents you had not seen?

SERGEANT GILBERT: Yes.

MS. GLADING: Do you know why you were asked to do that?

SERGEANT GILBERT: Because I believe there were a number of documents that I saw during the course of that process that I had not seen before.

MS. GLADING: Do you know why the Attorney General's Office would have been concerned about which documents you had seen, versus which you had not seen?

SERGEANT GILBERT: I believe that probably it would be better for them to answer that question. I'm not really sure.

MS. GLADING: And who did you work with at the Attorney General's Office regarding this document review?

SERGEANT GILBERT: I worked with Allison Accurso, who's an Assistant Attorney General, and people affiliated with her staff.

MS. GLADING: Okay. Were you asked to conduct a similar review of documents at the Governor's Office?

SERGEANT GILBERT: No, I was not.

MS. GLADING: Were you-- Did you see a lot of documents in that review that you had not seen before?

SERGEANT GILBERT: I saw a number of documents that I hadn't seen before.

MS. GLADING: Have you seen those documents reported on in the newspapers or discussed during the course of the depositions in this hearing?

SERGEANT GILBERT: Yes, ma'am.

MS. GLADING: All of them?

SERGEANT GILBERT: The ones that I've seen -- that were brought to my attention-- I've seen them focused on during the course of these hearings, the depositions, and newspapers articles. Yes.

MS. GLADING: I beg your pardon?

SERGEANT GILBERT: The ones that I know of that I've seen that -- that I was aware of-- I've seen them focused on in hearings here today. I've seen them focused on in the depositions I gave previously or mentioned in the newspaper.

MS. GLADING: There were no documents that you saw that you have not heard discussed during this process in the last month and a half.

SERGEANT GILBERT: No, ma'am, I haven't.

MS. GLADING: Thank you.

SENATOR GORMLEY: Senator Zane.

SENATOR ZANE: Sergeant, when you mentioned earlier about target letters, you then said that that is something that you understand as a term, but it also, actually, may have been a letter regarding a formal investigation. Am I correct?

SERGEANT GILBERT: Yes, sir.

SENATOR ZANE: Yes, that's what you said.

Who, if anyone, during any period of time, did you have any discussion with about either what you're referring to as a target letter, or a letter of formal investigation?

SERGEANT GILBERT: I remember when we went to the meeting on the 24th, I believe the general indicated the interaction he had had with the people in Washington -- that he had been able to talk them into doing, basically, an informal investigation versus the issuance of a formal notification letter that would make the -- make it an investigation as opposed to being formalized as an inquiry.

SENATOR ZANE: Now, to a State Trooper involved in this, such as yourself, that was good news?

SERGEANT GILBERT: Yes, sir, it was.

SENATOR ZANE: Okay. Why?

SERGEANT GILBERT: Because I felt that that would afford us the opportunity to work with them on a -- if you want to call it a friendlier basis -- a better working relationship. I think, again, as I testified here today, one of the concerns that I had, the Colonel had, and many other people was the conflicting messages that we were receiving. And I think once you get to the point where it becomes formal, and it becomes locked in stone, that it's going to be an investigation -- that it takes it to a different spectrum. I think we were hoping to get some of the issues resolved and move forward productively.

SENATOR ZANE: So that at that meeting on December 24th, 1996, all of the names that you gave us previously were present when the Attorney General made reference to an informal investigation as opposed to a formal. Is that correct?

SERGEANT GILBERT: I believe so. Yes, sir.

SENATOR ZANE: Okay. Do you recall what he said he did in order to have it informal as opposed to formal?

SERGEANT GILBERT: No. I just know that they had discussions. And I guess that was the final result of interaction that they had had down in Washington.

SENATOR ZANE: He made no comment elaborating how that happened?

SERGEANT GILBERT: No, other than the fact that he had had direct discussions with whoever the people were in Washington.

SENATOR ZANE: Okay. Did anyone else there comment or ask any questions about why it was going to be informal as opposed to formal?

SERGEANT GILBERT: Not that I recall.

SENATOR ZANE: You had mentioned towards the end of your original testimony here regarding discussions and meetings about the State Police withholding documents from the Attorney General. Do you recall that in response to Mr. Chertoff's question?

SERGEANT GILBERT: Yes, sir, I do.

SENATOR ZANE: Okay. Do you recall who you had those discussions with? You mentioned Colonel Dunlop. Am I correct?

SERGEANT GILBERT: Yes, sir.

SENATOR ZANE: Anyone else?

SERGEANT GILBERT: Colonel Dunlop and Colonel Fedorko at times, primarily with Colonel Dunlop, because Colonel Dunlop had primary responsibility from, I guess, after the shooting had taken place forward, as far as document production, interaction with the Attorney General's Office. So I felt comfortable, for the most part, talking to Colonel Dunlop about the situation.

SENATOR ZANE: Where did the whole notion come from that documents may have been withheld by the State Police, if you know?

SERGEANT GILBERT: I'm not really sure. I think there obviously was a lack of communication somewhere that I really didn't understand how it happened.

SENATOR ZANE: Was the inquiry made that maybe documents had been withheld? Was that made by the -- from the Attorney General's Office, if you know?

SERGEANT GILBERT: I believe that in what Colonel Dunlop represented to me -- that the contact he had had with Mr. Zoubek -- that it was a direct impression he got from Mr. Zoubek. As to where that all generated from, I'm not really sure.

SENATOR ZANE: And that was a twist to you, was it not, because you felt that all documents had been provided?

SERGEANT GILBERT: That was a very major twist. Yes, sir.

SENATOR ZANE: Just as a -- to clean something up for me, you mentioned about the meeting with the Maryland State Police and Attorney General Fahy comparing the Maryland litigation. And I think you set that meeting up. This is in regard to the ACLU litigation. When was that meeting?

SERGEANT GILBERT: I think it was either in the late summer or the early fall of 1996.

SENATOR ZANE: Did you have an impression as to whether or not then Attorney General Verniero, on December the 24th, 1996, had an understanding as to whether or not there were serious allegations being made in this state by some -- from within the state -- outside of the state that racial profiling was existing on the New Jersey Turnpike?

SERGEANT GILBERT: I think it was a preexisting issue, but I don't remember there being specific conversation from him on that date as to where he stood on that issue.

SENATOR ZANE: I'm not really asking about where he stood. Did you have an impression as to whether or not-- I mean, did he say to you, "Oh, my God. I didn't know this was going on," or not to you, but to the audience at large -- or was it fairly clear, from the nature of the conversation, that he was aware that this was a serious problem?

SERGEANT GILBERT: I just know from the contact that I had up to that point with Mr. Fahy about these issues. I don't think it was a hidden issue or anything else. I mean, there was a lot of litigation going on at that point, both related to Gloucester County and the challenges that had come at around the same time and were continuing. I believe it was common knowledge between the Office of the Attorney General and the State Police that this was an issue that had to be contended with.

SENATOR ZANE: And if it was common knowledge between the State Police and the Attorney General, would you have an opinion as to whether or not, based upon that meeting, the Attorney General knew of the issue of racial profiling here in this state?

SERGEANT GILBERT: And not to be disrespectful, but I don't want to offer an opinion as to what the Attorney General's mind-set was, because I'm not really sure, and I don't think--

SENATOR ZANE: Sergeant, I'm not asking that. I'm asking you your opinion. And if you have none, you have none. But in your opinion from the meeting you had with them, as to whether or not it was clear to you that he knew of the subject matter, and I'm referring to the meeting of the 24th, 1996--

SERGEANT GILBERT: I would say that he had knowledge that it was an issue. It was an important issue. There had been a trip already down to Washington to discuss that earlier in the month. So based on that information -- he was directly involved in that -- I would think that he had a grasp of the seriousness of the issue.

SENATOR ZANE: And there was a -- one more meeting that you had, where the Attorney General was present in his office. Am I correct?

SERGEANT GILBERT: Yes, sir.

SENATOR ZANE: Was that in May of 1997?

SERGEANT GILBERT: That was on May 20th. Yes, sir.

SENATOR ZANE: Nineteen hundred, ninety-seven.

And is that where the comment was made about the consent order that they'd have to tie me to the train and drag me down the tracks?

SERGEANT GILBERT: Yes, sir.

SENATOR ZANE: Did you have an opinion as to whether or not it was clear to you, on May 20th, 1997, that then Attorney General Verniero was versed -- your opinion as to whether or not he was versed on the issue of racial profiling here in this state?

SERGEANT GILBERT: I believe that he was.

SENATOR ZANE: ..Do you think it had crystallized by then?
(laughter)

SERGEANT GILBERT: I'm not the one to answer that, sir.

SENATOR ZANE: I have no other questions.

SENATOR GORMLEY: Okay.

Senator Robertson.

SENATOR ROBERTSON: Thank you, Mr. Chairman.

Sergeant, thank you for your work here and testimony.

I'd like to personalize this for a moment.

When you personally took a look at the statistics that you originally put together and saw the search rates, and even the stop rates, was that a matter of concern to you, personally?

SERGEANT GILBERT: From a numerical standpoint, sir, yes, because it was evident that this had gone the path where if you looked at things from this purely statistical nature, they look bad. Did I have faith in our people, having done it myself -- being out on the road -- as far as them being told to do the right thing and doing the right thing? I had faith in that, also.

However, I think, early on in this whole thing, it became evident to me that these numbers -- and as we see now, even to this day, have really not fluctuated that much, even with all the reforms that have been put into place.

So I don't know what the answer is, but one of the issues came to be with the contradiction in messages we were receiving, as far as go out and do highway interdiction-- We were actually achieving notable results, if you look back historically. State Police has been commended for that from many different angles over many years.

At the same time, as I started to look at the statistics, it was like these statistics may -- are going to take us down a path which is problematic. And to try and put those two things together and come up with a finite answer that was a good solution to this-- I don't know, to this day, if there is still one, other than the fact that you totally drop out of doing highway interdiction work. And I really don't have an answer -- a concrete answer to your question.

SENATOR ROBERTSON: Well, I suspect that that's the case, and that's fine. That's one of the reasons I wanted to personalize it.

If you look back to your own service, you were out on the road yourself, correct?

SERGEANT GILBERT: Yes, sir.

SENATOR ROBERTSON: And from what period of time was that?

SERGEANT GILBERT: From the period of 1982 to 1986.

SENATOR ROBERTSON: All right. So during those eras, '82 to '86, if you had to go back, knowing what you know now about the policies and procedures that are out on the road now, and if you ever had to do a statistical analysis of your own stops, do you think it would have been on a par with what you saw later on, or was there a specific reason why it would be greater or less?

SERGEANT GILBERT: I don't really know. I know that the training that I had, and the people that I had contact with that I learned how to do things from -- and that's a very important issue. I mean, what I was taught to do was go out there, do our job right. If you encountered circumstances to make a motor vehicle stop for -- a valid motor vehicle stop for a valid motor vehicle reason -- for violation of statues-- If you did that, we were to be aggressive in the questions that we asked, how we weren't to mistreat people, and that if we went out and we encountered signs of deception -- if you encountered signs of criminal behavior, that we were to pursue that through. And if you got to the point where there was nothing there-- For example, somebody gave us some answers, initially, that were a little confusing and maybe raised your antenna scope up-- If you resolved those issues, then the point was that you cut those people loose. You would issue them a summons or a warning, depending on what the circumstances warranted. From that point, we were to let them go, not push further, keep it within the confines of what we had been instructed to do.

But again, interdiction was a task that the Division of State Police had been given a very strong mission to perform that. And we've been under that guidance for several decades now.

SENATOR ROBERTSON: Well-- And you were involved in interdiction efforts back in the 1980s.

SERGEANT GILBERT: Just as a member of the Division. That was a -- basically a blanket policy of the Division. We had been tasked with interdiction. It was in the Statewide Narcotics Action Plan and a number of other directives that were issued to the Division.

SENATOR ROBERTSON: And, in fact, the Statewide Narcotics Action Plan also indicated that interdiction would be among the highest priorities for the State Police, correct?

SERGEANT GILBERT: That's correct, sir.

SENATOR ROBERTSON: That was under Attorney General Edwards.

SERGEANT GILBERT: Yes, sir.

SENATOR ROBERTSON: And, in fact, that sort of message was being sent out, not only by people within the Department, but also by elected officials, I take it.

SERGEANT GILBERT: Yes, sir, it was.

SENATOR ROBERTSON: And when you were out on the road, and you were doing your job, did you personally ever feel that you were targeting or racially profiling?

SERGEANT GILBERT: No, our-- My goal, when I was out there, was if I could apprehend -- or locate and apprehend criminals, that I would do that. It wasn't a matter of what color they were, what gender they were,

anything like that. It was, basically, play by the rules that we had. And if the rules took you somewhere-- I don't think, at that point, we were looking at who was getting arrested or who was getting stopped. I think there was the faith that we were doing our job right.

SENATOR ROBERTSON: Now, you still have contact with folks who are out on the road, I take it.

SERGEANT GILBERT: Yes, sir, I do.

SENATOR ROBERTSON: They're friends of yours.

SERGEANT GILBERT: Yes, sir.

SENATOR ROBERTSON: White, Black, Hispanic. Is there a broad range, or--

SERGEANT GILBERT: Yes, sir, there is.

SENATOR ROBERTSON: What is your understanding, and I'm not asking you to speak on behalf of the trooper who's out on the highway. Nobody can actually do that. But from your discussions with the folks that you know, what do their opinions range about the extent to which they are or are not racially profiling?

SERGEANT GILBERT: I think that the general opinion of the majority -- that if we have individuals that have done that in the past or at the present time -- that they're not doing any favors to the bulk of the troopers that are out there. I think the majority of our troopers want to go out, and they want to protect the citizens here in the state. They want to go out, and they want to do a good job. They want to know that they're being backed by everybody, because they're going out to do a dangerous job. It's not a simple, easy job, and it's easy to reflect back now on statistics. But to actually get out there and be in the trenches and do it, it's a very difficult job. And I think all our troopers are

looking for is support to be able to go out and do that every day and get a clear message as to what's expected of them at this point.

SENATOR ROBERTSON: And, in fact, trooper morale becomes a major ingredient in any policy decision that's made at higher levels, I take it. Is that correct?

SERGEANT GILBERT: That's correct, sir.

SENATOR ROBERTSON: During the course of these various discussions that you had within the State Police, was trooper morale and trooper support among the things that was discussed as an element in this consideration?

SERGEANT GILBERT: Yes, sir.

SENATOR ROBERTSON: And when you take a look, and you talk to your friends now, and you, yourself-- You're in a very unique position in the sense that you developed these statistics. You know what they say statistically. You know the serious questions that they raise statistically.

Talking to an ordinary trooper out on the highway, how do they explain these kinds of statistics?

SERGEANT GILBERT: I don't think that-- It's a hard thing to describe, because I don't think that-- I think that almost, from the trooper's standpoint, if you go back to even an earlier -- if I can go back to an earlier phase of this whole process--

At a certain point, when I brought those statistics to Colonel Williams, one of the things that Colonel Williams had to grapple with -- he could have very easily turned around and said, "Okay. If we're going to get subjected to criticism on the -- these numbers--"

It's very easy for me to peel back and say, I'm going to put out a mandate right now, and I'm going to tell the troopers, so that we can make the situation go away, that I'm going to give them a number to enforce the motor vehicle statutes by and the criminal statutes by. And that way, we'll have corresponding numbers.

He was very much against that. He said, "I'm not going to do that." He goes, "But I want my people out there doing the job right. I want to make sure we move forward with monitoring, with training, with the things--" I think he had a dedication to that, and he felt that if we were doing our job right, that the numbers -- not that they would change, but that he wanted to be in the position to say, "Hey. We've done a lot of things. These numbers are what they are." What exactly do they mean? I don't know, because I think we're still, even today, faced with that -- with all the reforms that we have in place, there's still a lot questions being raised about what do the numbers that exist today mean. And I don't know the answer to that.

SENATOR ROBERTSON: And I have to say, in taking a look at some of the numbers that have come in, I start to get a little confused in terms of the fact that these numbers have been compiled, sometimes, by different methodologies, using different periods of time and so forth.

But I can recall, when we had our hearings with respect to the racial profiling situation a couple of years ago, we had a certain -- we had certain figures on stops, or certain figures on searches -- and consent searches. And very clearly, I remember taking a look at it. That was the one thing that piqued my interest, was the disproportionate consent searches to which people were subjected -- people of color were subjected versus white motorists. And one of the things that

we didn't seem to have a handle on, at that time, was how many of these searches resulted in arrests. Now, do we have those statistics at this point?

SERGEANT GILBERT: I believe that we do at this point. I don't have them at my fingertips. But again, what you're talking about is a-- One of the things that you would call that would be the find rate -- the percentage. And you can say-- You can look at that as a batting average.

And again, I don't know what is an acceptable number, as far as a find rate. And I think that's what you're asking, as far as how many times out of 10 a search results in an arrest. I think that they do have those numbers. And again, it's a matter of perception, as to whether one -- depending on whether a law enforcement, sitting there as you are today-- Different people are going perceive those numbers in a different fashion.

SENATOR ROBERTSON: Absolutely.

But for instance, if we're talking about the extent to which we can subject a motorist to a consent search, the statistics seem to suggest to us that -- told us, actually, that minority motorists were subjected to the request for consent in a much higher proportion than white motorists. Is that accurate to say?

SERGEANT GILBERT: Yes, sir, that's correct.

SENATOR ROBERTSON: Was that the same case with find rates? Was the find-- Were the find rates substantially higher?

SERGEANT GILBERT: I'm not sure that's been analyzed.

SENATOR ROBERTSON: Well, because-- The reason I say that is because it was my impression, from our original discussion a couple of years ago, that the find rate was not substantially different among the races. And that kind of leads to a question that I can ask you (indiscernible). When a motorist

is stopped when there is a possibility that things start hitting the antenna-- I'm not talking about the fact that when they take out their wallet for their driver's license thousand dollar bills fall out, or stuffing a duffle bag under the back seat. That's a pretty obvious situation. But all things being equal, is it more likely because of the nature of how we've been conditioned in society, or specifically in the training given to the State Police-- Did race enter into a typical request to make a search? Did that cause more suspicion?

SERGEANT GILBERT: I can't really answer that. What I can tell you is that my contact with the training that we've done, and the contact I had specifically with the training we tried to do post-'96, was to make it very clear to the troopers that what you're looking for is you're looking for indicators -- behavior indicators and concrete facts. And if those things aren't there, then basically, you shouldn't be going on a fishing expedition or anything else. If they're there, fine. Then what we want you to do is we want you to aggressively pursue them, and we want you to stay within people's rights, but we do have a task of being out there to do highway interdiction and law enforcement in general, stolen cars, stolen property, things like that. We're talking a lot of activity that we do is on the corridor or roadways where you have a lot of travel back and forth, and a lot of things of that nature are out there.

But I believe that with the training that we've given, I think the message is clear that that's not supposed to enter into your mind-set -- that if it's there, it's there, and it should be there on the basis of concrete indicators.

SENATOR ROBERTSON: In other words, articulable suspicion.

SERGEANT GILBERT: Yes, sir.

SENATOR ROBERTSON: On the paperwork that's generated on each of these consent searches, I take it there is a piece of paper that's filled out.

SERGEANT GILBERT: Yes, sir, there is.

SENATOR ROBERTSON: Is there a line on it that says articulable suspicion where there is a recitation of precisely what factors went into--

SERGEANT GILBERT: I don't think it has that, but the consent to search data form, and again there's been some changes, and that's been enhanced-- But even going back to prior the interim report, the troopers were required to put language on the consent to search data form as to what circumstances led up to them asking for a consent to search. And if, in fact, the encounter had resulted in an arrest, that information would all be set forth in the actual investigation report where that could be looked at by the supervisors, and they could have a good feel for what their troopers out on the road were doing and how they got to the point of asking for consent.

SENATOR ROBERTSON: And I take it, human nature being what it is, that space isn't always filled out, is it?

SERGEANT GILBERT: The ones that I looked at, sir, in doing the review-- I thought that the troopers had done a decent job. Again, they have many different obligations when they're out on the road.

SENATOR ROBERTSON: Sure.

SERGEANT GILBERT: And that takes up time. But what I saw, the majority of the troopers, with the consent to search data forms, that they had taken the time to lay out the reasonable suspicion that they had developed to ask for consent.

SENATOR ROBERTSON: And what would an average-- In the case of a nonfind situation, what would an average-- I know there's nothing that's average. But what would a typical articulation be on that line?

SERGEANT GILBERT: Well, one example would be there was a number of consent where individuals would ask for consent because they walked up to a car, and they might have detected the odor of marijuana, and they might have asked for consent on that basis. However, the marijuana had been basically consumed, although the smell was still in the car. So they may have used that as the reasonable suspicion to end up asking for a search and getting it. They probably could have done that on probable cause alone. But in the case of a consent search, they did that. And they would search the car. Basically, although the odor was there, there was no remnants of the marijuana. So in that case, you wouldn't end up arresting somebody for the odor of marijuana if there was not tangible evidence left. Basically, those people would be issued either a summons or a warning.

SENATOR ROBERTSON: That's great. That's a pretty clear case where you, as you say-- You could almost have probable cause in a case like that, which is--

SERGEANT GILBERT: But it might be based on, for example, somebody giving conflicting versions of where they had been, where they were going to, their demeanor, if you have multiple occupants in a car, as far as the stories, if you had occasion to talk to multiple occupants, and the stories didn't make sense, third-party ownership of vehicles. There might be a lot of things -- cumulative information that you develop during the course of your conversation and what you observed. It might lead you to the path of thinking that something was problematic there -- that might give rise to the level of asking for a consent to search. However, it may just be that those things accumulated together, yet there may not have, in fact, been any controlled dangerous substance in the car or contraband or--

One thing that I think is important for you to understand is that there may have been cases that those items may, in fact, have been there. And we're not perfect. There have been numerous occasions where we don't locate whatever the contraband is. All those indicators may be there, and a search may be conducted, and, in fact, not to fault us, but we're not perfect either. You basically may miss something. And that would be chalked up as a negative result, when, in fact, all the indicators may be there in two identical cases. In one case, the people may be carrying narcotics. In the other case, for whatever reason at that point in time, they're not. Yet, one would be reflected as a positive find, the other would be reflected as a negative find, yet all the circumstances leading up to the encounter, and through the encounter, were identical.

SENATOR ROBERTSON: Now, do you believe-- Well, when you were out there -- or your knowledge in the years subsequent to that, was there a formal or informal quota on the number of arrests that should be made by troopers out on the road?

SERGEANT GILBERT: No, because we had some-- For example, when I worked down at Woodstown, there were some troopers that were traffic oriented. There were some troopers that were oriented towards going out and riding through Salem County and dealing with the population there and investigating burglary and thefts.

I think, when I was out there -- and I think the way I still think -- it's important-- You're going to pick something that you're good at, go do it, and do it well. Don't just disappear for the day. You go out and you do your duties. And if you're oriented towards making criminal arrests, that's fine. But in order to run a station and run a troop, you have to have some people that are

interested in apprehending -- identifying and apprehending drunken drivers, people that are interested in accident reduction. We have all those different angles that we have to deal with. You can't just say, "I want everybody to go out and be criminal oriented," because then that creates a void with the other areas.

SENATOR ROBERTSON: And to the best of your knowledge, among your friends or the people that you know who are out on the road, did you ever hear of any complaints from them about being pressured to make arrests, especially on the (indiscernible) side?

SERGEANT GILBERT: No. Because I said there were-- For example, when I was out there, I was criminally oriented. That was my interest. However, I had some real good friends who were traffic oriented.

And, again, if you're running a station-- For example, when I was down at Woodstown, you need to have varying degrees of productivity from your people in a multitude of different areas.

And that's why even with community policing now, that's not something you can easily measure results in, but we're embarked on that and we feel that it's very important. But you're not always going to get a tangible number out of the community policing program. It's hard to identify what crime you prevented. It's easy to identify it once it's happened with statistics, but it's-- Our community policing program right now is really attempting to keep crime down. How do we measure that? It's very difficult.

SENATOR ROBERTSON: Thank you, Sergeant.

Thank you, Mr. Chairman.

SENATOR CAFIERO: Senator Matheussen.

SENATOR MATHEUSSEN: Yes.

Trooper -- Sergeant, I should say, I'm sorry.

You mentioned before troopers getting conflicting orders. Would you term that in terms of were or are getting conflicting orders?

SERGEANT GILBERT: I think, right now, that the confidence level of the troopers out on the road, it's-- I think we've been given messages about where we are to go, but I think that there's still some confusion with hearings such as this and other litigation still going on as far as what the troopers are expected to do.

For example, with the highway interdiction, is that something that's still important? Is it not important? I believe that the bulk of the troopers are still developing in their minds a clear picture of where it is we're being asked to go.

SENATOR MATHEUSSEN: And is there a place that they look to for that message?

SERGEANT GILBERT: I believe the leadership of the division, the Governor, and the people sitting here today. I think that a lot--

If you go back even to the highway interdiction aspect, I don't think that that was a concept that was developed by the New Jersey State Police or any other law-enforcement agency. I think it was in response to a concern about the increase in narcotics use and the damage it was doing to the country.

SENATOR MATHEUSSEN: And that message is still out there isn't it, to some degree?

SERGEANT GILBERT: Yes, it is.

SENATOR MATHEUSSEN: So the clear message, I think, was what you said before, they're looking for a clear message to do the right thing and just to be able to do their job.

Was that part of your expectation in your assignment after the *Soto* case, not just to figure out how it was that we should take a look at that appeal, but also find a clear message for the troopers out on the road to do the right thing?

SERGEANT GILBERT: Well I know that they were looking for that, and I think the Gloucester County case came out and the additional litigation that followed with that-- I think--

Well, my intent was in all of this, once we had identified that there were numbers that gave the appearance of being problematic -- that we really didn't know what the answer to those numbers were, but that we, as a division in response to the citizens, had to make sure that we did the very best we could as far as training, monitoring, supervision out on the street, and so forth.

That we could say, basically, we're doing the very best job we can with a very sensitive issue, and if they're the numbers that are there -- you know, I still don't know how to explain the numbers -- but that we could show that we had done everything to make sure that our troopers treated people properly out on the street; that they had been properly trained; that we had supervision to intervene when necessary; that we had monitoring in place to be able to do that. And that by doing all those things, I think we show a good-faith effort in trying to deal with a real complicated issue.

SENATOR MATHEUSSEN: If you had to-- Well, first of all, I'm sure when you started off with the post-*Soto* decision to where you're sitting today, I would imagine this was not one of the conclusions that you were anticipating--

SERGEANT GILBERT: No.

SENATOR MATHEUSSEN: --sitting here at this hearing today.

SERGEANT GILBERT: No, it's not.

SENATOR MATHEUSSEN: You just delineated a couple of things, though, that I think you, perhaps, gave some forethought to in where you might -- where your work might end up, and that was training?

SERGEANT GILBERT: Yes, sir.

SENATOR MATHEUSSEN: In the form of what, if I may ask, Sergeant?

SERGEANT GILBERT: I think that, again, when you go back to-- Highway interdiction is a very critical type of activity, because in order to have effective highway interdiction, it is an intrusive activity. But I think it's very important that we train our personnel to what level you can be intrusive and that once you reach a certain point -- which is, basically, I've done everything politely, I've done everything within the letter of the law, I've done everything within policy -- that you get to a point where -- okay, I've gotten to this point, and now there's nothing that allows me to go beyond that point. That's when you terminate the encounter. That's not--

SENATOR MATHEUSSEN: And can that still be effective law enforcement work?

SERGEANT GILBERT: Well, I believe that's effective law enforcement work.

SENATOR MATHEUSSEN: The second thing you delineated or one of the things you delineated was monitoring. Tell us about that. Where does that take us?

SERGEANT GILBERT: Well, one of the things that -- going back away -- is we have a computer aided dispatch system at the division, and

unfortunately, there was a lot of moves afoot to get that in place back around this same time period.

And we had felt that that computer aided dispatch system was going to be very beneficial, because it would allow a sergeant at a road station to basically pull up information on the people working at that station. You would be able to make a comparison between the people working at a station, because they're working the same environment, and be able to take a look at statistics.

And maybe if there was anything that looked significant in any way from an activity standpoint -- and I'm not just talking about the issue we're talking on today -- but it would allow supervisors a chance to take a look at the issue, do any type of intervention if necessary, and deal with that issue at a very early stage. And we felt that that was a very prudent way to look at these situations -- again, not only for this issue today, but for almost any type of a conduct or performance issue.

Unfortunately, the CAD system got bogged down. It's a very complicated system, and it took longer to get it on line than we had hoped for. But systems such as that, where you can give the feedback to the individuals by the supervisors, you can allow the internal affairs function to look at issues from a collective standpoint -- because now you have computer driven information -- which is obviously much better than the way I had compiled my work, but I mean, that was a starting point, and you move forward from that.

SENATOR MATHEUSSEN: If handled the right way, this monitoring doesn't necessarily have to look like someone's trying to punish an officer for doing a good job. It's more or less to give them the tools they need to take corrective action.

Is that the way you would put it?

SERGEANT GILBERT: We're trying to make sure we do an effective job, but that we do it right.

SENATOR MATHEUSSEN: To what degree are you satisfied with implementing those two things -- that would be education, training, and monitoring? Where are we now from where we were in 1996?

SERGEANT GILBERT: I think we're doing well. I think it's going to take some time. I mean, I'm appreciative of the fact that since the interim report came out and the consent decree, we have had an infusion of resources in the division that was unprecedented.

Because, going back in the years, even when I was dealing with this issue, we didn't have the infrastructure that we needed to basically perform our job properly in total. I mean, it was a lot of competing demands for troopers out on the road, as opposed to having the support personnel behind them, and I think we are moving in the right direction. I hope we continue that way.

SENATOR MATHEUSSEN: Sergeant, I'm sure that every member of this Committee and the Legislature as well wants to do right by the State Police and give you the tools necessary to conduct law enforcement as best as you possibly can. Are there any things that we're missing now, if you know, that we need to do?

SERGEANT GILBERT: No, again, I think that the hearings that are being conducted now, I think are beneficial to the division. I believe that, again, there has been a real significant infusion of resources in a lot of different directions, and I think the personnel within the division are appreciative of that.

Of course, they would not like to have seen the chain of events that led to that maybe having taken place, but I think the final result -- I think it's

going to allow the division to be significantly modernized and move forward to where we have to go and serve the people better.

SENATOR MATHEUSSEN: If we can get that new handgun straightened out, we'll be a lot better off, too, won't we?

SERGEANT GILBERT: Yes, sir.

SENATOR MATHEUSSEN: The last thing I'd like to say, Sergeant, you know sometimes-- You did wind up here, as opposed to-- I know you didn't anticipate it, but you did wind up here, and oftentimes, I'm sure that that was not a comfortable position -- both in anticipating being here and sitting here today -- but I want to compliment you on the work that you've done over the years and the steadfastness that you've shown.

I'm sure that there were times when it would have been easier for you to turn and walk in a different direction. You didn't do that. But I think you have made a difference, and I appreciate you being here today and your candor that you have given us in this Committee today.

Thank you.

SERGEANT GILBERT: Thank you.

SENATOR GORMLEY: Senator Martin.

SENATOR MARTIN: Thank you.

Ditto to that last remark, Sergeant.

I'm interested in some institutional issues, something along the line of Senator Matheussen; fault finding, if any, I'll reserve for a later time.

In the memo that was listed GC -- that Ms. Glading referred to earlier that you had prepared, that's now listed November 1st, '00, but came out in '97--

SERGEANT GILBERT: Yes, sir.

SENATOR MARTIN: --one of the numbers that I found interesting in that is that when you were making a comparison between Maryland and New Jersey, you noted that in New Jersey 98.1 percent of all drivers are violating traffic laws. I assume that's on the Turnpike.

Is that where that statistic would come from?

SERGEANT GILBERT: I think that was derived from the study that was done on the -- the traffic survey that was done on the Turnpike back in relation to the Gloucester County case. I don't think that was-- I'd have to look at the numbers in there, but I don't think that was me stating that as a fact. I think I was using that as the reference from what the statisticians for the defense had come up with out of the Gloucester County case.

SENATOR MARTIN: Okay.

So you're not saying then or now that it's at that level.

SERGEANT GILBERT: No.

SENATOR MARTIN: But it's apparently-- You wrote this memo. I assume you're suggesting that it's at a relatively high level. I'm not asking you to verify the accuracy. I'm leading to something, and that is, if the number is very high, even if it's not 98 percent, it does provide troopers with a great deal of discretion as to the initial stop, as to who they're going to pull over, because you've suggested before that the stops are based upon motor vehicle violations, correct?

SERGEANT GILBERT: That's correct, sir.

SENATOR MARTIN: And if that's a decision making-- Let's exclude racial profiling for a moment. Is there some kind of departmental/divisional guidelines that suggest, among those who are violating the motor vehicle laws of New Jersey, as to what criteria would be used to select

which among the potential persons you would pull over? I mean, how is that done? Is it totally within the trooper's discretion? There must be some--

SERGEANT GILBERT: At this point, sir, yes, as long as they're not having undue influence by certain characteristics of the people, because, again, you get into situations where if a trooper-- One of the things we're supposed to be after is-- The person you stop and issue a summons to, obviously, that activity is going to have influence on a lot of other people who are driving down the roadway.

For example, out on the Turnpike, the troopers are assigned a certain area, and they have a certain loop that they have to perform. So they may issue a summons, and realistically, they could have numerous other violators go by them, but one of the critical needs that they have to address is the people who are sitting on the side of the road, and they have to get their loops in. So a lot of it comes down to timing. A lot of it comes down to--

It's very hard. It is very discretionary. But what we have to make sure is that-- Again, what I talked about with the training, the monitoring, supervision, we have to have faith in the troopers that they're doing the right thing, and that they're exercising that discretion in the proper way.

SENATOR MARTIN: Is it-- At least based upon your experience, are most of the motor vehicle violations based upon speed?

SERGEANT GILBERT: They can -- it depends where you work. I think on the Turnpike a lot of times you would have speeding violations being paramount, but you have following too closely, you have failure to maintain a lane, or obviously, you can go out into a more rural area where we're patrolling, and you might have issues of running stop signs.

It depends geographically where the trooper's situated.

SENATOR MARTIN: Well, I was thinking about the Turnpike and your experience from your own area -- and even using the *Soto* sort of area, which would be in the southern portion.

If those violations that are based on speed, is it generally-- I mean, the troopers will generally pull over a vehicle that is one of the faster vehicles among many that are exceeding the 65-mile-an-hour speed limit?

SERGEANT GILBERT: That would generally be correct. Yes, sir.

SENATOR MARTIN: But it doesn't have to be the fastest, and there is no specific criteria that one would follow?

SERGEANT GILBERT: No, there's not, because the traffic flow constantly changes. The flow and the rate have a big impact, for example, on -- as for speeding, depending on weather conditions. I mean, you could have where there is fog or the roadway could be wet, and the trooper, within his discretion, may feel that on that day a certain speed is okay--

SENATOR MARTIN: I understand.

SERGEANT GILBERT: --whereas, another day -- you know, a bright, sunny day -- realistically, they may feel that a slightly higher speed is okay and is not going to be a risk to the other motorists out on the roadway.

SENATOR MARTIN: As far as the State's policy of interdiction, if we remove ourselves from racial profiling, which I hope we have, and maybe it never occurred, but at least it seems to have been an acknowledgment, is it your understanding that some profile would be in place, absent race, that would still be a criteria in which State Troopers could exercise discretion to nab vehicles that have potential -- a more likelihood from a profile -- that they were running drugs?

SERGEANT GILBERT: I think the difficulty with that, sir, is that we run into a situation which we've run into in the past. That we are going to be given-- For example, at the Federal level, there are statistics that are generated about who is involved in, say, narcotics trade -- and from the angle of highway interdiction, who is being arrested -- and that information is normally pumped out.

And I know this issue has been discussed internally in the State Police for a while now with everything that's happened. Is it prudent for us to give that information out to the road troopers for the purposes of their own personal safety -- at the risk of -- does that information slant them in a certain direction as far as conducting their activities?

I don't really know the answer to what you're asking at this point. It's very confusing. I think we--

SENATOR MARTIN: All right.

Well, let me ask you this: Are you inferring then that if racial profiling wasn't part of the profile, you would feel that some other profile would not be able to be put in place that would increase the likelihood of interdiction?

SERGEANT GILBERT: I think there's other indicators. What I was saying before, there are indicators of criminal behavior and deception.

For example, if you stop somebody and they're driving a car -- after you've stopped them for a motor-vehicle violation--

SENATOR MARTIN: I'm just talking about the stops right now, as to what cars are pulled over.

SERGEANT GILBERT: I don't really think you could do that, because there's such a variation. To be quite frank, the people that are involved in that business understand the business that we're in, and it can, at times,

become like a cat-and-mouse game. So there's always constant shifting from both sides responding to interdiction strategies.

SENATOR MARTIN: That leads me into my third and final area, and that is, I've been bothered before, and I've said it at these Committee meetings, about so-called consent searches.

It strikes me as somewhat counterintuitive that somebody would voluntarily provide a "consent search," especially if they are running drugs, especially if what you suggest is that many of them know about a cat-and-mouse game where they are taking evasive actions in the first place to try to avoid State Troopers.

So I guess my problem, and some of it has to do with questions about the legality from a constitutional basis, is the nature of these consent searches. Maybe you could just give me some kind of understanding from your training as to whether these are, in your -- I'll just confine it to you -- your experience, do you recognize these as being truly consent?

SERGEANT GILBERT: Yes, I do.

SENATOR MARTIN: Do you have any basis of opinion as to why somebody would voluntarily consent, especially if they are, in fact, carrying drugs in their vehicle?

SERGEANT GILBERT: Because I think that a lot of the cases that I encountered, as I mentioned with the cat-and-mouse game-- Some people will feel that by consenting to the search that they're basically running the tables as to whether the trooper's going to find the contraband that's contained in the vehicle.

SENATOR MARTIN: But if you were concerned about that wouldn't the easiest thing be to just say no -- to use another drug expression?

SERGEANT GILBERT: They could do that, yes, sir. But in my experience, and I know as implausible as that may sound, in many cases, people that are carrying contraband, they do consent to search of the vehicle. And I believe, again, that that's part of their strategy from where they're sitting in the situation.

SENATOR MARTIN: You don't find that that environment, given a stop, creates sort of an implied understanding that if you were to say no that you would be running into some difficult issues?

Let me just frame-- I'm not concerned about evasive drug dealers. What I'm really concerned about is others having -- also caught in that same situation and agreeing to so-called consent searches. And I really have some questions about that whole policy, not, again, because I want to increase the odds for those running drugs, but rather that most of the people--

It's been your testimony, and the data reveals, that most people where you have consent searches are not found -- there's not a find. I think that that's your word for it, a find, right?

SERGEANT GILBERT: Yes, sir.

SENATOR MARTIN: So more than-- At least a majority of them go through this search. It's taking up their time. I guess they have some trepidation -- at least I would if somebody's searching my car or other motor vehicle. But you don't see anything from a law enforcement point of view that would suggest that it's anything other than a voluntary permission by the person who's stopped?

SERGEANT GILBERT: No, and I think, as you said, it is a very volatile issue. It's very critical that we make sure that our personnel are trained properly; that they exercise their authority properly; that we have the proper

monitoring and supervision to make sure that we address the concerns that you're raising right now.

SENATOR MARTIN: Thank you.

SENATOR GORMLEY: Senator Girgenti.

SENATOR GIRGENTI: Thank you very much, Mr. Chairman.

First of all, Sergeant, I want to compliment you again on your presentation today. I think you did an excellent job. It took a great deal of initiative in coming forward with some of the information that you have.

Just some questions that I'm going to ask may be redundant in the sense that I'm just trying to get a feel for exactly what happened in terms of certain items that were discussed before.

SERGEANT GILBERT: Yes, sir.

SENATOR GIRGENTI: The first thing is, who assigned you in the post-*Soto* committee -- the Littles committee? Where did that assignment come from?

SERGEANT GILBERT: Well, I think originally what happened is Sergeant Blaker -- who was the assistant to the superintendent -- he came back to me with the copy of the decision that had been rendered by Judge Francis, and he asked me to take a look at that. And he basically said, "I want you to take a look at this. I want you to get back to me and the superintendent, and I want you to tell us what you think about what the ramifications are, and where we should be going."

So that's really where my start-up point was.

SENATOR GIRGENTI: All right.

And I believe I read somewhere in the transcripts-- Who recommended-- Did you have something to do with recommending the names for the people on this committee?

SERGEANT GILBERT: Well, I think I had gotten together with Sergeant Blaker, once we-- I think Sergeant Blaker and I had talked at that point about the need to have the committee with everything going on. I think Sergeant Blaker took that idea to Colonel Littles. He basically gave it the okay.

Sergeant Blaker got back together with me, and I believe we sat down and said, what kind of complexion do we want to have in the committee? We wanted to go out and identify people who we felt were proactive and had a good state of mind about being -- you know, looking at this open-mindedly -- and where did we have to go from there. And I think the people that we ended up with on the committee were basically logical choices.

SENATOR GIRGENTI: I know I read somewhere that you recommended DiPatri, who was a road--

SERGEANT GILBERT: Yes, sir.

SENATOR GIRGENTI: --because he had been a road trooper.

All right. Now, how did DAG Fahy get involved in that? How does his role come onto this committee?

SERGEANT GILBERT: Sergeant Blaker and I had discussed the need to have input from -- again, excuse me for using the word downtown -- but from the Attorney General's Office and the Division of Criminal Justice. It was only prudent that we have some involvement and input from them, because they were the people that ultimately represent us in what we do.

SENATOR GIRGENTI: And he met with this committee? I guess you had four meetings. He was at the majority of the meetings? I don't know if he's at all of them, but he was an active member of the--

SERGEANT GILBERT: Yes, sir.

SENATOR GIRGENTI: And information that was shared -- you felt that this information, obviously, was going back to the Department of Justice or the Attorney General's Office?

SERGEANT GILBERT: Within the State here, yes, sir, I did.

SENATOR GIRGENTI: All right.

Then, at some point, Fahy was phased out, as you said?

SERGEANT GILBERT: I don't think he was phased out. I think what--

SENATOR GIRGENTI: He went to other roles?

SERGEANT GILBERT: His role was to continue, I believe, with the Gloucester County appeal and the things with the other issues that had been raised in other venues. And Mr. Rover was assigned to handle specifically the interaction with the Department of Justice, and I think that kind of got to the forefront of the issues that were being dealt with.

SENATOR GIRGENTI: Okay, so there was a formal relationship between you and DAG Rover at that point? You shared information?

SERGEANT GILBERT: Yes, sir. That started up in the beginning, after the meeting that I went to with the Colonel on December 24th of 1996. If I recollect, I believe that we were also told on that day that Mr. Fahy was going to continue with the Gloucester County matter and any related issues that tied into that, and that Mr. Rover was going to be -- I'm pretty sure that we were told

that day that he was going to be the DAG that was assigned to handle the Department of Justice issues.

SENATOR GIRGENTI: And you and Rover would share information, send memos back and forth in terms of things that were happening, is that the case?

SERGEANT GILBERT: We didn't send a whole lot of memos back and forth, but we talked constantly about the issues.

SENATOR GIRGENTI: All right.

Do you feel that-- I just noticed from reading the transcripts that you seem to have made-- Your communications with Rover were always, for the most part, by phone. Was that standard policy? Was that just-- How did that evolve that you didn't have the documentation go forward to Rover?

SERGEANT GILBERT: Well, he really hadn't asked for it, and the other issue was that George was working down at ABC, I was working at the State Police, we had a lot of-- Basically both of us had been given additional -- we weren't detached off to do this assignment, to deal with that as our sole thing.

So we were playing -- unfortunately, looking back, we were playing a lot of hit-and-miss and catching up to each other on the phone, because he had a lot of other duties to do, as did I. As I look back on it, I don't think that that was detrimental, because I think I did a real good job of conveying all that information to him.

SENATOR GIRGENTI: Yes, I know. I'm not questioning that. The only concern I had was that I remember somewhere you had just developed a lot of statistics, and you were reading them to him. Wouldn't it have been easier to put it in a memo and send it over to him, I guess?

SERGEANT GILBERT: I could have done that, yes, sir.

SENATOR GIRGENTI: Was there a reason why you didn't?

SERGEANT GILBERT: No, there wasn't.

SENATOR GIRGENTI: And he never asked for it?

SERGEANT GILBERT: No, he did not.

SENATOR GIRGENTI: Did that surprise you? Wouldn't policy usually be that you would send information over to have it to refer to, instead of just talking about it on the phone? You seem to be very thorough about everything you do. Didn't that surprise you that that type of information was not on paper?

SERGEANT GILBERT: My concern was to make sure that I got the information over, which I did. And I understand your concern about the paperwork, but my viewpoint was that the paperwork was there if anybody wanted it. If anybody wanted it to verify what I had done, I knew that I had it. So I was confident in that.

But my main concern was to make sure that whatever I did come across that was of significance, was to get it up my chain to Colonel Williams and to make sure that DAG Rover knew about it, because I know that he had people that he had to be responsible to, also.

SENATOR GIRGENTI: And he had been at a number of meetings where he discussed this with you there, in terms of statistics and so forth?

SERGEANT GILBERT: Yes, sir. We had ongoing--

SENATOR GIRGENTI: So it was very clear that you had shared this information.

SERGEANT GILBERT: We had ongoing contact.

SENATOR GIRGENTI: All right.

Now, who brought to you the information about the Maryland suit? I think somebody-- You took it off the Internet or somebody brought it to you?

SERGEANT GILBERT: Actually, Joseph Brennan -- who was a captain at that point, he's now one of our majors -- he had seen that on the Internet, and he put that into my hands.

SENATOR GIRGENTI: And you took it upon yourself in a lot of cases to devise the comparisons and efforts like that? It seems like you were doing a lot of this. You were self-motivated, which I'm complimenting you on, but a lot of this was initiated by yourself?

SERGEANT GILBERT: Yes, sir, it was.

SENATOR GIRGENTI: Very impressive.

Now, when you get down the line and you're almost-- Well, the meeting that you had on Christmas Eve, was that a normal-- I don't believe that was a normal-type meeting. I think you said that this wasn't something that happened every day with you, obviously.

SERGEANT GILBERT: No, being a sergeant, that would be very unusual that I had not only one, but I had two occasions to be at the Attorney General's Office like that.

SENATOR GIRGENTI: And you-- At that time, it was Colonel Williams--

SERGEANT GILBERT: Yes, sir.

SENATOR GIRGENTI: --who got you, and you went down to this meeting?

SERGEANT GILBERT: Yes, sir.

SENATOR GIRGENTI: And your feeling as to that meeting was everybody was on the same page in terms of the problems that were out there?

SERGEANT GILBERT: Yes, sir.

SENATOR GIRGENTI: And you left with that in your mind.

Then further, when we get down to the end -- and that's why I was saying that -- at the end, where we're seeing that at some point-- I don't know if they're saying -- that somebody in the AG's Office is saying this information was not shared with them?

SERGEANT GILBERT: That's correct.

SENATOR GIRGENTI: And what was your reaction to that?

SERGEANT GILBERT: I was mildly upset.

SENATOR GIRGENTI: Does that make you think maybe -- going back to the lack of documentation--

SERGEANT GILBERT: I believe that there was a communication gap somewhere, and I don't believe that had anything to do with me.

SENATOR GIRGENTI: All right.

And so at that point, then, at the end of this, when you passed over this blue book with all of your data and information, that was on -- what was it, March 15th, 1997, or something along those--

SERGEANT GILBERT: Thereabouts, yes, sir.

SENATOR GIRGENTI: And that had all your data and files from Point A, from the beginning of all this, ongoing--

SERGEANT GILBERT: That had the statistical information. There were other files and other information that I subsequently also forwarded. That was basically the bulk of the statistical information.

SENATOR GIRGENTI: And your superiors -- the chain of command on the State Police side -- they were supportive of you, because they had seen a lot of this documentation and so forth throughout the years?

SERGEANT GILBERT: I don't think-- Well, Colonel Dunlop had seen some of it. I don't know what exactly Colonel Fedorko had seen, but I think that they took me at my word when I described to them the interaction that I had had with Mr. Rover, Mr. Fahy, and so forth. I don't think that they had any reason to doubt what I was saying.

SENATOR GIRGENTI: All right. Well, then, I just -- again, I just want to commend you for the job that you did under trying circumstances. I don't know if, in the end, the way this turned out that it looks like, you know, there even should be a discussion about whether that information was ever forthcoming, because from everything I have seen and most of the information that I have read, you certainly were doing a lot in this whole process in trying to correct the situation that was out there. So I just want to commend you. Thank you.

SERGEANT GILBERT: Thank you.

SENATOR GORMLEY: I'd like to compliment you, also, for your testimony. And I would again reiterate the statement I made at the end of the deposition, and that -- oh, I'm sorry.

Sergeant Lynch -- Sergeant Lynch, I apologize. (laughter) Senator Lynch.

SENATOR LYNCH:..By your standards, that's a promotion for me.

Sergeant, Senator Girgenti was so complimentary, I was starting to believe that maybe he may have a problem, and he's making sure that he doesn't become a statistic on the Turnpike. (laughter)

Sergeant, when you were brought up to the Attorney General's Office in the late summer, early fall of 2000 to look through documents and identify which ones you had seen, did you see Attorney General documents that,

in your mind, made it clear to you that the Attorney General's Office knew about your statistical analysis all along?

SERGEANT GILBERT: Yes, sir, I did.

SENATOR LYNCH: And specifically, what documents did you see?

SERGEANT GILBERT: The memorandum that Deputy Attorney General Rover had prepared and submitted to Mr.--

SENATOR GORMLEY: Turn your red light on again. (referring to PA microphone)

SENATOR MARTIN: He anticipated leaving.

SERGEANT GILBERT: How's that?

The memorandum that George Rover had prepared, which laid out the comparison with Maryland and the issues that related to the Maryland statistics that had gone to Mr. Waugh. Also, there was a note -- and I believe that's part of the package -- that indicates some reference from the General to Mr. Waugh about whether a return trip to Washington was in order. And I also knew that--

SENATOR LYNCH: Subsequent to receiving the detailed information--

SERGEANT GILBERT: Yes, sir.

SENATOR LYNCH: --about the audits?

SERGEANT GILBERT: Yes, sir.

SENATOR LYNCH: Have you personally been involved in any surveys or audits, post '97?

SERGEANT GILBERT: Conducting actual surveys?

SENATOR LYNCH: Yes.

SERGEANT GILBERT: No, I know, in collecting the information I collected, but in actually putting a survey together, I believe there was a recent effort to do that, but I wasn't personally involved in that, as far as a traffic survey.

SENATOR LYNCH: Are you aware of an ongoing audit process to monitor what's going on, particularly with regard to search data, subsequent to the spring of 1999?

SERGEANT GILBERT: I believe that there are efforts under foot with both the Division and the Attorney General's Office to keep tabs on what is going on with search activity.

SENATOR LYNCH: Particularly, who's responsible for conducting those audits?

SERGEANT GILBERT: My understanding, it would -- it would most likely lie with our Office of Professional Standards, which formerly was Internal Affairs.

SENATOR LYNCH: And who's heading that now?

SERGEANT GILBERT: Major Brennan.

SENATOR LYNCH: And are you aware of audits that occurred in the year 2000?

SERGEANT GILBERT: No, I'm not, sir.

SENATOR LYNCH: Have you seen or heard of any data, since the beginning of the year 2000, concerning audits of -- that reflect percentages of minorities that are involved in consent searches or probable cause searches?

SERGEANT GILBERT: The only thing that I've heard in general terms, through contact with the Division, would be that the numbers are generally running the same.

SENATOR LYNCH: They're generally running the same?

SERGEANT GILBERT: About the same as they did in the past.

SENATOR LYNCH: So there's ongoing audits, and the numbers remain the same?

SERGEANT GILBERT: I believe so, sir.

SENATOR LYNCH: In terms of the percentages, or in terms of the numbers of consent searches that actually occur?

SERGEANT GILBERT: It would be my understanding that it would be by the percentages.

SENATOR LYNCH: The percentages--

SERGEANT GILBERT: Of who's being stopped, who's being searched, and so forth.

SENATOR LYNCH: Are you aware that the numbers of consent searches have diminished, for instance, with regard to the southern half of the Turnpike?

SERGEANT GILBERT: I wouldn't be surprised at that, but I haven't seen the actual numbers.

SENATOR LYNCH: I'm sorry. You--

SERGEANT GILBERT: I would not be surprised at that, but I have not seen actual, hard numbers. . . .

SENATOR LYNCH: So you suspect that there's probably a diminution in the number of consent searches on the southern half of the Turnpike?

SERGEANT GILBERT: Yes, sir.

SENATOR LYNCH: Why would that be?

SERGEANT GILBERT: I believe that generally our activity has been -- has decreased somewhat, and that would be reflective of that decrease.

SENATOR LYNCH: Before getting back to the search issue for the moment, when you were in the fall -- late summer, early fall, 2000, to look at these documents at the Attorney General's Office, you said that some people from the DeCotiis firm were there?

SERGEANT GILBERT: Yes, sir.

SENATOR LYNCH: Who, particularly, Michael Cole?

SERGEANT GILBERT: Brian McLaughlin.

SENATOR LYNCH: Anyone else?

SERGEANT GILBERT: I don't -- the one I met was him, and another associate, but I don't remember what her name was.

SENATOR LYNCH: Were they -- did they discuss with you their reason for being there, and did they have questions for you?

SERGEANT GILBERT: Well, I was also involved in a civil matter that was heard back towards -- where I had to give depositions in, in the early part of December of last year. And the DeCotiis firm was my assigned counsel for that matter.

SENATOR LYNCH: In the case that Mr. Buckman was handling?

SERGEANT GILBERT: Yes, sir.

SENATOR LYNCH: And so you had -- they were there to discuss that case with you, or were they there to help you review these documents?

SERGEANT GILBERT: Actually I think the review of those documents tied in to what my probable deposition subject matter was going to be, so it actually involved going over a number of the documents that had been generated during my assignment with this issue.

SENATOR LYNCH: Why would the documents that you didn't already have that you generated and were in your own file -- why would they be relevant to your testimony in that *Baez* case?

SERGEANT GILBERT: I'm not really sure.

SENATOR LYNCH: From a historic perspective, when did consent forms originate -- consent to search forms?

SERGEANT GILBERT: Quite a while ago, because I know they were in existence when I first came in the State Police in 1982. I believe they were in existence at that point. I know that they had been around for a number of years, when I left the road in 1986. So I believe that they've been around for quite a while.

SENATOR LYNCH: Did the language in those consent forms change dramatically over the years?

SERGEANT GILBERT: I don't believe that it has. It has -- recently I think there's been some enhancements to the language, but I think up until recently the content pretty much stayed constant.

SENATOR LYNCH: From your work in the field, and more particularly with regard to the surveys and audits, is there a difference in the percentages of nonminorities who agree to sign a consent form, as opposed to minorities?

SERGEANT GILBERT: I don't know if that's ever been -- those numbers have ever been crunched out, sir. I'm not sure if there's been a statistical analysis done on that. I can't say, off the top of my head.

SENATOR LYNCH: And getting back to Senator Martin's line of inquiry, why would someone who's carrying a couple of kilos of coke in the trunk

voluntarily sign a consent to search form and hand the keys to the investigating trooper?

SERGEANT GILBERT: Calculated risk.

SENATOR LYNCH: It doesn't sound like a risk to me. I mean, that -- you clearly have -- State Police, not you personally -- have discovered in the drug interdiction program significant quantities of drugs in the trunks of cars, particularly in the southern end of the Turnpike, that were seized as a result of consent to search cases, right?

SERGEANT GILBERT: Yes, sir.

SENATOR LYNCH: Have you ever heard anyone, during the course of your -- over the last four years, express a proactive concern that maybe the way to end all of this -- these investigations, the interaction with the Department of Justice, and a lot of this litigation would be to abandon consent to search?

SERGEANT GILBERT: Yes, sir.

SENATOR LYNCH: When did you first hear that?

SERGEANT GILBERT: In discussions with the analytical group that had been constructed by Colonel Dunlop. Colonel Dunlop had reached the point where he was looking for guidance from the Attorney General's Office on where we should be going. Exactly as you just said, we're looking at a lot of litigation. We're looking at it increasing. Where should we go? And Colonel Dunlop, I believe, set forth in writing a number of options as to where the State Police could potentially go on this issue.

SENATOR LYNCH: What's the time frame?

SERGEANT GILBERT: I believe this would have been post the shooting, but I'm not exactly sure when that -- those recommendations were -- options were drafted.

SENATOR LYNCH: With regard to other recommendations, one of the things that you had discussed early on in post-*Soto* -- post the *Soto* committee initiation was the utilization of patrol logs and identification of race in those charts.

SERGEANT GILBERT: Yes, sir.

SENATOR LYNCH: My understanding from the record is that it took some two-and-a-half years before that was implemented?

SERGEANT GILBERT: That's correct.

SENATOR LYNCH: Why was that?

SERGEANT GILBERT: I don't know.

SENATOR LYNCH: And also with regard to your work that you were charged with doing when the *Soto* committee was formed, specifically with regard to the audits of the troopers that were involved in *Soto*, where you found some strong positive results in terms of percentages of minorities on arrests, as well as searches, one of the reasons that you were charged with the responsibility of doing these surveys and audits was for the Attorney General's Office to make a determination as to whether to continue with the *Soto* appeal, correct?

SERGEANT GILBERT: Well, I think that was one of the elements of the decision, but I don't think it was going to be the sole determinant in whether the appeal would go forward. But that was--

SENATOR LYNCH: But it was one of the reasons you were told as to why you were going to do that?

SERGEANT GILBERT: Yes, sir.

SENATOR LYNCH: Amongst others?

SERGEANT GILBERT: Yes.

SENATOR LYNCH: And you had retrieved and forwarded all this data along with regard to the statistics involving the troopers in the *Soto* case within a matter of months after you were charged with that responsibility in 1996.

SERGEANT GILBERT: That's correct, sir.

SENATOR LYNCH: Yet it was some three years later that the *Soto* appeal was abandoned?

SERGEANT GILBERT: I'm not sure of the exact date, but I think that's about right.

SENATOR LYNCH: Do you have an opinion as to why -- it's clear from your testimony and from the record that the Attorney General's Office didn't want you to reduce most of your surveys to writing and send it to them?

SERGEANT GILBERT: I'm not really sure, sir.

SENATOR LYNCH: But you know that's a fact?

SERGEANT GILBERT: That they wanted me not to reduce--

SENATOR LYNCH: Right.

SERGEANT GILBERT: --the information to writing?

SENATOR LYNCH: Well, not that you wouldn't reduce it to writing, but you wouldn't send a written memoranda to them setting forth the statistical analysis.

SERGEANT GILBERT: Well, it was their option if, in fact, they wanted those things from me. My understanding was -- is that they were -- believed that the information that I was passing to them verbally was accurate, and at that point in time, that they were satisfied with the way they were getting it.

SENATOR LYNCH: Were you ever told by anyone in the Attorney General's Office that they didn't want the information sent to them in writing, that you were communicating to them orally on the phone?

SERGEANT GILBERT: No. They didn't tell me that specifically, no.

SENATOR LYNCH: No one ever told you not to send over the written information?

SERGEANT GILBERT: No. The issue, as you're raising it, was not put to me in that way.

SENATOR LYNCH: Was it put to you in a way that made it clear to you that they didn't want it in writing?

SERGEANT GILBERT: No. It was put to me in a fashion that if they needed the information, that I had it in writing, I had conveyed it over. There was no effort made on their part to tell me, send the reports over.

SENATOR LYNCH: And you understand, of course, that they would have had some obligation, if they had that information, to pass it along as part of discovery in some of the litigation that they were involved in.

SERGEANT GILBERT: Yes, sir.

SENATOR LYNCH: Correct?

SERGEANT GILBERT: Yes, sir, I understand that.

SENATOR LYNCH: As well as having deniability for purposes of proceedings such as this.

SERGEANT GILBERT: Yes, sir, I do.

SENATOR LYNCH: Do you have any opinion as to whether the consent to search procedure should be abandoned?

SERGEANT GILBERT: I think that right now, with -- and we've taken steps in that direction. I think it is -- it's proven itself, over the years, to be a viable tool. I think that we just have to take steps to ensure that we continue to use it properly, and that we monitor the use of it, which I think are the steps that have been put into place now -- and that we train our people properly in its use.

I don't think that there's a need for it to be abandoned at this time, as long as those appropriate measuring tools are undertaken.

SENATOR LYNCH: How do you account for the fact that the characteristics that enter into a reasonable suspicion land on some 80 percent to 90 percent of being minorities?

SERGEANT GILBERT: I can't, sir. I don't have an answer for that.

SENATOR LYNCH: Doesn't that mean there's something wrong with the program?

SERGEANT GILBERT: I'm not really sure, and I don't think I'm in a position, really, to make a definitive statement on that.

SENATOR LYNCH: In terms of the consent search forms, over the years, through your training and through the training you may be familiar with of troopers that are involved in the drug interdiction program, are they given a training program as to how to convince people to sign a consent to search form?

SERGEANT GILBERT: I think what you're trying to do is to explain the form to the people, explain to them what their rights are, make sure that before you do that, that you have reason to be doing it in the first place, and that--

SENATOR LYNCH: But are they given a specific technique as to how to convince them that it's in their best interests to sign the form?

SERGEANT GILBERT: I think every individual trooper out there has their own individual ways of conveying that information to the people. But there are certain set priorities -- or parameters, I'm sorry -- that they're given as to how they will do that. I don't think that there's any training protocol as far as trying to convince people to sign a consent to search form.

SENATOR LYNCH: Where it's such a significant tool, isn't that -- doesn't it cry out for a clear set of training tools, if you're going to use it at all--

SERGEANT GILBERT: Well, they--

SENATOR LYNCH: --to ensure that innocent motorists are not caused to have their vehicles searched?

SERGEANT GILBERT: I think that's where we've been moving to recently. I think one of the issues that I had raised several years ago, I think we're always in need of any training that we can have to augment our operations and make sure we're doing our job better.

I think that with the consent to search training that we are doing that now. I think that we've moved to that point, and I think that we're ensuring that our troopers balance constitutional rights with also the need to conduct effective law enforcement out on the highways.

SENATOR LYNCH: Based upon your statistical analysis and surveys, what percentage of consent searches come up negative?

SERGEANT GILBERT: I believe that if you want to go back to a find rate, I think we were probably in the area of 25 percent to 30 percent.

SENATOR LYNCH: Twenty-five percent to thirty percent come up negative?

SERGEANT GILBERT: Come up positive.

SENATOR LYNCH: Come up positive?

SERGEANT GILBERT: Yes, sir.

SENATOR LYNCH: So that some 75 percent of the motorists who are subjected to a search have a negative finding with regard to drugs or contraband?

SERGEANT GILBERT: That would be accurate, yes, sir.

SENATOR LYNCH: Thank you, Sergeant.

SENATOR GORMLEY: Senator Furnari.

SENATOR FURNARI: Thank you.

Sergeant, I want to thank you for being so forthright in detailing all the information that you provided us today. I'm going to try not to be as long as some of my fellow colleagues.

I just want to get back to this one issue of the statistics not being sent to the Attorney General's Office. They were -- and as I understand your testimony and as I understand your deposition, you had regular contact with Mr. Rover, and you regularly provided this information and discussed this information and its different machinations as you came across, more or less, information. Is that correct?

SERGEANT GILBERT: Yes, sir.

SENATOR FURNARI: So there was never any question in your mind, throughout the entire process, that the Attorney General's Office was completely and fully aware of all of your activities and all of the varying machinations, whether it was statistics on consent or whether they were stops?

SERGEANT GILBERT: No, I passed all that over to Mr. Rover.

SENATOR FURNARI: And just to be absolutely clear, but it also was your information that you were not to send anything to them in writing unless they requested it?

SERGEANT GILBERT: That's correct.

SENATOR FURNARI: And so there was never a time where it was your option, "Today I'll send them a memo; tomorrow I'll call." The answer was if they wanted it in writing, you'd give it to them in writing. Other than that--

SERGEANT GILBERT: I don't think I received a specific directive in that form. It's just that I knew that they were -- when I was dealing with Mr. Rover, that I would give him the information. He knew that my materials were fully available to him over at the Division of State Police, and anytime he wanted any of that, they were fully available to him.

SENATOR FURNARI: Okay. Thank you very much.

SERGEANT GILBERT: You're welcome.

SENATOR GORMLEY: Thank you.

Senator O'Connor.

SENATOR O'CONNOR: Sergeant, after the *Soto* case, I know that some plans had been made to implement a four-hour training session on proper search and seizure procedures.

SERGEANT GILBERT: Yes, sir.

SENATOR O'CONNOR: And am I correct that that was not implemented at the time?

SERGEANT GILBERT: You're correct, sir.

SENATOR O'CONNOR: And has it been implemented to date?

SERGEANT GILBERT: I think that, as time has moved forward, with the training that we've had since the implementation of the consent decree and the reports that have come out, I think we've even gone further than that. And I know I've been -- personally been to training on these issues that I think --

training was recognized as a very important component of moving forward. And we have had substantial training, including specifically on those issues.

SENATOR O'CONNOR: Thank you. You testified, you know, at length today on the whole history of your involvement with this issue of racial profiling. And some of the events you seem to have a very clear recollection of, I guess because, for example, the Christmas Eve meeting was one that was, you know, sort of unique in that you'd only been twice to that office. And other events have more to do with documents and your analysis.

Are you testifying on those issues, if I can generalize them, from your memory, or from your memory which has been refreshed by looking at documents, or what?

SERGEANT GILBERT: I think it's all a combination of different factors. I mean, this is all meshed in together from so many different directions at this point. Some of it's from direct memory, some of it's from refreshing my memory and looking at the reports. It was an awful voluminous amount of work that I was involved in. It was on top of my other assignments. So I can't give you a definitive that any specific answer is coming from one place. It depends on the circumstances.

SENATOR O'CONNOR: Is your testimony in any way the product of discussions that you had with other members of the State Police?

SERGEANT GILBERT: No. It's a product of me being here today to be honest with you about what happened.

SENATOR O'CONNOR: And prior to your testimony here today, have you had the opportunity to review the various documents that we've all been provided with?

SERGEANT GILBERT: Yes, sir, I have.

SENATOR O'CONNOR: Just one last thing. I recall reading in one of our briefing memos that right after the *Soto* decision, I guess at a point in time when you were assigned to do the analysis -- the statistical analysis -- that one of the members of the State Police attributed the high percentages of minority stops to the knucklehead factor. Is that something that you recall?

SERGEANT GILBERT: I believe I'm familiar with that, yes, sir.

SENATOR O'CONNOR: That's your quote, the knucklehead factor?

SERGEANT GILBERT: No, that's not my quote.

SENATOR O'CONNOR: That's Captain Blaker's quote?

SERGEANT GILBERT: I believe that would be accurate.

SENATOR O'CONNOR: And there was also some discussion about a belief that the statistics would fare better for the State Police, for want of a better term, if other portions of the State, such as the Parkway south, were checked, and parts of the central and northern part of the State. Were those numbers ever put together as part of your analysis?

SERGEANT GILBERT: There was some compliance audits that were done for the radio procedures, because one of the things, as we talked about earlier, we were trying to get the compliance rate up, not only on the Turnpike, but statewide for the troopers calling in their stops and what -- making sure they were calling in complete information.

And there was analysis done by Internal Affairs, which went out to various locations, throughout the State, to look at the compliance rate for the radio audit. So we did have that information that had come in from those stations.

And looking forward, what was going to be implemented in the near future, was the CAD system, which I mentioned earlier. And that was -- where we are now, where they can actually go into the system and extract that information out. We really didn't have the computerized capability to do that back then. We've reached that point now, today, where we do.

SENATOR O'CONNOR: So that I understand then, your final numbers, then, which indicated that the State Police were vulnerable, did they take in these overall numbers, or were they limited?

SERGEANT GILBERT: No, the numbers that I generated were from the Turnpike. However, I believe the issue of the letter had come up today that had the passage in there about the ongoing monitoring, about the Turnpike stations, and other stations in the State. That information was derived from information that I had passed on that's contained in those reports about the radio compliance audits.

SENATOR O'CONNOR: Thanks very much.

SENATOR GORMLEY: Counsel has one final question.

MR. CHERTOFF: Sergeant, I don't know if this was ever compiled, but did anybody ever put together the percentage of people who are asked to participate in a consent search and refused?

SERGEANT GILBERT: I don't think that there was, sir, because we didn't have it all computerized. I would think that now, with the way that we're doing things, that that will be one of the -- I haven't been directly involved in developing the system that's in place now, but I would think that if it's not in place, the recommendation obviously could be forthcoming. But I think, very easily, from a review of the reports, you could come up with that.

MR. CHERTOFF: Thank you.

SENATOR GORMLEY: Now I'd like to thank you for your testimony. You have done a lot to make people proud of the title of sergeant. So I want to thank you very much for your testimony.

We will take a five-minute break.

(RECESS)

AFTER RECESS:

SENATOR GORMLEY: We'll begin with the next list -- we'll have three witnesses next, in a panel: Major Richard Touw, Major Joseph Brennan, and Captain David Blaker.

Have a seat for now. We'll wait for all the senators to get back in the room.

I'd ask that Major Touw, Major Brennan, and Captain Blaker stand to be administered the oath. Please raise your right hand.

(Oath administered)

Mr. Chertoff.

MR. CHERTOFF: If you would -- just each of you identify yourself and give your current employment.

SENATOR GORMLEY: Excuse me. Make sure the red light's on. This is very confusing sometime. (referring to PA microphone)

MAJOR RICHARD TOUW: Retired Major Richard Touw. I'm currently employed at AAA-Midlantic Insurance.

CAPTAIN DAVID E. BLAKER: Retired Captain David E. Blaker.

SENATOR GORMLEY: Excuse me. Excuse me for one second.
Stop the interview in the rear, please. There's an interview going on.
Would you please conclude the interview.

CAPTAIN BLAKER: Retired Captain David E. Blaker, currently the acting Camden County Prosecutor.

MAJOR JOSEPH BRENNAN: Major Joseph Brennan, Superintendent's Office, Supervisor, Professional Standards, Division of State Police.

MR. CHERTOFF: I'm going to just go, again, down the row.

Major Touw, you were with the State Police during the period 1995 until your retirement in when?

MAJOR TOUW: I retired in March of 1999.

MR. CHERTOFF: And so you were with the State Police during that period of time, right?

MAJOR TOUW: Yes, I was.

MR. CHERTOFF: What was your assignment in the period 1995 through 1999?

MAJOR TOUW: From '95 I first was the Bureau Chief, Internal Affairs Bureau. I left the Bureau in October the 4th of 1996. I was transferred to the Investigations Section, where I was the Assistant Investigations Officer. A year later I was promoted to major, and I served as the Investigations Officer until my retirement in 1999.

MR. CHERTOFF: All right. Now, Prosecutor Blaker, you were -- what were your assignments from 1995 through your retirement?

CAPTAIN BLAKER: In 1995, I was the Assistant Station Commander at Bass River Station, on the Parkway. January 6th, 7th, or 8th of

1996, I was transferred to Division Headquarters, where I became the administrative assistant to Colonel Carl Williams. In October of '97 I became the Equal Employment Opportunity-Affirmative Action Bureau Chief, which varies from what I had said during my deposition, or interview. I think I said March of '98 I became the Bureau Chief of the EEO-AA Bureau. I was mistaken. After checking my calendar, it's actually October of '97.

MR. CHERTOFF: All right, so you're correcting your testimony?

CAPTAIN BLAKER: That's correct, sir.

MR. CHERTOFF: And finally, Major Brennan, what was your -- what were your assignments from 1995 through 1999?

MAJOR BRENNAN: Sir, in 1995, I was a lieutenant assigned as the administrative assistant to Colonel Williams. In December of 1995, I was transferred to the EEO-AA, the Equal Employment Opportunity-Affirmative Action Bureau as the supervisor, promoted to captain. In September of 1997, I was transferred to the Training Bureau in Sea Girt, as the Commandant of the Academy. And in January of 2000 I was transferred to the superintendent's office as a captain and made responsible for being the Division Liaison with the consent decree negotiation and implementation, and then organizing the new internal affairs function, currently the Office of Professional Standards, which I now supervise.

MR. CHERTOFF: All right. Now let me go to you, Major Touw. In early 1996, you were with Internal Affairs?

MAJOR TOUW: Yes, I was.

MR. CHERTOFF: Okay. And did there come a time you became aware of the decision in the Gloucester County case, before Judge Francis, called the *Soto* case?

MAJOR TOUW: Yes, there was.

MR. CHERTOFF: Now, were you assigned soon after that to be part of a committee that was set up by the superintendent to deal with the issue of racial profiling?

MAJOR TOUW: Yes, I was.

MR. CHERTOFF: And if I could just do this rapidly, because we heard testimony this morning, am I correct that the committee included then Detective Gilbert, then Captain Brennan, Detective Reilly, and Trooper DiPatri, as well as Deputy Attorneys General Fahy and Susswein?

MAJOR TOUW: Yes.

MR. CHERTOFF: And am I correct, also, Major Brennan, that you were part of that committee in 1996 as well?

MAJOR BRENNAN: Yes, sir.

MR. CHERTOFF: Now both you, Major Touw, and you, Major Brennan, attended meetings with the committee?

MAJOR BRENNAN: Yes, sir.

MAJOR TOUW: Yes, I did.

MR. CHERTOFF: And are you familiar with the fact, Major Touw, that Detective Gilbert wrote memos or reports which included summaries of what happened at the meetings? ..

MAJOR TOUW: Yes, I am.

MR. CHERTOFF: Did you ever review those at the time that they were written or shortly thereafter?

MAJOR TOUW: Yes, I have.

MR. CHERTOFF: Okay.

And what about you, Major Brennan, did you have an opportunity to review those at the time or shortly thereafter?

MAJOR BRENNAN: Not at the time, sir, I believe I saw them for the first time during my earlier testimony for this proceeding in February.

MR. CHERTOFF: Now, Captain Blaker, you were, at the time, at the Office of the Deputy Superintendent, correct?

CAPTAIN BLAKER: That's correct, sir.

MR. CHERTOFF: And were these memos transmitted through you up to Colonel Williams?

CAPTAIN BLAKER: Yes, sir.

MR. CHERTOFF: So you were familiar with them as well, right?

CAPTAIN BLAKER: That's correct.

MR. CHERTOFF: Let me ask, going down the line here, Major Touw, do you have reason to doubt the general accuracy of the memos as they recount the meetings that you attended?

MAJOR TOUW: No, I have no reason.

MR. CHERTOFF: What about you, Major Brennan? To the extent you recall the meetings, are the -- is the version set forth in the various memos prepared by Sergeant Gilbert accurate?

MAJOR BRENNAN: Yes, sir.

MR. CHERTOFF: Now, I want to direct your attention, first of all, to events in early 1996, Major Touw.

Did there come a period of time that you were made aware of an issue that had been raised in Moorestown by certain minority troopers concerning profiling?

MAJOR TOUW: Yes, there was.

MR. CHERTOFF: How did that come to your attention?

MAJOR TOUW: I received a memo, to my recollection, with a special report from Lieutenant Gilbert. It also contained a -- Lieutenant Gilbert's report was-- Attached to that was a special report from Trooper Smith, who was a trooper at the Moorestown Station.

MR. CHERTOFF: And what-- Tell us in brief what these reports indicated to you when they came to your attention.

MAJOR TOUW: They indicated a concern by the minority troopers that the nonminority troopers were stopping more minorities than the minority troopers were.

MR. CHERTOFF: Did you actually look at the statistics that had been developed?

MAJOR TOUW: Yes, I did.

MR. CHERTOFF: Now, I'm going to put before you a document we saw earlier. It's W-30. It's actually right before you on the table, I think.

It's a memo to Peter Verniero from Alex Waugh, dated July 29, 1997, and it bears the letters OAG-975 at the bottom. If you could just get that.

Now, I take it the first page of this you didn't see at the time, right? The cover page.

MAJOR TOUW: I hadn't seen that, no.

MR. CHERTOFF: All right.

If you turn to the first page and you go into the body of the memo, you see there's a number of documents. First of all, there's a report to you from Lieutenant Hinkle.

MAJOR TOUW: That's correct.

MR. CHERTOFF: Who's Lieutenant Hinkle?

MAJOR TOUW: He was the Inspection Officer for Internal Affairs.

MR. CHERTOFF: Now, do you know how this report, dated September 24, 1996, came to be prepared?

MAJOR TOUW: Yes. I directed him to prepare this report.

MR. CHERTOFF: And what was the reason for that?

MAJOR TOUW: This was done as a result of the concerns that were generated by Lieutenant Gilbert and the minority members at the Moorestown Station.

MR. CHERTOFF: And what was the purpose of having him prepare this report?

MAJOR TOUW: Would you repeat that, please?

MR. CHERTOFF: What was the purpose of having him prepare this report -- Lieutenant Hinkle?

MAJOR TOUW: Basically, I wanted a better understanding of the circumstances that were going on at the station. I wanted to know whether the information that Lieutenant Gilbert had given was accurate.

MR. CHERTOFF: And as you go through the package you see that, for example, towards the end -- going further back -- you have a document to you from Major Fedorko, dated June 13, 1996. Is that something that you would receive that led you to generate this review by Lieutenant Hinkle?

MAJOR TOUW: Yes. I generated this document after receiving Hinkle's report.

MR. CHERTOFF: And as we go further back in the document, going in reverse chronological order, are these the various original complaints and reports that came to your attention that led you to generate Lieutenant Hinkle's study?

MAJOR TOUW: Yes.

MR. CHERTOFF: All right.

I want to take you to the very last page in this group. It is a page from a special report continuation, dated April 15th, 1996, from Lieutenant Gilbert, and actually, the final two pages is a statistical review of the Moorestown Station criminal activities and personnel facts for the year 1995.

Do you see that?

MAJOR TOUW: Yes.

MR. CHERTOFF: Do you remember getting this in 1996?

MAJOR TOUW: Yes, I do.

MR. CHERTOFF: And you see at the top of the page, it says here that it makes reference to the Gloucester County decision, and you understand that to be the *Soto* case.

MAJOR TOUW: That's correct.

MR. CHERTOFF: All right.

Now, as you review this set of statistics put together by Lieutenant Gilbert, it indicates, for example, on the last page, "consent searches conducted: 89 minority driver consent searches. That's 62 percent of 144. And 55 nonminority -- that's 38 percent of 144."

Do you remember that statistic among others?

MAJOR TOUW: Yes, I do.

MR. CHERTOFF: In your mind at the time, did you have a reaction to that statistic or to these statistics in general?

MAJOR TOUW: Yes, I did.

MR. CHERTOFF: What was that reaction?

MAJOR TOUW: I was concerned that they were high.

MR. CHERTOFF: And of course, this is April '96, so this is within a matter of a few weeks after the *Soto* decision, correct?

MAJOR TOUW: I believe so, yes.

MR. CHERTOFF: And you were familiar with that decision?

MAJOR TOUW: Yes, I was somewhat familiar with it, yes.

MR. CHERTOFF: Did you also form a reaction when you got the report back from Lieutenant Hinkle about the percentages of stops that Lieutenant Hinkle identified that were of both white and nonwhite or minority or nonminority?

MAJOR TOUW: Yes.

MR. CHERTOFF: What was your reaction to that?

MAJOR TOUW: I was also concerned, again, because those figures were higher than what were stated in the *Soto* decision.

MR. CHERTOFF: Did you, in fact, communicate that fact to Major Fedorko?

MAJOR TOUW: Yes, I did.

MR. CHERTOFF: And you did that in a memo?

MAJOR TOUW: Yes, I did.

MR. CHERTOFF: Now, let me ask you-

Before I continue with you-- Major Brennan, was there a point in time when you became aware of these statistics that are contained in this document?

MAJOR BRENNAN: I had received a copy of a transmittal of the Lieutenant B. Gilbert memo, sir, with the report by SFC James Smith. So I did have knowledge and did work with that document.

MR. CHERTOFF: And again, focusing your attention on the consent search issue, did you have a reaction to the statistics presented on the last page regarding consent searches?

MAJOR BRENNAN: Yes, I did.

MR. CHERTOFF: What was that reaction?

MAJOR BRENNAN: I thought they were high.

MR. CHERTOFF: And again, when you say you thought they were high, can you explain a little bit about the context of that?

MAJOR BRENNAN: I did not study these statistics carefully. At this point, from my assignments, I was already of the conclusion that the division needed to be going in a different direction, and the materials that I saw, I looked at, and backed up my impression. I did not go through them.

My response was I believed we needed a competent statistician. Lieutenant Gilbert, probably a fine station commander, but in order to actually-- If the statistics were even needed to go further in this issue, we needed a survey, or research done by a scientific institution, that could look at that material.

MR. CHERTOFF: Captain Blaker, was there a point in time you saw these statistics?

CAPTAIN BLAKER: Yes, sir.

MR. CHERTOFF: And do you remember how that came to be?

CAPTAIN BLAKER: Through the course of my employment as the superintendent's administrative assistant.

MR. CHERTOFF: And did you have a reaction to the statistics on the last page regarding consent searches?

CAPTAIN BLAKER: I did, sir. As I recall, the percentages were somewhere in the vicinity of 62 percent minorities--

MR. CHERTOFF: That's correct.

CAPTAIN BLAKER: Bear with me a second.

I thought the numbers were high, sir.

MR. CHERTOFF: Do you remember ever having a discussion with that fact with the superintendent?

CAPTAIN BLAKER: I don't recall a specific discussion.

MR. CHERTOFF: Now, Major Touw or Major Brennan, you sat on the committee related to post-*Soto* racial profiling issues, correct?

MAJOR TOUW: Yes, that's correct.

MR. CHERTOFF: Major Touw, do you remember discussing this particular issue, these Moorestown statistics, at the committee meeting?

MAJOR TOUW: Yes, I did.

MR. CHERTOFF: And do you remember approximately when that would have been?

MAJOR TOUW: It would have been the next meeting subsequent to the date of the report.

MR. CHERTOFF: That would have been in October, or would it have been after the April meeting?

MAJOR TOUW: The last meeting I attended was October the 4th, 1996.

MR. CHERTOFF: Did you discuss it at the last meeting, or did you discuss it at an earlier meeting?

MAJOR TOUW: My recollection is, I would have discussed it at the last meeting. I may have discussed it sooner. I note that Lieutenant Hinkle's report is dated September the 24th of '96.

MR. CHERTOFF: And do you remember anything about the discussion as it occurred at that meeting concerning this issue?

MAJOR TOUW: I think everybody was concerned about the high numbers that were generated as a result of the report.

MR. CHERTOFF: Now, let me ask you again, during your period of service on this committee, which I guess ran from about April of '96 through October of '96, was there discussion on the committee in general about audits?

MAJOR TOUW: Yes, there was.

MR. CHERTOFF: And what was that discussion?

MAJOR TOUW: Basically, I believe I may have brought it up. I had a thought of the way we should be doing audits, to audit the stops of our troopers.

MR. CHERTOFF: And what was the suggestion that you made?

MAJOR TOUW: Well, I suggested that the Inspection Unit -- in fact, my recollection is I may have even had the Inspection Unit conduct one of these audits in the Washington and Perryville Stations in early 1996.

However, what my thought was, was to obtain the stopping information of a given trooper or given troopers and compare that against other troopers on the same squad, other troopers at the same station, other troopers working on the same roadway, maybe at a different station, to see if the stopping patterns were unacceptable.

MR. CHERTOFF: Now, you said something about a Perryville audit. Do you remember specifically that in early 1996 there was an audit of the Perryville Station in Hunterdon County?

MAJOR TOUW: Yes, there was, as the result of a complaint from an individual, and as follow-up, a story in *The Star-Ledger* with regard to troopers stopping individuals because they were black at those stations.

MR. CHERTOFF: Now, I'm going to show you what we've marked -- and it's before you in the pile of papers -- G-5. It's a memo from Detective Gilbert through, among others, Sergeant Blaker up to Colonel Littles, dated April 24, '96, and it talks about the Perryville audit arrest information.

Is this the audit you were referring to as the one that was conducted in Perryville?

MAJOR TOUW: This is not the report that I'm familiar with.

MR. CHERTOFF: Do you remember what report you -- what your report was or the report you are thinking of was?

MAJOR TOUW: My report was conducted by Lieutenant Hinkle from the Inspection Unit.

MR. CHERTOFF: All right.

Can you tell us what you recall of that audit, the Perryville audit? What was the subject matter, and what were the results?

MAJOR TOUW: Again, the subject matter was the fact that an individual had complained, in behalf of her brother, I believe, that the troopers at those two stations -- are actually on Interstate 78 -- were stopping individuals because of their race only.

The data that was able to be collected was insufficient to draw a real accurate conclusion. There were stops that weren't documented as to the race of the individual, numerous stops. So, from what data we had available, we were unable to substantiate the allegation.

MR. CHERTOFF: All right.

That was an internal audit of summonses, is that what it would be?

MAJOR TOUW: Yes, it was.

MR. CHERTOFF: Okay. Now, what I've shown you, which is the exhibit G-5, that's a separate, a different analysis that was done for Perryville having to do with arrests. Do you remember seeing this?

MAJOR TOUW: I don't think I have. This came from the Traffic and Records Unit in the R and I Section.

MR. CHERTOFF: All right.

Now, let me direct your attention, Major Touw, to April 12th of 1996. I want to, again, put before you an exhibit we've marked as G-4, OAG-4197. And let me ask you to take a look at that for a second, because I want to ask you about that meeting.

MAJOR TOUW: I've seen this before.

MR. CHERTOFF: Now, do you remember attending this meeting?

MAJOR TOUW: Yes, I was in attendance.

MR. CHERTOFF: And I want to, first of all, direct your attention to the paragraph that says, "Gloucester County appeal." It indicates that there was discussion at the meeting concerning the need to review the actual cases by the 19 -- the 19 Moorestown cases that were the subject of the Gloucester County appeal to determine whether, in fact, if the appeal were successful by the State and the case went back for further fact-finding, whether there would be potential negative issues regarding the actual troopers.

And it concludes by saying, "If this review uncovers substantial problems, it would be recommended that additional thought be given to proceeding with the appeal."

Do you remember that discussion?

MAJOR TOUW: Yes, I do.

MR. CHERTOFF: And again, is it correct, as the memo indicates, that Mr. Fahy and Mr. Susswein were present?

MAJOR TOUW: I believe they were.

MR. CHERTOFF: What was the gist of the discussion that you remember about this issue?

MAJOR TOUW: Can you be more clear with your question?

MR. CHERTOFF: Basically, what was the conversation concerning the Gloucester County appeal and the need to review the actual underlying cases?

MAJOR TOUW: Well, the basic feeling that I got from this was that we needed to have more accurate data to determine whether we should conduct an appeal.

MR. CHERTOFF: And when you say more accurate data, you mean underlying data regarding the actual cases and the troopers whose investigations were the subject of the appeal?

MAJOR TOUW: Yes, those and the overall activities of the stations at Moorestown.

MR. CHERTOFF: Was it clear to you in that meeting that there was going to be an analysis undertaken, a statistical analysis undertaken, of the activities at Moorestown Station for the period of 1995 and 1996?

MAJOR TOUW: By way of an inspection audit?

MR. CHERTOFF: Or by way of any kind of an analysis by Detective Gilbert.

MAJOR TOUW: No, it wasn't clear to me, no.

MR. CHERTOFF: Well, what was the understanding you had concerning what was going to be reviewed at Moorestown?

MAJOR TOUW: My understanding is that we were going to do an inspection audit of the Moorestown Station.

MR. CHERTOFF: And was that done?

MAJOR TOUW: Yes, it was.

MR. CHERTOFF: When was that done?

MAJOR TOUW: When was it done?

MR. CHERTOFF: Yes.

MAJOR TOUW: It would have been in the summer, I believe, or early spring of 1996.

MR. CHERTOFF: Now, was it clear to everybody-- Was it made clear at the meeting at which Mr. Fahy and Mr. Susswein attended, therefore, that there was going to be a statistical audit or an inspection audit of Moorestown Station that would yield information concerning stops at that station?

MAJOR TOUW: Yes.

MR. CHERTOFF: And, Major Brennan, do you have the same recollection that was discussed at the meeting?

MAJOR BRENNAN: My recollection is different, Mr. Chertoff, from the perspective of, I believe it was the first time that it was made clear to me that even if we succeeded in the appeal, DAG Fahy was explaining to us that each individual case, in and of itself, would still have suppression motions per case, as opposed to a class. And it was important to get that information up to our superiors with regard to whether this appeal should continue to be

prosecuted, especially if there were other discrepancies with the troopers involved in the arrests.

So I don't recall discussions of an audit, and I had no follow-up expecting an audit to come back, but I think the main concern was the amount of work that laid ahead should we even win the appeal.

MR. CHERTOFF: Well, let me ask you this then: Is it fair to say you certainly remember that Mr. Fahy expressed the importance -- in terms of deciding whether to proceed with the appeal or continue with the appeal, the importance of getting an understanding of the underlying facts about what was going on at Moorestown?

MAJOR BRENNAN: Other than, sir, the appeal may have already been decided at higher levels that it was going forward, but DAG Fahy was making it clear to us, in my recollection, that that wasn't the end of it, that we had better be certain that we had the information we needed for each individual case, much less the class aspect of *Soto*.

MR. CHERTOFF: And, Major Touw, you recall it actually going so far as to be a discussion of undertaking some kind of inspection audit, right?

MAJOR TOUW: That's correct.

MR. CHERTOFF: Now, is it also fair to say, again, looking at this memo, that there was discussion about the fact that there were issues, similar issues to the Gloucester case, in other parts of the State, and that therefore there would have to be a need to deal with getting statistical evidence together in other parts of the State as well?

MAJOR TOUW: That's correct.

MR. CHERTOFF: And in particular, was it your understanding that there was going to be a statistical overview at the Perryville Station and that that was discussed in this April meeting?

MAJOR TOUW: Yes, we were going to do a Perryville audit, also.

MR. CHERTOFF: Okay, and is that the summons audit you talked about, or is that the arrest audit that I showed you a few moments ago?

MAJOR TOUW: That would have been the summons audit.

MR. CHERTOFF: And again, that was discussed with Deputy Attorney General Fahy and Mr. Susswein present, right?

MAJOR TOUW: If this report indicates that they were there.

MR. CHERTOFF: Do you remember if they were there?

MAJOR TOUW: At this point, I don't really recall.

MR. CHERTOFF: You don't have any reason to doubt the memo that says that they were there, correct?

MAJOR TOUW: Yes, it says they were there. I would agree with it, yes.

MR. CHERTOFF: And again, Major Brennan, do you have a recollection that it was generally discussed that there would have to be other statistical work with respect to these other cases?

MAJOR BRENNAN: Yes, sir.

MR. CHERTOFF: Now, let me ask you this, Major Touw: Stepping back and looking at your entire service on the committee, was there an understanding that the State Police, through your unit, would be conducting some inspection audits going forward to develop some sense of, statistically, what was going on with respect to stops?

MAJOR TOUW: Yes.

MR. CHERTOFF: And was that made clear at the committee meetings?

MAJOR TOUW: Yes, it was.

MR. CHERTOFF: Now, I want to show you what we've also looked at earlier today -- CW-6 -- which has GC-3983 at the bottom. And it's a kind of a superintendent's action memo on the top, and then it's got an interoffice communication from May 21, 1996, regarding the May 16th committee meeting.

I want to ask you if you recognize that?

MAJOR TOUW: Yes.

MR. CHERTOFF: All right.

Now, if you look at that document, there's a-- Do you remember attending this particular meeting?

MAJOR TOUW: I don't have any independent recollection of it, no.

MR. CHERTOFF: Well, I'm going to refresh your memory. If you see the first paragraph, it says there was a meeting with Lieutenant Colonel Littles, Captain Touw, Captain Brennan, Sergeant Blaker, Detective Gilbert, Trooper DiPatri, and Attorneys General Susswein and Fahy.

Do you have a reason to doubt that?

MAJOR TOUW: No.

MR. CHERTOFF: Major Brennan, do you remember attending that meeting?

MAJOR BRENNAN: Sir, I remember the committee work, and I think I attended each meeting, but specifically which one, I don't have an independent recollection of what happened at what meeting.

MR. CHERTOFF: Okay.

Captain Blaker, do you remember being at this meeting?

CAPTAIN BLAKER: Yes, I do, sir.

MR. CHERTOFF: Now, there's discussion at the very last page. It talks about, "the Gloucester County appeal is proceeding as planned. The Records and Identification Section has prepared an analysis of the arrest statistics for those troopers whose cases are subject to the appeal."

Now is that refer in your mind to that discussion you had had that we talked about in your April meeting about the need to do a review of the Moorestown cases? Remember, in the April memo we showed you a few moments ago, it indicated that there was going to be an analysis or inspection audit of the Moorestown cases.

MAJOR TOUW: Yes, I remember that, yes.

MR. CHERTOFF: All right.

It also talks about "A preliminary analysis of enforcement activity for the I-78 Perryville Station for the period 10/94 to 10/95 has also been completed." Was that essentially true as of this point in time?

MAJOR TOUW: I believe so, yes.

MR. CHERTOFF: Do you remember at any point in 1996, Major Touw, if you had discussion with anybody concerning either the results of the Moorestown inspection audit or the results of the Perryville analysis?

MAJOR TOUW: I discussed those findings at the different meetings that we had.

MR. CHERTOFF: And what was the gist of those findings in terms of proportionality of minorities to nonminorities being stopped at Moorestown and at Perryville?

MAJOR TOUW: At Moorestown they were alarming. I was concerned. They were high. My recollection of Perryville was that it was not quite as bad.

MR. CHERTOFF: And this was discussed at these committee meetings?

MAJOR TOUW: Yes.

MR. CHERTOFF: Was there any secret at the committee meetings that there were audits and statistical reviews being conducted?

MAJOR TOUW: No.

MR. CHERTOFF: In fact, is it fair to say that one of your main points at the committee meetings was the importance of conducting audits?

MAJOR TOUW: Yes, it was.

MR. CHERTOFF: You didn't keep that a secret from anybody at the committee?

MAJOR TOUW: No.

MR. CHERTOFF: What about you, Major Brennan, do you remember discussion concerning the results of the Moorestown audits or the Perryville analysis with anybody?

MAJOR BRENNAN: I remember general discussions in the courses of the committee meetings about the data being as alarming or as high as it was.

MR. CHERTOFF: And was there any-- Is there any doubt in your mind that the fact that there were these analyses and statistical reviews going on was something that was made clear to everybody on the committee?

MAJOR BRENNAN: The committee was well aware of it, yes.

MR. CHERTOFF: And that would include Mr. Fahy and Mr. Susswein?

MAJOR BRENNAN: Yes, sir.

MR. CHERTOFF: What about you, Captain Blaker, do you remember this subject generally coming up during the committee meetings you attended?

CAPTAIN BLAKER: Yes, I do.

MR. CHERTOFF: And again, is there any doubt in your mind that it was made clear to the people of the committee, including the people from the Office of the Attorney General, that there were statistical analyses and reviews going on?

CAPTAIN BLAKER: There is not, sir.

MR. CHERTOFF: And was it also clear that the numbers were high?

CAPTAIN BLAKER: The numbers were high, yes.

MR. CHERTOFF: Now, let me ask you, Major Touw, did there come a point in time in mid-1996 that you accompanied Mr. Fahy to a meeting with a prosecutor from Hunterdon County concerning these Hunterdon County cases?

MAJOR TOUW: Yes, I did.

MR. CHERTOFF: And what was the purpose of the meeting?

MAJOR TOUW: To educate the prosecutor on the inspection audit program that we had initiated in the State Police.

MR. CHERTOFF: And why was that relevant to what was going on with the Hunterdon County prosecutor? Why did she have to know about this?

MAJOR TOUW: Because there were some actions by the Public Defender's Office against the State Police to -- based on racial profiling.

MR. CHERTOFF: Did you come to learn, either in that meeting or later, that something happened with respect to a couple of cases in Hunterdon County?

MAJOR TOUW: Yes, I believe that it was two cases where some of the serious -- most serious -- charges were dropped.

MR. CHERTOFF: What was the reason for that?

MAJOR TOUW: Because of the concerns of the possible racial profiling that the Hunterdon County prosecutor had.

MR. CHERTOFF: Do you remember who made the decision that those should be dropped? Was it the Hunterdon County prosecutor, or was it basically an instruction came down from Mr. Fahy?

MAJOR TOUW: I don't really recall.

MR. CHERTOFF: Is it fair to say that having to drop major narcotics charges because of problems of profiling was a significant event and a serious event, as far as you were concerned?

MAJOR TOUW: Yes.

MR. CHERTOFF: And was it-- Do you recall whether the Hunterdon County prosecutor was concerned or displeased about the need to do this?

MAJOR TOUW: Yes, I think she was troubled by it.

MR. CHERTOFF: Was the motivation for doing this, if you recall, to avoid having to get into court and litigate the underlying facts?

MAJOR TOUW: I don't really recall the-- My motivation was to advise the Hunterdon County prosecutor of our new inspection audit program.

MR. CHERTOFF: Do you remember the Hunterdon County Prosecutor's Office being uncomfortable with pleading the cases out, due to the

fact that the first-degree crimes charged were being charged because of the type and amount of drugs involved?

MAJOR TOUW: Yes, I do recall that.

MR. CHERTOFF: Were the cases ultimately pled out on reduced charges?

MAJOR TOUW: I believe they were.

MR. CHERTOFF: Did you have a conversation with Mr. Fahy about this fact?

MAJOR TOUW: Yes, I spoke to him about it. I don't have any independent recollection of what our conversation was, but I'm sure -- I'm confident that I spoke to him about it.

MR. CHERTOFF: Do you remember anything at all about the conversation?

MAJOR TOUW: Basically, we talked about the inspection audit. I believe Mr. Fahy was-- There was also a Mercer County issue that was going on, and he was going to go to Mercer County and address that issue.

MR. CHERTOFF: And was it the same problem, an issue of perhaps having to drop cases or plead them to reduced charges, because of problems with the underlying facts involving the issue of the stops?

MAJOR TOUW: Yes. Yes, it was.

MR. CHERTOFF: Now again, in trying to put into perspective the importance of these issues to people involved in law enforcement, would you agree with me that when problems with an investigative technique reach the level that it's necessary to talk about throwing out major criminal cases, because you don't want to have to deal with the underlying investigation, that that generally is considered a very serious problem?

MAJOR TOUW: Yes, it is.

MR. CHERTOFF: And is it fair to say that from your discussions in the committee and from your discussions with Mr. Fahy, that others that you were dealing with regarded this as a serious problem?

MAJOR TOUW: Yes.

MR. CHERTOFF: Now I want to-- You left, then, in October of 1996. You left your position with IAB, and you moved someplace else, right?

MAJOR TOUW: That's correct.

MR. CHERTOFF: And did that essentially end your direct involvement with racial profiling?

MAJOR TOUW: Yes, it did.

MR. CHERTOFF: And again, with respect to you, Major Brennan, as of late 1996, were you still involved with the issue of racial profiling?

MAJOR BRENNAN: Only insofar as the assignment to the committee was concerned, sir.

MR. CHERTOFF: Do you remember, did there come a point in time the committee kind of tailed off or stopped meeting?

MAJOR BRENNAN: Yes. I have a recollection of three, possibly four meetings, and that's the extent of it.

MR. CHERTOFF: Do you know why that was?

MAJOR BRENNAN: No, sir.

MR. CHERTOFF: During the time, Major Touw, that you were there, and during the time you were there, Major Brennan, involved with the committee, this was before there was any notion of a Federal civil rights investigation getting started, correct?

MAJOR TOUW: Correct.

MR. CHERTOFF: Is that also correct for you, Major Brennan?

MAJOR BRENNAN: Well, I had not heard of any investigation, but based on the track that the *Soto* decision had taken, I assumed that it was only a matter of time before something along that line would occur. And I believe at the meeting -- at these meetings -- that issue was voiced.

MR. CHERTOFF: About a possible civil rights violation -- investigation?

MAJOR BRENNAN: Yes. Yes.

MR. CHERTOFF: Why did you believe it was likely to come about?

MAJOR BRENNAN: Well, the impact of the *Soto* decision, the nature of it, the way Judge Francis laid out his determination, created a road map to focus on law enforcement, in my view, not just the State Police, and I believed that it might-- My personal feeling was it would generate interest on the part of the Justice Department, or other defendants -- defense attorneys would be moving toward the Justice Department in order to aid their clients if they couldn't get relief at the State level, so I felt it was just a matter of time that we would face that.

MR. CHERTOFF: Did you voice this opinion at these committee meetings?

MAJOR BRENNAN: Yes.

MR. CHERTOFF: Did there come a time you learned that there was a Maryland State Police case that had been settled with a consent decree?

MAJOR BRENNAN: Yes.

MR. CHERTOFF: How did you find that out?

MAJOR BRENNAN: I don't recall the issue of why I went onto the Internet in my other role in the EEO-AA Bureau. I just don't recall the details.

But when I found the ACLU case, what struck me was the fact that the individual troopers in Maryland, their names, their locations, were listed on the Internet for all to see. And I felt that that would be extremely critical to the people who were working on this, that perhaps someone who saw their outcome might stand up and look at where we could end up if we didn't take some significant action.

MR. CHERTOFF: Did you communicate about this realization to anybody else?

MAJOR BRENNAN: To Tom Gilbert.

MR. CHERTOFF: Why did you communicate it to him?

MAJOR BRENNAN: Because I knew from the committee work that Detective Gilbert and Sergeant Blaker, at the time, had opened a channel of communication with the superintendent, who at the time -- Colonel Williams was extremely chain-of-command oriented. And the committee recommendations that we had been involved with, I had not yet see come to fruition at that time.

I knew that Tom Gilbert, through his efforts, and Sergeant Blaker had brought this information through which, I believe, around the chain of command, to Colonel Williams, and that he was interested in the information to the point that he was authorizing Detective Gilbert to bring this information out to the road stations to look more carefully at how we were conducting business.

MR. CHERTOFF: Did you ever have a conversation with Sergeant Gilbert about a comparison he made between consent to search numbers in New Jersey and those in Maryland?

MAJOR BRENNAN: I think it was a few days later or some short time period later, he contacted me back and advised that our statistics were either equal to or possibly worse than Maryland's.

MR. CHERTOFF: And what did you say?

MAJOR BRENNAN: I just basically told him I anticipated something along that line.

MR. CHERTOFF: Did he indicate to you at any point in time -- that is, Sergeant Gilbert -- that he had communicated about this comparison between Maryland and New Jersey to anybody else?

MAJOR BRENNAN: My recollection is, he was speaking to Sergeant Blaker and Colonel Williams about these issues.

MR. CHERTOFF: Did he say he had spoken to anybody else?

MAJOR BRENNAN: Not that I recall.

MR. CHERTOFF: Okay.

Captain Blaker, now, so the question then becomes, do you remember being told by Sergeant Gilbert about this comparison between the New Jersey consent to search figures and the Maryland figures?

CAPTAIN BLAKER: Yes, I do, sir.

MR. CHERTOFF: And how did that come about?

CAPTAIN BLAKER: I don't remember how it came about other than the normal work-a-day activity that we had. I was his supervisor. He discussed things with me. I assigned him to do the case, and as everyone's seen, he did a great job. And we gave the information to the Colonel, and the numbers weren't good. They were very bad. They weren't parallel. They were very close.

MR. CHERTOFF: Did you see an undated memorandum he prepared that laid this all out?

CAPTAIN BLAKER: I did see the undated memorandum.

MR. CHERTOFF: It's G-13. I don't think you have it in front of you. I'm going to show you G-13 in a minute. This is the undated memo we talked about.

Do you remember seeing that document?

CAPTAIN BLAKER: I do remember seeing it at some point.

MR. CHERTOFF: And did Sergeant Gilbert give that to you and indicate he was passing it up to Colonel Williams?

CAPTAIN BLAKER: I don't recall whether Sergeant Gilbert gave it to me. I just recall that I had seen it before.

MR. CHERTOFF: Did you ever discuss this document with Colonel Williams or the content of the document with Colonel Williams?

CAPTAIN BLAKER: We certainly discussed the content at different times. I don't know that we did it in connection with this particular document.

MR. CHERTOFF: And what was-- Let me talk about two parts of the content. There is part of the content that has to do with consent to search data in New Jersey-Maryland, and part of it has to do with the underlying analysis of the stops at Moorestown Station.

Do you remember whether you discussed both parts of that with Colonel Williams?

CAPTAIN BLAKER: I don't have an independent recollection, but I probably would have.

MR. CHERTOFF: But you specifically remember talking about the consent to search data with him?

CAPTAIN BLAKER: As I sit here now, I don't specifically recall the content of our conversation.

MR. CHERTOFF: Let me ask you this: In your conversations with Colonel Williams, do you recall if he expressed concern to you or if you expressed concern to him that the consent to search numbers being so close to those in Maryland, that it was exposure to the State Police in terms of litigation with the Department of Justice?

CAPTAIN BLAKER: We were both concerned that the numbers were high. I don't know that he expressed it in terms of a lawsuit, a potential lawsuit, but we knew it was going to impact us. And the information had been turned -- would have been turned over to the Attorney General's Office.

MR. CHERTOFF: Did you have discussions with Sergeant Gilbert-- Now, first of all, you were his superior in the chain of command?

CAPTAIN BLAKER: Yes, sir.

MR. CHERTOFF: All right.

So you obviously had the responsibility for supervising him and making sure he did what he was supposed to do, is that fair to say?

CAPTAIN BLAKER: That's fair, sir.

MR. CHERTOFF: Did he tell you that the content of this document, not the document itself, but that the content of this document had been shared with anybody from the Attorney General's Office?

CAPTAIN BLAKER: ...Tommy generally-- Sergeant Gilbert generally represented to me that he turned everything that he got, with respect to his investigation into this matter, over to his contact in the Attorney General's Office.

MR. CHERTOFF: And at the time -- point in time we're talking about, which is early 1997, was his contact George Rover?

CAPTAIN BLAKER: Yes, it was.

MR. CHERTOFF: Would you agree with me that Gilbert represented to you that Rover had all the information that Gilbert had compiled?

CAPTAIN BLAKER: Yes, I would.

MR. CHERTOFF: Was it your understanding that Sergeant Gilbert was in regular contact with Mr. Rover, passing on information that he was developing with respect to statistics to Mr. Rover?

CAPTAIN BLAKER: Yes, sir.

MR. CHERTOFF: Was that part of Sergeant Gilbert's assignment?

CAPTAIN BLAKER: Yes, it was.

MR. CHERTOFF: Were you, in fact, aware that there was an order from Colonel Williams to Sergeant Gilbert to make sure this information was getting over to Mr. Rover?

CAPTAIN BLAKER: I don't know if I was aware of it then.

MR. CHERTOFF: Did you become aware of it later?

CAPTAIN BLAKER: I've heard it either today or at some point during other procedures reference this committee.

MR. CHERTOFF: Did you, yourself, have conversations with Mr.-- You knew Mr. Rover personally, right?

CAPTAIN BLAKER: Yes, sir.

MR. CHERTOFF: Did you, yourself, have conversations with Mr. Rover in 1997, where he indicated to you an awareness that the Moorestown and Cranbury statistics were bad numbers in terms of the position of the State Police?

CAPTAIN BLAKER: Yes, sir.

MR. CHERTOFF: Okay. Tell us about that -- that conversation.

CAPTAIN BLAKER: Occasionally, I would meet George Rover at the gas pump -- not plan it, we just happened to be gassing up at the same time, our vehicles -- and we would just talk about how the numbers were bad, not in-depth conversations, but enough for me to know that George Rover was aware of the numbers.

MR. CHERTOFF: Now, there actually came a time you attended a meeting regarding the issue of the Maryland statistics, correct, in the Attorney General's Office?

CAPTAIN BLAKER: May 20th, 1997.

MR. CHERTOFF: That's the day.

CAPTAIN BLAKER: Yes, sir.

MR. CHERTOFF: You remember that.

CAPTAIN BLAKER: I do.

MR. CHERTOFF: How did you come to attend the meeting? How did it get generated?

CAPTAIN BLAKER: As I recall, Sergeant Gilbert received a fax from someone at the Office of the Attorney General, possibly George Rover. He brought it into the office. I don't know whether I saw it first or the Colonel saw it first, but the Colonel advised me that I was going to go to the Office of the Attorney General with he and Tommy Gilbert.

MR. CHERTOFF: Now, I'm going to show you W-29, which is a copy of the interoffice memo setting forth the agenda -- GC-2210. It should be in front of you. It's actually three versions of the same document with some handwriting on it.

Do you have that?

CAPTAIN BLAKER: I don't have it, sir.

MR. CHERTOFF: All right. We'll give it to you.

It's headed, Department of Law and Public Safety, Office of the Attorney General, Interoffice Memorandum, and it's dated May 20th, 1997.

You have it?

CAPTAIN BLAKER: I do, sir.

MR. CHERTOFF: Is that the document that was faxed over to Sergeant Gilbert? I don't mean with the handwriting on it.

CAPTAIN BLAKER: Sergeant Gilbert represented to me that this is the information that was faxed to him, yes, sir.

MR. CHERTOFF: And did you, in fact, attend the meeting?

CAPTAIN BLAKER: I did, sir.

MR. CHERTOFF: Now the top-- There are three copies of the typed agenda in this exhibit with -- each one has different handwriting. The top one, marked Page GC-2210, whose handwriting is on that, except for where it says Alex Waugh?

CAPTAIN BLAKER: That's my printing, sir.

MR. CHERTOFF: Did you basically take some notes during the course of the meeting?

CAPTAIN BLAKER: I wrote this down after we left the meeting and we went back to Division Headquarters, which is approximately a 10-minute drive.

MR. CHERTOFF: Okay. We'll come to that in a second.

Where did the meeting take place?

CAPTAIN BLAKER: In the Attorney General's Office.

MR. CHERTOFF: And who was there?

CAPTAIN BLAKER: To the best of my recollection, there was Attorney General Verniero; DAG Fahy; DAG Rover; Colonel Williams; I believe the executive assistant, Alex Waugh; Sergeant Gilbert; and I was, also.

MR. CHERTOFF: Now, with respect to the agenda items, let me focus your attention on the agenda item marked "production of consent to search documents."

But first let me ask you, in general, who did most of the talking at the meeting?

CAPTAIN BLAKER: My impression was that George Rover did most of the talking.

MR. CHERTOFF: And with respect to this item, "production of consent to search documents," what was the conversation with respect to that?

CAPTAIN BLAKER: As I stated in my taped interview in February, sir, I don't remember much of what was talked about at this meeting, other than the fact that there was a recitation by George Rover of statistics that had been provided to him by Sergeant Gilbert.

MR. CHERTOFF: And were these the statistics that were compared to the Maryland statistics?

CAPTAIN BLAKER: Yes, sir.

MR. CHERTOFF: So is it fair to say that Mr. Rover summarized the information he had gotten from Sergeant Gilbert comparing the Maryland statistics and the New Jersey statistics?

CAPTAIN BLAKER: Yes, sir.

MR. CHERTOFF: And what-- After he summarized that-- Let me withdraw the question.

In the course of that summary, was it made clear that the statistics in New Jersey were essentially on a par or even slightly worse than the Maryland statistics?

CAPTAIN BLAKER: Yes, sir.

MR. CHERTOFF: Was it made clear in the meeting that the Maryland statistics had led to the imposition of a consent decree?

CAPTAIN BLAKER: Yes, sir.

MR. CHERTOFF: Was there anybody at the meeting who expressed concern about whether these consent to search statistics for New Jersey would expose the State Police to the risk of a similar type of court order?

CAPTAIN BLAKER: I'm sure there was, sir, I just don't have an independent recollection of that part of it.

MR. CHERTOFF: Now, you do remember the Attorney General addressing the issue of a consent decree, whether he would go along with one or not, right?

CAPTAIN BLAKER: That's why I'm sure there must have been conversation about it, yes.

MR. CHERTOFF: What did the Attorney General say, as you later recorded it in your notes, on the agenda item?

CAPTAIN BLAKER: Well, with respect to signing the consent decree, he stated that, they'd have to tie me to a track and drag me along -- tie me to a train and drag me along the track before I'd sign a decree.

MR. CHERTOFF: And what was your reaction to that?

CAPTAIN BLAKER: I was delighted.

MR. CHERTOFF: In your drive back on the way to West Trenton, did Colonel Williams or anybody else express a reaction to that?

CAPTAIN BLAKER: I think Colonel Williams and Sergeant Gilbert did, as did I. I don't remember the exact content, but we were pleased that we were going to be given an opportunity -- we being the Division of State Police -- an opportunity to cure whatever ills we were experiencing within the State Police at that time.

MR. CHERTOFF: Now, let me ask you this then: After-- And apart from the discussion about the consent to search statistics in New Jersey and Maryland and the issue of a consent decree, did there come any point in the meeting where there was discussion about how you would actually go about curing the problem?

CAPTAIN BLAKER: In the meeting of May 20th?

MR. CHERTOFF: Right.

CAPTAIN BLAKER: I don't recall that there was, sir.

MR. CHERTOFF: Did anybody in the meeting suggest that the State Police go behind the numbers, the statistics on consent to search, and actually investigate the underlying files?

CAPTAIN BLAKER: Not that I recall.

MR. CHERTOFF: Do you remember anybody turning to Colonel Williams in the meeting, and saying, point-blank, "Is there racial profiling going on?"

CAPTAIN BLAKER: I don't remember that, no.

MR. CHERTOFF: Did anybody, in your recollection of the meeting, ask questions of any of the State Police representatives there about the underlying facts or underlying statistics with a view to determining whether there was a real problem or not?

CAPTAIN BLAKER: If there were questions posed to the members of the State Police, they would have been posed to Tom Gilbert, because he was the repository of all our knowledge, or most of it, at that point. But I don't remember Sergeant Gilbert saying more than -- he may have, but I don't remember him saying more than a dozen words, if that.

MR. CHERTOFF: Did anybody at the meeting say, in substance -- I don't mean exact words -- all right, putting aside what we're going to do in the litigation or in dealing with the Federal government, as managers, what do we need to do to make sure we don't have a real problem here? Was there anything along that line that was expressed?

CAPTAIN BLAKER: Not to my recollection, sir.

MR. CHERTOFF: Were you given any mandate or any orders, that you recall, walking out of the meeting either to do further investigation of the underlying facts or to take some specific steps to address the problem in the future?

CAPTAIN BLAKER: No, sir.

MR. CHERTOFF: Did anybody at the meeting say to you or to any other State Police that they wanted you to report back within a certain period of time about what steps had been taken to cure the problem or if the problem was still persistent?

CAPTAIN BLAKER: No, sir.

MR. CHERTOFF: Is there anything else about the meeting you can remember, besides what we've elicited here in the testimony?

CAPTAIN BLAKER: No, sir.

MR. CHERTOFF: Now, after this meeting-- I'm going to show you what's been marked as G-25, GC-2172, and then I'm going to ask you a couple

questions about it, and we're almost through. It's a memo dated July 10, 1997, to Colonel Williams from Sergeant Gilbert, through you.

Do you have that document?

CAPTAIN BLAKER: I do, sir.

MR. CHERTOFF: Do you remember seeing this?

CAPTAIN BLAKER: Yes, sir.

MR. CHERTOFF: Now, were you familiar with what this document reflected, what it was supposed to address?

CAPTAIN BLAKER: It addressed the consent to search data for Moorestown and Cranbury Stations.

MR. CHERTOFF: And did you understand that as of this point in time, in terms of negotiating with the Department of Justice in Washington, they were requesting that information related to certain dates be turned over -- certain sample dates -- and that this was basically Sergeant Gilbert's analysis of what those -- what the statistics would show if someone looked at those dates?

CAPTAIN BLAKER: These were the 30 randomly selected dates, yes, sir.

MR. CHERTOFF: And did you look at this before you passed it up to Colonel Williams?

CAPTAIN BLAKER: I'm certain that I did, but I don't have a recollection as to when I would have handed him or if I handed it to him.

MR. CHERTOFF: Would you agree with me that in the normal course, you would have passed it up to him?

CAPTAIN BLAKER: Absolutely.

MR. CHERTOFF: Was it your understanding from Sergeant Gilbert that he had conveyed the content of this information to Mr. Rover?

CAPTAIN BLAKER: Yes, sir.

MR. CHERTOFF: Was it your understanding that after the main meeting in 1997, Sergeant Gilbert continued to regularly pass on whatever significant statistical information he had to Mr. Rover?

CAPTAIN BLAKER: Yes, sir.

MR. CHERTOFF: To your knowledge, was there ever a decision by anybody in the hierarchy of the State Police to deliberately limit information that was turned over to the Office of the Attorney General?

CAPTAIN BLAKER: There was not, sir.

MR. CHERTOFF: Was there, in fact, a general mandate or requirement, as you understood it, that Sergeant Gilbert keep his contact at the Office of the Attorney General informed about anything of significance?

CAPTAIN BLAKER: Yes, sir.

MR. CHERTOFF: By the way, as you look at this exhibit of this July 10th memo, is it fair to say that the statistical proportions between minority and nonminority consent searches and arrests show a high number for minorities?

CAPTAIN BLAKER: Show what, sir?

MR. CHERTOFF: A high number for minorities.

CAPTAIN BLAKER: Absolutely.

MR. CHERTOFF: And would you agree it was a number that was, again, explicitly compared to the Maryland number and found to be at least as high if not higher than the Maryland?

CAPTAIN BLAKER: Yes, sir.

MR. CHERTOFF: So this would be consistent with a continuing concern along the lines of what you would see with respect to Sergeant Gilbert's earlier analysis?

CAPTAIN BLAKER: That's correct, sir.

MR. CHERTOFF: Now, I want to close up by asking you, were you involved in the preparation of the interim report?

CAPTAIN BLAKER: No, I was not, sir.

MR. CHERTOFF: Did you ultimately get a chance to read the final version?

CAPTAIN BLAKER: I did, sir.

MR. CHERTOFF: I want to direct your attention to a portion of a draft of the report that was produced on April 7, 1999. And I want to say, in fairness, this was significantly changed after April 7th. I guess it's fair to say it was substantially watered down.

But I want to give you an opportunity to comment directly on an assertion that was made, at least as of April 7th, by the authors of this report. It's in Page 2, and the last paragraph says: "We feel constrained to comment that some of the statistical information we rely upon, including particularly revealing data concerning the consent searches, were only recently disclosed by the State Police to the Office of the Attorney General. Certain internal studies and audits prepared at the request of the superintendent were not made known to the Deputy Attorneys General who were representing the State in the *Soto* litigation. This circumstance has seriously compromised the State's litigation posture and has also needlessly delayed initiating appropriate remedies and reforms."

I have to ask you, Captain Blaker, to your understanding, having worked with Sergeant Gilbert and having worked on this during the period of

time of '96 on, is this an accurate statement here? That certain -- that the statistical information that's relied upon was only recently disclosed by the State Police and that internal studies and audits were not made known to the Deputy Attorneys General?

CAPTAIN BLAKER: When I initially suggested that Sergeant Gilbert be assigned to do this job, I did it because he was honest, thorough, and he always followed my number one mandate, which was to always let the cards fall where they may.

This is shocking. The State Police does not operate that way. No one in the State Police would condone it, and it's just ludicrous. This is not our-- Tommy Gilbert does not operate the way this suggests, nor does anyone else in the State Police.

MR. CHERTOFF: All right.

Let me ask you this question: In 1999, in March, April, May or thereafter, did anybody ever come to investigate whether there was any kind of misconduct by the State Police in the way they turned over documents to the Office of the Attorney General?

CAPTAIN BLAKER: I'm not aware of any investigation or allegation. The first I saw was in Colonel Dunlop's interview, which was posted on the Internet.

MR. CHERTOFF: I think that's-- I have no further questions.

SENATOR GORMLEY: Jo.

Somebody turn off a red light. (referring to PA microphone)

MS. GLADING: Good afternoon, gentlemen.

Captain Blaker, going back to the May 20th, 1997 meeting, is there any reason for you to believe that anyone in that room was not aware of the similarity between the Maryland numbers and the New Jersey numbers?

CAPTAIN BLAKER: No. No, ma'am.

MS. GLADING: Okay.

So, from what you recall of that meeting and the discussion during it, it appeared to you that everyone in that room knew what Sergeant Gilbert's numbers were showing at that point?

CAPTAIN BLAKER: That's correct.

MS. GLADING: You testified earlier that there was no discussion about how to cure the problem, that you recall, and you don't recall leaving with any mandate to address the problem. During your interview a couple of weeks ago, your testimony was a little bit different.

You said, in reference to the handwritten remark at the bottom of the agenda: "I thought at the time, as did the three people at that meeting -- Colonel Williams, Tom Gilbert, and I -- that we were going to be able to determine the problem, the extent of the problem, and then how to correct it, by Verniero's statement that he wasn't going to sign a consent decree. I mean, certainly there were issues, there were problems, but you just can't go off half-cocked. You have to do an investigation. You have to see what you find."

So I'm trying to square that with your testimony today.

CAPTAIN BLAKER: How did it differ?

MS. GLADING: It sounds-- That testimony I took to mean that you were glad that he was not going to sign a consent decree, because the State Police was going to have an opportunity to clean its own house if there was a problem.

CAPTAIN BLAKER: That's correct.

MS. GLADING: Okay.

Was there any action subsequent to the May 20th meeting, in your mind, that were actions by the Attorney General's Office and the State Police to clean their own house?

CAPTAIN BLAKER: There were continuing reforms, which would allow us to address the issues involved with the high numbers that we were seeing, absolutely.

MS. GLADING: Okay.

And were there ongoing efforts to determine whether or not there was a problem, an ongoing statistical analysis to determine whether there was a problem?

CAPTAIN BLAKER: There was an-- To my knowledge, there was, yes.

MS. GLADING: To your knowledge, were those being shared with the Office of the Attorney General?

CAPTAIN BLAKER: Yes.

MS. GLADING: Major Touw, in your October 4th memo, where you referred to the numbers being excessively or being above the levels reported in *Soto*. Do you know-- To your knowledge, who was that memo shared with?

CAPTAIN TOUW: That memo -- excuse me (coughs) -- that memo went to -- I believe it went to the committee, and it also went through the chain of command, which would have been the section supervisor at that time, then up to Colonel Littles and Colonel Williams.

MS. GLADING: And would it have been shared with Sergeant Gilbert, as a member of the committee?

CAPTAIN TOUW: Yes.

MS. GLADING: To your knowledge, did Sergeant Gilbert share that information with the Attorney General's Office?

CAPTAIN TOUW: I have no knowledge of that.

MS. GLADING: In your testimony, you indicated that-- You talked about a discussion during one of the committee meetings where you said that you felt that our people were probably stopping minorities more than they should be because of their race. I mean, there's just too many complaints coming in. And then you say, "And I remember that it was quiet when I said that in the meeting, and that I believe that at that time I composed this audit." Do you recall that discussion during one of these committee meetings?

CAPTAIN TOUW: Yes, I do.

MS. GLADING: What do you recall about the reaction from the representatives from the Attorney General's Office?

CAPTAIN TOUW: I don't have any independent recollection of their reaction to it.

MS. GLADING: Did Mr. Fahy support the idea of conducting ongoing audits?

CAPTAIN TOUW: Yes, he was supportive of them.

MS. GLADING: And your superior at this time was who?

CAPTAIN TOUW: Major Fedorko.

MS. GLADING: And was he supportive of the idea of ongoing audits?

CAPTAIN TOUW: Oh, yes.

MS. GLADING: When you met with Prosecutor Ransavage and Mr. Fahy, the-- There's a memo from Mr. Fahy to now Judge Ciancia, indicating

that at that meeting he was going to provide him with some statistical information concerning the arresting officers in the two Hunterdon cases. And there's a reference in another document, one of Sergeant Gilbert's memos about the Littles committee, referring to the records of two officers, one having a significant IAB history. Do you recall discussing the records of those two officers at that meeting?

CAPTAIN TOUW: I believe we did.

MS. GLADING: As a result of the records of the officers, was the decision made to then plead those cases out?

CAPTAIN TOUW: Yes, that was a significant part of it.

MS. GLADING: When you conducted an audit -- or the final document is dated September 19, 1996, and there's referenced-- I think you testified for this in your interview. There's reference to your concerns about the Trooper of the Year Program. Can you explain why you conducted that audit?

CAPTAIN TOUW: If my memory is correct, there was a -- two troopers who were being nominated for Trooper of the Year. I was concerned that they may have a high stopping patterns -- records for minorities. We conducted an audit. They, in fact, did. That information was passed on to the superintendent, and he elected to go with another individual for Trooper of the Year that year.

MS. GLADING: And why was that, because of the high minority arrest rates?

CAPTAIN TOUW: Yes.

MS. GLADING: Was one of those troopers Trooper Hogan?

CAPTAIN TOUW: Yes, it was.

MS. GLADING: Major Brennan, let me give you a copy of what is marked--

Scott?

MR. WEBER (Assistant Special Counsel to the Committee): SJC-2.

MS. GLADING: Major Brennan, before I ask you about this document, I wonder if I could ask you something else. Sergeant Gilbert testified that as a part of this committee that was chaired by Colonel Littles there were discussions, and ultimately a plan was put in place to create a four-hour training block on search and seizure techniques. Do you recall those discussions?

MAJOR BRENNAN: Yes.

MS. GLADING: Sergeant Brennan also testified that at that time that plan never was implemented. Was that your recollection as well?

MAJOR BRENNAN: Sergeant Gilbert?

MS. GLADING: Sergeant Gilbert, I'm sorry, yeah.

MAJOR BRENNAN: I do not recall individualized or targeted training on those areas.

MS. GLADING: And when did you go to the academy as commandant?

MAJOR BRENNAN: In, roughly, September of '97.

MS. GLADING: Okay. So, if the targeted training had been put in place, would you have been aware of it by virtue of your position by -- in 1997 as commandant?

MAJOR BRENNAN: Most likely, but if it was taken out to the Turnpike for training by trainers at the Troop D level, I might not have known about it.

MS. GLADING: I assume you're familiar with this document that I've put in front of you.

MAJOR BRENNAN: Yes.

MS. GLADING: Okay. The cover memo is dated October 26th, 2000, and it's a memo from Lieutenant Sachetti to you?

MAJOR BRENNAN: Yes.

MS. GLADING: And it's concerning the synopsis of the Troop D audit. Can you tell me why-- My understanding from other witnesses is that the Troop D audit was actually closed down in June of 1999. Can you tell me why this was generated at this time, nearly a year and a half later?

MAJOR BRENNAN: To the best of my understanding, when Colonel Dunbar took over, there was confusion, where I was to some degree working for him and organizing the Office of Professional Standards, which includes the Internal Affairs Bureau, as to the status of serious cases that came out of the Troop D audit that Lieutenant Sachetti was in charge of. I became aware at that time, Captain Van Tassel, who had been in charge of IAB, indicated that either eight to ten cases of troopers involved in stop patterns that would fall into question, whether or not race was a factor, had been sent down to the Division of Criminal Justice for review for possible criminal charges.

We were awaiting--..At this time, I was transferred up there in January of 2000, and I was briefed that we were awaiting action from the Attorney General's Office on how to proceed with these eight to ten cases, whether we were going criminal or whether they would be returned to us for further internal investigation and handling as an administrative matter if any rules and regulations violations came to pass.

MS. GLADING: What period of time was this?

MAJOR BRENNAN: This is between January and I believe right through until May or June of 2000.

MS. GLADING: So, to your understanding, when were those cases sent back from the Attorney General's Office?

MAJOR BRENNAN: Sometime-- To my understanding, one or two of the cases had been sent back earlier, prior to my transfer, and had resulted in completed internal investigations. The remaining cases were sent back to us -- I would -- sometime between April and June to handle as administrative matters.

MS. GLADING: April, June of 2000?

MAJOR BRENNAN: Yes.

MS. GLADING: And two cases had already been sent back, more than two?

MAJOR BRENNAN: I believe one or two had been fully investigated and were completed at the time that I had -- possibly three that I can think of that clearly didn't have any patterns of race involvement, but showed significant rule and reg violations by the troopers involved.

MS. GLADING: Were there transmittal documents attached to the transfer of these cases back to the State Police?

MAJOR BRENNAN: I'm sure there are.

MS. GLADING: Lieutenant Colonel Dunlop testified that the cases were actually sent back while he was still there at some point in the late summer or early fall of 1999. The cases were sent back from the AG's Office. Your testimony is different than that, right?

MAJOR BRENNAN: Yes. I don't know how to rectify that other than Colonel Dunbar upon assuming the position of superintendent on November 1st of 1999, very possibly sent them back to the Attorney General's

Office to ensure that they had been looked at properly. Now, there was also some interest and confusion on my part, because I was aware that of the audit that was done, there were as many as 158 troopers involved with from one rule and regulation violation to substantially more. It was almost the entire Troop D complement had at least one -- what might have been, upon investigation, a simple typographical error or an error in transposing something. They took the audit to the detail. And from my perspective, all of those cases had to be investigated and adjudicated in an equal fashion, if they didn't relate to race issues.

MS. GLADING: I'm not sure I understood your testimony a minute ago. Was it that the cases had been sent back to State Police and that Colonel Dunbar sent them back to Law and Public Safety?

MAJOR BRENNAN: That's my belief. I'm not certain of that. Colonel Dunbar was up there for approximately two months while I was still assigned to the academy, and I have a definite recollection of declination of prosecution letters coming back on either a group of them or the eight to ten troopers that were involved.

I was also concerned by the fact that, when he briefed on this issue, Captain Van Tassel advised-- I asked him, how did you distinguish between what cases were sent down for criminal investigation or investigated as a significant matter and which were not investigated and basically held back -- most of them represented in this package you just put before me. And his response was, it was just a line that was drawn after the top eight or ten with the most discrepancies as a result of the audit, which indicated to me and confirmed that the remaining cases had not yet been investigated or looked into.

MS. GLADING: So what's the status of these cases currently?

MAJOR BRENNAN: The status of the cases currently--

MS. GLADING: Let me back up a second. How many cases are we talking about in all, including the ones that maybe approached criminal levels and then ultimately did not -- were sent back?

MAJOR BRENNAN: The cases are approximately 100 cases that we are going to investigate at this time.

MS. GLADING: And these cases have been back in State Police since when?

MAJOR BRENNAN: Well, the more significant cases I recall coming back sometime in the spring or early summer. There was also an issue that the new Office of State Police Affairs, directed by Martin Cronin, that was established as a result of the consent decree, were asked to review these cases as well by Colonel Dunbar, so that Director Cronin and his staff, charged with oversight of the State Police, could possibly argue with the Division of Criminal Justice as to whether or not these cases should go back on a criminal track or should come back to the State Police as administrative matters.

MS. GLADING: Okay. Just so we're clear on the time, though, the cases may have come back to State Police, and Colonel Dunbar may have sent them back to CJ when he got to State Police.

MAJOR BRENNAN: That's my belief, yes.

MS. GLADING: And then they came back, and you recall the declination of prosecution letters that came back when?

MAJOR BRENNAN: Sometime in the late spring or early summer of 2000.

MS. GLADING: Okay. And you had testified earlier that we're going to investigate these cases. Are those investigations under way now?

MAJOR BRENNAN: There have been-- In getting the investigations under way, there were delays as a result of Judge Barisonek's orders. We have tens of thousands of documents stored at Division Headquarters, and we are not allowed to access them without a court order for individual documents. So Lieutenant Sachetti and my investigators have to go up one at a time and ask for specific documents. Also, one of the delays was in determining how to proceed with what could be argued to be fewer discrepancies than the top 10 cases, the concept of investigating every discrepancy from each phase of the audit. We needed to get that information, and that information was provided by Lieutenant Sachetti's unit after review and approval by Mr. Cronin's office, I believe, around this date of -- sometime in October--

MS. GLADING: Okay.

MAJOR BRENNAN: --was the first time we had a full list of the troopers who had been identified in the audit.

MS. GLADING: And is it correct that Colonel Dunbar, at some point, established a 5 percent rule?

MAJOR BRENNAN: Yes.

MS. GLADING: The cutoff point in the cases in which more than -- there was a discrepancy of more than 5 percent of a trooper's activity, those cases warranted further internal investigations?

MAJOR BRENNAN: Provided that there were no indicia of discrepancies that could be -- intentionally be created to cover up any improper conduct about race. So there will be cases where discrepancies -- one failure, one improper recordation of race will be an investigation, whereas the reason there was a 5 percent rule applied was that the CAD system was not operable on the Turnpike during this period of 1998, and the troopers calling in the stops were

handled by a shift supervisor recording the stops. So there was an understanding or belief that it was difficult for these troopers to make all the calls that they were required of during this time. Nonetheless, I personally, along with Lieutenant Sachetti's staff, along with Colonel Dunbar, reviewed every single discrepancy and determined whether or not people who fell below the 5 percent rule should still be investigated to rule out any improper conduct related to race.

MS. GLADING: And when did that review take place?

MAJOR BRENNAN: Those reviews started in earnest in October and continued up until, I believe, January.

MS. GLADING: And is it correct that four detectives were just assigned to this detail two weeks ago to try to augment this work?

MAJOR BRENNAN: To augment my staff of 23 investigators, we requested the assignment of 10 additional investigators for the duration to work on this project. And that was something that we had tried to put in place some time ago, and now they are assigned to us.

MS. GLADING: Okay. Just a couple more quick questions. If you look at OAG-2207, it's in the middle of the Sachetti audits -- actually, 9207, I apologize.

MAJOR BRENNAN: Yes.

MS. GLADING: Then look to where 9208 is. It looks as though there's a page missing there, and it covers part of Case No. 33 and part of Case No. 34. Is there anything significant in your recollection about Case No. 33 and Case No. 34?

MAJOR BRENNAN: No, ma'am.

MS. GLADING: Okay. And if you could, look at OAG-9200, in which the discussion of Case No. 23 takes place. It indicates that 146

discrepancies remain to be investigated after the preliminary review in Phase II. Was that a high -- that appeared to be a high number on my review of this audit result. Was that a high number in your mind?

MAJOR BRENNAN: I'm on Page OAG-9200.

MS. GLADING: Correct.

MAJOR BRENNAN: And where on the page are you, Ms. Glading?

MS. GLADING: Under Phase II. Phase II of this audit revealed the following: "After preliminary review by Sergeant Nessler, it was determined that a total of 146 discrepancies remain to be investigated."

MAJOR BRENNAN: Yes. While that number, in and of itself, would trigger an investigation under the way we're approaching, it is just a fact that there's a -- 10 instances of alleged undocumented searches would be enough to investigate this.

MS. GLADING: In your mind, do you know if that rises to near the level of the offenses committed by Troopers Hogan and Kenna, for which they were indicted?

MAJOR BRENNAN: I was not in Internal Affairs at that time, ma'am, and I'm not familiar with the statistics.

MS. GLADING: Has Lieutenant Sachetti ever represented to you that he's concerned about some of these cases, or at least one of these cases, because it did rise to a level that was comparable?

MAJOR BRENNAN: I believe that there were more than one case that we were concerned about.

MS. GLADING: Okay. And did Lieutenant Sachetti express concerns with you about the incompleteness of this audit and the resulting fact

that some troopers would not be -- that some troopers would be punished for discrepancies while other troopers would not be caught at discrepancies?

MAJOR BRENNAN: Yes.

MS. GLADING: And do you share his concerns about that?

MAJOR BRENNAN: Yes, from the perspective of a disciplinary matter, internally, the troopers who were subject to the audit should be treated uniformly with whatever response the Division determines.

MS. GLADING: Did you request Lieutenant Sachetti to forward this incomplete -- well, what appears to be an incomplete product to you?

MAJOR BRENNAN: Well, I think I got a complete product. I'm not certain, but-- Yes, we had requested this document in order to develop an investigative plan.

MS. GLADING: Let me rephrase, an unfinished product?

MAJOR BRENNAN: By unfinished, I--

MS. GLADING: By Lieutenant Sachetti's view?

MAJOR BRENNAN: In that the--

MS. GLADING: Audit was not--

MAJOR BRENNAN: --Phase III was completed, yes. Yes, I did request this.

MS. GLADING: Correct. Okay.

I don't have any other questions.

SENATOR GORMLEY: Questions from members of the Committee? (no response)

Senator Lynch, any questions?

SENATOR LYNCH: No questions.

SENATOR GORMLEY: Thank you for your testimony.

We'll take a two-minute break.

(RECESS)

AFTER RECESS:

SENATOR GORMLEY: The next two witnesses--

Everybody get their seats, please.

Lieutenant Colonel Robert Dunlop, Lieutenant Colonel Michael Fedorko, would you please raise you right hands?

(Oath administered)

SENATOR GORMLEY: Mr. Chertoff.

MR. CHERTOFF: Just for the record, Colonel Fedorko, are you represented by anybody here?

LIEUTENANT COLONEL MICHAEL FEDORKO: No, I'm not, Mr. Chertoff.

MR. CHERTOFF: Okay. Colonel Dunlop, are you represented by somebody here?

LIEUTENANT COLONEL ROBERT DUNLOP: I am, yes.

MR. CHERTOFF: And can you just identify your counsel for the record?

LIEUTENANT COLONEL DUNLOP: Mike Reilly, sitting behind me.

MR. CHERTOFF: You need to turn your red lights on. (referring to PA microphone)

LIEUTENANT COLONEL FEDORKO: How's that?

MR. CHERTOFF: All right.

Now, Colonel Dunlop, how long were you with the State Police?

LIEUTENANT COLONEL DUNLOP: Thirty and a half years, sir.

MR. CHERTOFF: And when did you retire?

LIEUTENANT COLONEL DUNLOP: I retired July 1st of 2000.

MR. CHERTOFF: What was your rank on retirement?

LIEUTENANT COLONEL DUNLOP: Lieutenant Colonel, sir.

MR. CHERTOFF: And what was your last position at retirement?

LIEUTENANT COLONEL DUNLOP: I was the Executive Officer and also the Acting Deputy Superintendent.

MR. CHERTOFF: Colonel Fedorko, you were with the State Police for how long?

LIEUTENANT COLONEL FEDORKO: Thirty-one years.

MR. CHERTOFF: And when did you retire?

LIEUTENANT COLONEL FEDORKO: November the 1st of 1999.

MR. CHERTOFF: And what was your final position on retirement?

LIEUTENANT COLONEL FEDORKO: Acting Superintendent.

MR. CHERTOFF: And you're currently a member of the Casino Control Commission?

LIEUTENANT COLONEL FEDORKO: That's correct.

MR. CHERTOFF: And Colonel Dunlop, what's your current occupation?

LIEUTENANT COLONEL DUNLOP: I'm retired, and I'm doing some investigative work.

MR. CHERTOFF: All right. Colonel Dunlop, I'd like to start with you. In April 1998, you assumed a new position, correct?

LIEUTENANT COLONEL DUNLOP: In 1998?

MR. CHERTOFF: Yeah, April. Approximately April or early 1998, did you assume a new position as Executive Officer?

LIEUTENANT COLONEL DUNLOP: Yes, but it was back in February, sir.

MR. CHERTOFF: I'm sorry. Back in February. And what was that position?

LIEUTENANT COLONEL DUNLOP: That position was as Executive Officer of the State Police.

MR. CHERTOFF: And what does the Executive Officer do, and where is it located in the hierarchy of the State Police?

LIEUTENANT COLONEL DUNLOP: I would be third in command, and I had command of the Field Operations Section, which is all the uniformed troopers; the Investigations Section; the Intelligence Section; and the Emergency Management Section.

MR. CHERTOFF: Now, who was the other lieutenant colonel at the time you assumed your position?

LIEUTENANT COLONEL DUNLOP: Lieutenant Colonel Fedorko.

MR. CHERTOFF: And who was the superintendent?

LIEUTENANT COLONEL DUNLOP: That would have been Colonel Carl Williams.

MR. CHERTOFF: And who did you report to?

LIEUTENANT COLONEL DUNLOP: Lieutenant Colonel Fedorko was the Chief of Staff. I would report to him, and I would also report to Colonel Williams. On most issues, I would report through Colonel Fedorko.

MR. CHERTOFF: Now, did there come a time you became familiar with Sergeant Thomas Gilbert?

LIEUTENANT COLONEL DUNLOP: There was.

MR. CHERTOFF: And how did that come about?

LIEUTENANT COLONEL DUNLOP: Oh, right after I assumed the position of Executive Officer, in sometime in March, Sergeant Gilbert provided me with some documents in reference to *Soto* and where we were there on the appeal.

MR. CHERTOFF: I'm going to mark -- ask you to mark as SJC-3 a package of documents which reflects copies of a red binder that Sergeant Gilbert gave to you.

Do you have a copy for the witness, the original?

MR. WEBER: We asked the witness' counsel to have the witness bring the original.

MR. CHERTOFF: Do you have the original of this red binder?

LIEUTENANT COLONEL DUNLOP: I believe I do, with me, yes.

MR. CHERTOFF: Okay. If we could just get a copy.

LIEUTENANT COLONEL DUNLOP: I can see if counsel has it.

MR. CHERTOFF: All right. This is a red binder that Sergeant Gilbert gave to you in early 1998?

LIEUTENANT COLONEL DUNLOP: That's correct, sir.

MR. CHERTOFF: And how did he come to give that to you?

LIEUTENANT COLONEL DUNLOP: I think he wanted to bring me up to speed on where we stood on this in the *Pedro Soto* case and in the areas of our stop rates and consent searches.

MR. CHERTOFF: And why was that a concern to you when you took this position?

LIEUTENANT COLONEL DUNLOP: Well, I think it was just one of the issues that was on the table. Not specifically related to me, but I think he was trying to give me a general background of what we had pending.

MR. CHERTOFF: Did there come a point in time that you reviewed the material in that red notebook?

LIEUTENANT COLONEL DUNLOP: Yes, sir, there was.

MR. CHERTOFF: And when was that?

LIEUTENANT COLONEL DUNLOP: It would have been sometime after the shooting on the Turnpike, which was April 23rd of 1998.

MR. CHERTOFF: And when you're talking about the shooting, you mean the shooting which led to the charges against Troopers Hogan and Kenna?

LIEUTENANT COLONEL DUNLOP: That is correct, sir.

MR. CHERTOFF: Why is it that after that shooting, you came to review this material?

LIEUTENANT COLONEL DUNLOP: Because of the allegations of racial profiling that were being raised. I know it was very important to look through this and see where we stood and what allegations had been raised in the *Pedro Soto* case.

MR. CHERTOFF: Now, did you also understand at this time that there was a inquiry, or some kind of a review, by the Civil Rights Division at the Department of Justice regarding racial profiling?

LIEUTENANT COLONEL DUNLOP: I was after I had been briefed and looked at this book, yes.

MR. CHERTOFF: So, is it fair to say until after the shooting, you were not really involved in this issue?

LIEUTENANT COLONEL DUNLOP: That's correct, yes, sir.

MR. CHERTOFF: I'm going to cover some things with respect to '98 later, but I want to jump ahead.

First of all, when you reviewed this material, did you see certain documents or numbers that related to consents to search and statistics for minorities, such as nonminorities being asked to consent to search?

LIEUTENANT COLONEL DUNLOP: Yes, sir.

MR. CHERTOFF: And what was your reaction to it?

LIEUTENANT COLONEL DUNLOP: Well, the reactions were that the numbers, in and of themselves, were high.

MR. CHERTOFF: Can you explain what you mean by that or how you came to feel that way?

LIEUTENANT COLONEL DUNLOP: Well, if you look at just the numbers themselves, our minority consent to search rates were higher than they were for nonminority people. And I don't remember the specifics unless I look through, but I would say they were well in excess of 50 percent, 60 percent.

MR. CHERTOFF: Were there any particular documents in the red binder you remembered looking at that caused you to focus on this issue?

LIEUTENANT COLONEL DUNLOP: If I'd may, I'd like to just glance at it.

MR. CHERTOFF: Yeah, take a look. I don't mean to rush you. Take a moment to look through it. And then if you can tell us -- maybe identify in some way the documents.

LIEUTENANT COLONEL DUNLOP: Well, initially, in one of the first ones that's in this binder is the consent to search rates and also for Moorestown and Cranbury, and also the stop rates.

MR. CHERTOFF: And that would be for the periods of time in 1997?

LIEUTENANT COLONEL DUNLOP: That's correct, yes, sir.

MR. CHERTOFF: Anything else?

LIEUTENANT COLONEL DUNLOP: One of the things, I did read the *Pedro Soto* decision from Judge Francis, and I knew that there would be stop rates there. According to the court documents or the decision that was rendered -- was it should have been somewhere in the area of maybe 15 percent for a stop rate of minorities.

MR. CHERTOFF: Did you also become familiar with the fact that there had been a comparison made by Sergeant Gilbert between the consent to search rates in New Jersey and the consent to search rates in Maryland back in 1997 -- they were comparable?

LIEUTENANT COLONEL DUNLOP: That's correct, yes.

MR. CHERTOFF: And what was your understanding of the significance of that?

LIEUTENANT COLONEL DUNLOP: That the Maryland State Police were forced into a consent decree based mainly on consent search numbers, I believe, plus some other factors.

MR. CHERTOFF: Now, I want to jump ahead a little bit. But did there come a time that you had occasion to ask Sergeant Gilbert whether these consent to search numbers had ever been discussed with the Office of the Attorney General?

LIEUTENANT COLONEL DUNLOP: Yes, sir, it did.

MR. CHERTOFF: And when was that discussed first with Sergeant Gilbert?

LIEUTENANT COLONEL DUNLOP: I think after the shooting, at some point in time, we had an audit of the New Jersey Turnpike, the Troop D audit, and there would have been a conversation in reference to these documents.

MR. CHERTOFF: And in connection with which documents?

LIEUTENANT COLONEL DUNLOP: I think the consent search rates and the stop data.

MR. CHERTOFF: At that point in time, and this would put it in sometime around May of 1998, right?

LIEUTENANT COLONEL DUNLOP: Yes.

MR. CHERTOFF: This conversation?

LIEUTENANT COLONEL DUNLOP: Yes. Or even maybe later than that. Maybe later on into the year.

MR. CHERTOFF: At that point, what did Sergeant Gilbert tell you about whether he had shared the consent to search information and data with the Office of the Attorney General?

LIEUTENANT COLONEL DUNLOP: Well, it was my impression, from my conversations with Gilbert, whenever I had them, was that everything

was being turned over, and they were well aware of it. Counsel was representing us in this matter, and they were aware of what our figures were.

MR. CHERTOFF: And when you say they, you mean people in the Office of the Attorney General?

LIEUTENANT COLONEL DUNLOP: Yes, sir, I am.

MR. CHERTOFF: Was he specific at that time about who he was dealing with?

LIEUTENANT COLONEL DUNLOP: I don't-- I can't say specifically at that time, but I did come to understand later on as to who his liaison with the Attorney General's Office was.

MR. CHERTOFF: And who was that?

LIEUTENANT COLONEL DUNLOP: It was George Rover, and also Fahy was involved in the *Soto* appeal.

MR. CHERTOFF: Did you also have conversations with Captain Blaker about whether this information about consent searches and statistics had been shared with the Office of the Attorney General?

LIEUTENANT COLONEL DUNLOP: I don't think I had any conversation with Captain Blaker until maybe into 1999.

MR. CHERTOFF: And what did he tell you in 1999?

LIEUTENANT COLONEL DUNLOP: Well, the specific question I asked Captain Blaker was if he had had a conversation, or was there a meeting on May 20th of 1997, in which consent search rates were discussed with the Attorney General?

MR. CHERTOFF: All right. Let's-- I'm going to jump ahead, but I think I want to cut to the chase. How did this come up, this issue of whether there was a May 20th meeting? Let me focus your attention, first of all, in the

period of February-March of 1999. In February-March of 1999, were there certain events with respect to a State Police Review?

LIEUTENANT COLONEL DUNLOP: The State Police Review, as I recall, was announced February 10th of 1999, yes.

MR. CHERTOFF: And how did you come to have a discussion with Captain Blaker and with Sergeant Gilbert about this May 20th, 1997 meeting? How did that come about?

LIEUTENANT COLONEL DUNLOP: Well, I believe that my conversations with Sergeant Gilbert were earlier on. But what brought this to light again was, I would say this was sometime in -- perhaps it may have been April, around the time that this interim report was coming out, sir. And I had been receiving information or I had through -- information was coming up into my office that the Attorney General's Office was considering -- was looking to discredit the New Jersey State Police and specifically Colonel Williams. They were even considering possible criminal sanctions against Colonel Williams for failing to turn over documents to the Office of Attorney General.

MR. CHERTOFF: Now again, to put it in context, on February 10th, this review team is announced, right?

LIEUTENANT COLONEL DUNLOP: Yes, sir.

MR. CHERTOFF: ..When does Colonel Williams leave as the superintendent?

LIEUTENANT COLONEL DUNLOP: I believe it was February 28th of 1999.

MR. CHERTOFF: Now, in March 1999, did you receive a request to turn over documents related to racial profiling to the First Assistant Attorney General Mr. Zoubek?

LIEUTENANT COLONEL DUNLOP: I did, yes, sir.

MR. CHERTOFF: And did you, in fact, do that?

LIEUTENANT COLONEL DUNLOP: Yes, we did, sir.

MR. CHERTOFF: Did you do that in a meeting?

LIEUTENANT COLONEL DUNLOP: Yes, sir.

MR. CHERTOFF: Tell us about that.

LIEUTENANT COLONEL DUNLOP: Well, originally, Colonel Fedorko and I-- I believe Colonel Fedorko was with me. I originally had gone down on February the 11th to the Attorney General's Office. At that point in time, I was going to give him some recommendations in reference to how we could change some policies and make some changes within the Division on how we were specifically conducting ourselves as to highway interdiction, drug interdiction. At that time, he mentioned to us that he wanted the production of documents.

MR. CHERTOFF: Was this February 11th or March 11th?

LIEUTENANT COLONEL DUNLOP: This was March 11th. I'm sorry. Were you taking me back until February? I misunderstood you. Were you taking me back to February?

MR. CHERTOFF: All right. I'll start at the beginning so we're clear. February 10th, the State Police Review Team is announced.

LIEUTENANT COLONEL DUNLOP: Yes, sir.

MR. CHERTOFF: And then February 28th, approximately, is when Colonel Williams leaves. With those as kind of milestones, when do you have your first meeting with Mr. Zoubek about turning over documents?

LIEUTENANT COLONEL DUNLOP: I believe that was at the March 11th meeting. Now, he may have requested documents from us, but not-- I remember specifically he was requesting certain documents on March the 11th.

MR. CHERTOFF: Now, was that at a face-to-face meeting?

LIEUTENANT COLONEL DUNLOP: Yes, sir.

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

LIEUTENANT COLONEL DUNLOP: I remember I was. I think Colonel Fedorko, and I don't remember who else was at that meeting at that time.

MR. CHERTOFF: And what was the conversation with Mr. Zoubek?

LIEUTENANT COLONEL DUNLOP: I think he was telling us where he was going in reference to this review team and that he needed certain documents. And it was my understanding he would probably follow it up with a memorandum or a letter to us explaining exactly what he wanted.

MR. CHERTOFF: So did you go back obtaining the documents he had requested?

LIEUTENANT COLONEL DUNLOP: Yes. We put the word out that it was-- You know, it was given to the people who had the responsibility for those records that we needed to collect them. And also, at the point in time, we decided that we would have our management review team be the one that actually handled these documents so that they could properly document them. A lot of the documents you'll see have bar codes on them. We wanted to make sure that every document that left the Division of State Police was accounted for.

MR. CHERTOFF: Now, a few days later, on March 15th, did you go back and meet with Mr. Zoubek or with Sergeant Gilbert?

LIEUTENANT COLONEL DUNLOP: I did, yes, sir.

MR. CHERTOFF: And did Sergeant Gilbert have something with him that was responsive to Mr. Zoubek's earlier request for documents?

LIEUTENANT COLONEL DUNLOP: That is correct, sir.

MR. CHERTOFF: What was that?

LIEUTENANT COLONEL DUNLOP: It was a blue binder.

MR. CHERTOFF: Now, was the content of the blue binder similar to the content of the red binder he had given you the year before?

LIEUTENANT COLONEL DUNLOP: It had some of the material -- the same substance type of material, yes.

MR. CHERTOFF: And did you look at the blue binder?

LIEUTENANT COLONEL DUNLOP: After he presented it to Paul Zoubek, I asked him to give me a copy so I could see what was in it. Yes, sir.

MR. CHERTOFF: Was there anything in the blue binder you were unfamiliar with from the previous year?

LIEUTENANT COLONEL DUNLOP: Well, there were documents that I had never seen before. Yes, sir. But basically, I didn't see any real revelations in what we were turning over.

MR. CHERTOFF: Is it fair to say that although there might have been individual documents you hadn't seen, the essential content, the core substance, was stuff you had seen before when you had gotten the red notebook?

LIEUTENANT COLONEL DUNLOP: That's correct, sir.

MR. CHERTOFF: What was Mr. Zoubek's reaction when he got this blue binder from Sergeant Gilbert?

LIEUTENANT COLONEL DUNLOP: At that meeting, I don't think there was any reaction whatsoever. I later on-- I did hear from Paul Zoubek in reference to the turning over of documents.

MR. CHERTOFF: What did you hear from him?

LIEUTENANT COLONEL DUNLOP: I received a phone call. I'm sure it was a phone call. I thought about this since I gave depositions. I don't think it was in person at all. It was a phone call, at which time he seemed very upset and emphasized the fact that we must turn over all documents to him.

MR. CHERTOFF: And what was your response?

LIEUTENANT COLONEL DUNLOP: I was a little taken aback, given the circumstances of the prior month, February into March. I was taken aback. I really believed that this material-- We weren't holding back anything. There was no one in the State Police who was holding back any material, and I was a little bit taken aback at his accusations and his demeanor.

MR. CHERTOFF: When you said accusations, did he in some sense indicate or suggest his belief that the State Police had withheld information from the Office of the Attorney General?

LIEUTENANT COLONEL DUNLOP: No. Maybe that was an unfair characterization. I'm going to say I was a little taken aback by his demeanor. I had a good working relationship with Paul Zoubek. I think he knew that we wouldn't hold anything purposely back on him. And as soon as I came back from our March 11th meeting, I remembered making sure that we had all these documents. Whatever we had, we were going to be delivering to the Office of the Attorney General.

MR. CHERTOFF: So the response to this callback from Mr. Zoubek, which you got after the blue binder was developed -- what did you do?

LIEUTENANT COLONEL DUNLOP: I'm sure I had further conversation with Sergeant Gilbert to ascertain, you know, what is this all about.

MR. CHERTOFF: And what did he tell you concerning his having furnished documents and any information -- the substance of the information over the years to Mr. Rover?

LIEUTENANT COLONEL DUNLOP: That the Attorney General's Office was fully aware of the substance of what was turned over in that binder.

MR. CHERTOFF: Now, you mentioned earlier-- We got into this because you mentioned a discussion about a May 20th meeting. Did there come a time that you had a conversation with Mr. Zoubek that led to your asking about this May 20th meeting?

LIEUTENANT COLONEL DUNLOP: Yes, there was.

MR. CHERTOFF: Tell us about that conversation.

LIEUTENANT COLONEL DUNLOP: This is where I started to hear information, and I had heard this before, that they were looking into discrediting the -- not only the State Police, but specifically the superintendent of State Police. But when this particular moment happened, the information came back in to me again. I think it was in the morning. I got on the phone with Paul Zoubek, and I basically told him that I was hearing this -- rumors that they were thinking about either charging Colonel Williams with obstruction of the administrative law or some type of criminal statute, possibly charging or indicting. I told Mr. Zoubek at that point in time, Paul, I wouldn't go there. You know, Attorney General Verniero had this information.

And I told him about this May 20th, 1997 meeting where Colonel Williams, Captain Blaker, and Sergeant Gilbert had gone down to the Office of

the Attorney General, had briefed the Attorney General specifically about the State Police concern that our consent rates were as high as or higher than the Maryland State Police consent rates.

MR. CHERTOFF: How did you know-- When you had conversation with Mr. Zoubek, how did you know about that May 20th meeting?

LIEUTENANT COLONEL DUNLOP: I had a previous conversation with Sergeant Gilbert in reference to that.

MR. CHERTOFF: And what about with Captain Blaker?

LIEUTENANT COLONEL DUNLOP: Yes.

MR. CHERTOFF: And did both of them confirm to you that they had-- Well, I don't want to put words in your mouth.

LIEUTENANT COLONEL DUNLOP: No.

MR. CHERTOFF: What did both of them tell you about this May 20th meeting?

LIEUTENANT COLONEL DUNLOP: Specifically, I got more information from Sergeant Gilbert, because I wanted to know what was there. And he had advised me that the Attorney General had been briefed at this meeting of May 20th. I had no physical evidence in front of me to say that that was, other than what I was getting-from Sergeant Gilbert. At some point in time, I did ask Captain Blaker if there was a meeting. And also what was very concerned to me was the fact that Sergeant Gilbert had mentioned that there was a statement made by the Attorney General that they would not enter into a consent decree. At the time, as I remember him saying, it was something about it would be drug down the Turnpike or something of this nature. My specific

questions to Captain Blaker was, is that true? Did he make those comments? And was there that meeting? And he confirmed it.

MR. CHERTOFF: And what did Captain Blaker tell you concerning -- had been discussed at the meeting concerning the Maryland statistics and the consent to search issue?

LIEUTENANT COLONEL DUNLOP: I didn't get into that with him. I was more interested in finding out if, in fact, there had been a meeting and if those comments had been made.

MR. CHERTOFF: And did he confirm to you in general that the consent to search issue had been disclosed at the meeting -- Captain Blaker?

LIEUTENANT COLONEL DUNLOP: Yes. Yes. The Maryland State Police issue was discussed. Yes, sir.

MR. CHERTOFF: Now, with this information you got from Captain Blaker and Sergeant Gilbert, that's when you made your call to Mr. Zoubek?

LIEUTENANT COLONEL DUNLOP: I had that information prior to my calling Paul Zoubek. That was what I based my conversation with Paul Zoubek on, the information that I had originally obtained from Gilbert and eventually confirmed with Blaker, yes, sir.

MR. CHERTOFF: And what did Mr. Zoubek say to you after you told him about this May 20th meeting?

LIEUTENANT COLONEL DUNLOP: Well, there was silence on the phone. I think this is the first time he was hearing about this. In fact, I originally didn't tell him about the comments which General Verniero had made. But after, I wasn't sure he was convinced that what I was telling him was accurate, and so I mentioned to him that there was even a comment made by the

Attorney General in reference to not signing a consent decree, that he'd be drug down the Turnpike. I didn't have the exact wording. That's when there was some silence on the phone. He said, "I'll get back to you."

MR. CHERTOFF: Did he get back to you?

LIEUTENANT COLONEL DUNLOP: He did, sir.

MR. CHERTOFF: About how much later?

LIEUTENANT COLONEL DUNLOP: This is a morning call. He was back-- I was guessing at maybe a half an hour to an hour. It could have been a little bit longer.

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

LIEUTENANT COLONEL DUNLOP: That he had checked with the Attorney General, and the Attorney General had checked with the people that would have been in the meeting, meaning the Deputy Attorney Generals, and it was my impression when I got off the phone that the Attorney General had no recollection of the meeting, let alone the verbage that was used.

MR. CHERTOFF: How was it left then in connection with Colonel Williams?

LIEUTENANT COLONEL DUNLOP: Well, at that point in time, Paul Zoubek told me that they weren't going there with Colonel Williams.

MR. CHERTOFF: Mearing what?

LIEUTENANT COLONEL DUNLOP: Well, to me, my impression was that it may have been true what I was hearing, that they were considering to either charge or indict or in some way discredit.

MR. CHERTOFF: But they had decided not to do that?

LIEUTENANT COLONEL DUNLOP: I think it was obvious after I had got off the phone call that that was not going to happen.

MR. CHERTOFF: Now, I want to step back for a second. This is an issue of some interest. Was it your understanding going into this call at this period in time that there was some -- that Mr. Zoubek was of the belief-- Let me just step back for a second. Mr. Zoubek was not involved in this issue of racial profiling, as far as you know, back in '99 and '98, right?

LIEUTENANT COLONEL DUNLOP: Yes, sir.

MR. CHERTOFF: Ninety-seven and ninety-eight, right?

LIEUTENANT COLONEL DUNLOP: Not to my knowledge, no.

MR. CHERTOFF: So, as far as you know, he was new -- coming into it basically new in the early part of '99, right?

LIEUTENANT COLONEL DUNLOP: Yes, sir.

MR. CHERTOFF: Was it your understanding that Mr. Zoubek was of the belief that the information in the blue notebook was new information? I don't mean the documents, but the actual core substance was new information that had not been previously given to the lawyers and the Attorney General's Office?

LIEUTENANT COLONEL DUNLOP: I'm going to ask you to repeat that one more time.

MR. CHERTOFF: Was it your belief-- I'm going to try it again. It's late. Was it your understanding that Mr. Zoubek believed the information in the blue notebook -- the content had not previously been disclosed to the Office of the Attorney General?

LIEUTENANT COLONEL DUNLOP: I can't say I was. I didn't have faith that he did not know.

MR. CHERTOFF: You didn't know whether Mr. Zoubek knew or didn't know about that earlier disclosure.

LIEUTENANT COLONEL DUNLOP: I think the assumption I had is that he probably would have known in the position that he was in, but I could have been very well wrong also.

MR. CHERTOFF: But in any case, the position that was being taken was that this material hadn't been turned over earlier, correct?

LIEUTENANT COLONEL DUNLOP: That's correct.

MR. CHERTOFF: And your position was that it had been turned over, right?

LIEUTENANT COLONEL DUNLOP: Well, after talking to Sergeant Gilbert, yes, I was convinced that had all been, over a period of time, disclosed to the Attorney General's Office.

MR. CHERTOFF: Now, let me ask you this: Would it be a serious matter if on something of significance the State Police withheld information from the Attorney General's Office?

LIEUTENANT COLONEL DUNLOP: Absolutely.

MR. CHERTOFF: I mean, that would be -- essentially be a violation of civilian control over the State Police, wouldn't it?

LIEUTENANT COLONEL DUNLOP: I'm sorry, sir.

MR. CHERTOFF: That would essentially amount to a violation of civilian control over the State Police, wouldn't it--

LIEUTENANT COLONEL DUNLOP: Yes, sir.

MR. CHERTOFF: --that the State Police held things back deliberately?

LIEUTENANT COLONEL DUNLOP: Yes, sir.

MR. CHERTOFF: And I take it it is understood that it's a fundamental obligation of the State Police that they have to report up the chain

of the command and be under the ultimate supervision of the Attorney General, right?

LIEUTENANT COLONEL DUNLOP: That is correct.

MR. CHERTOFF: Now, after this conversation with Mr. Zoubek about Colonel Williams, did you have any further conversations with him about what information was passed to the Attorney General's Office and when it got passed?

LIEUTENANT COLONEL DUNLOP: The only other conversation I remember having is, we had a meeting, and he showed us -- and I think Colonel Fedorko was with me -- he showed us the book and asked us if we had ever seen some of the material in there or we had ever seen that material before. I don't believe at that time, when that meeting occurred, that I had gotten a copy from Gilbert, but I'm not sure.

MR. CHERTOFF: When was this conversation with Mr. Zoubek where he asked you if you had seen the material in the book?

LIEUTENANT COLONEL DUNLOP: It was shortly after delivery of that -- of those documents.

MR. CHERTOFF: And do you remember what you answered him?

LIEUTENANT COLONEL DUNLOP: I had not seen some of the material that was in there, no. . . .

MR. CHERTOFF: Did you tell him that in general you were familiar with the content?

LIEUTENANT COLONEL DUNLOP: I didn't. In fact, as I recall, the question was put to us very quickly. I don't even remember looking through the book other than just to maybe glance over it.

MR. CHERTOFF: So you weren't able to form an opinion at that point as to whether you'd seen the material before, right?

LIEUTENANT COLONEL DUNLOP: No, some of the material I think I had seen. I had seen the Hinkle audit and some other material, but there was some documents in there that I had not seen.

MR. CHERTOFF: Well, what did you say to Mr. Zoubek?

LIEUTENANT COLONEL DUNLOP: I really don't recall what I said to him.

MR. CHERTOFF: Again, I want to be quite clear on this. Was there a point in time when you had an opportunity to look at the documents in the blue notebook and to conclude that, whether you had seen every document, essentially you were -- had been told about the substance of it in the previous year?

LIEUTENANT COLONEL DUNLOP: Yes. Yes, sir. I can't say that I was told about the substance of everything, but I was under the understanding from Sergeant Gilbert that the consent search rates, the stop rates, these things had all been discussed with the Attorney General's Office.

MR. CHERTOFF: And you had heard about this stuff in '98, right -- about the consent rates and things of that sort?

LIEUTENANT COLONEL DUNLOP: Yes. Yes, sir.

MR. CHERTOFF: Now, in fact, did you have discussions yourself with Mr. Zoubek over a period of time about consent search rates?

LIEUTENANT COLONEL DUNLOP: I did, sir.

MR. CHERTOFF: And during what period of time would that be?

LIEUTENANT COLONEL DUNLOP: We had started an audit on the Troop D, New Jersey Turnpike, and we were looking at a lot of issues, but I

think that we knew that our drug interdiction program was causing us problems, as it relates to consent searches, and also the pending *Soto* case, also. So there was conversations back and forth with Paul Zoubek in reference to a lot of items, not just consent searches, but stop rates, consent searches, how we were conducting our patrol activities on the Turnpike.

MR. CHERTOFF: And that would have been in 1998 as well as 1999?

LIEUTENANT COLONEL DUNLOP: That's correct. Yes, sir.

MR. CHERTOFF: Now, let me turn to you, Colonel Fedorko. Do you recall being asked by Mr. Zoubek for documents relating to racial profiling?

LIEUTENANT COLONEL FEDORKO: To give him documents or-

MR. CHERTOFF: Yeah. Or to obtain documents for him relating to racial profiling.

LIEUTENANT COLONEL FEDORKO: When I was acting superintendent, yeah.

MR. CHERTOFF: And did you ever have conversations with Mr. Zoubek or were you present during conversations with Mr. Zoubek concerning whether the State Police had withheld information about the statistics from the Attorney General's Office before 1999?

LIEUTENANT COLONEL FEDORKO: I don't remember being present. I don't know where I -- at what point I heard that. I don't know if I heard it from him or from Colonel Dunlop.

MR. CHERTOFF: What do you remember hearing about this issue?

LIEUTENANT COLONEL FEDORKO: That there was a concern that we weren't giving the Attorney General's Office what they were asking for.

MR. CHERTOFF: And did you do anything in response to that concern?

LIEUTENANT COLONEL FEDORKO: I told him that anything he asked for, as far as I was concerned, he would get.

MR. CHERTOFF: Did you ever look into the question or try to find out whether anybody had withheld information from the Attorney General's Office?

LIEUTENANT COLONEL FEDORKO: No, because it's such a broad statement. I mean, I'd have to ask every trooper, you know, did you ever not give something to the Attorney General's Office that they asked for. No, I didn't do that.

MR. CHERTOFF: Did you ever talk to Sergeant Gilbert about it?

LIEUTENANT COLONEL FEDORKO: No.

MR. CHERTOFF: Did you talk to Captain Blaker about it?

LIEUTENANT COLONEL FEDORKO: No.

MR. CHERTOFF: As between the two of you, just to understand the situation at the time, who would have been principally responsible for dealing with the Attorney General's Office on this issue, you or Colonel Dunlop?

LIEUTENANT COLONEL FEDORKO: Well, Colonel Dunlop was in charge of the audit, if that's what you're talking about.

MR. CHERTOFF: So he was the person you would have looked to, to basically deal with the issue of these statistics and when they were turned over?

LIEUTENANT COLONEL FEDORKO: I think that's accurate.

MR. CHERTOFF: Now, you mentioned, Colonel Dunlop, something about a Troop D audit. Would you explain what the Troop D audit was?

LIEUTENANT COLONEL DUNLOP: Yes, sir. Shortly after the shooting, we, as a matter of routine looking into the actual shooting case itself, we would look at the patrol activities of the troopers that were involved, which we initiated through the Internal Affairs Bureau. From there, we made a decision that not only were we going to look at those troopers that were involved in the actual shooting, but that given the allegations that were being made and some of the information that we were developing, that we also wanted to look at the patrol activities of-- We started out with the Cranbury Station.

MR. CHERTOFF: Now, when you say patrol activities, was this particularly related to the allegation of falsification of racial identification on the patrol logs and/or the radio logs.

LIEUTENANT COLONEL DUNLOP: Yes. The audit was based -- or what we were trying to determine in reference to the audit was that if there was any selective enforcement which was based on race or on ethnicity being performed on the New Jersey Turnpike.

MR. CHERTOFF: Was the audit designed generally to compare statistics, or was it more narrowly focused on the issue of falsification, trying to see if people were actually falsifying forms?

LIEUTENANT COLONEL DUNLOP: Right, statistics played some part in it to identify-- It was used as an indicator as to some of the area that we should look at, but more specifically it was looking at falsification of reports, which would be patrol logs, radio logs, summonses, warnings, and that type of thing.

MR. CHERTOFF: Who made the decision to initiate this audit?

LIEUTENANT COLONEL DUNLOP: That was my decision.

MR. CHERTOFF: And why did you make that decision?

LIEUTENANT COLONEL DUNLOP: I thought it was something that had to be done. I also had conversations with Paul Zoubek, and I know that he was interested in the *Pedro Soto* appeal as to -- if the representations that were being made to the court were accurate.

MR. CHERTOFF: Now, who did you assign to be the point person on this audit?

LIEUTENANT COLONEL DUNLOP: That would have been Lieutenant Sachetti.

MR. CHERTOFF: And what were his instructions?

LIEUTENANT COLONEL DUNLOP: Well, first of all, we had a couple discussions as to methodology, how would we properly go about that. And the reason I picked Lieutenant Sachetti was because he had experience out on the New Jersey Turnpike in Troop D, and his character and integrity were unquestionable. So I knew he could get to the bottom of this and that he could figure out a good methodology that we could utilize. And he did this in conjunction with the people in the Internal Affairs Bureau.

MR. CHERTOFF: And what was the plan or the methodology that was set up to do this audit?

LIEUTENANT COLONEL DUNLOP: We broke it into three phases. The first phase would be to go -- and we initiated this audit at Cranbury Station. Phase I would be to go look and pull all the records, all the patrol charts, as I said, the radio logs, compare them against summonses issued,

warnings issued, the warning issue log, the summons issue log, the daily activity logs, and to see if there was any information that showed discrepancies.

MR. CHERTOFF: And when you say discrepancies, you mean the radio log might say someone was White and the patrol log would say they were not White or something of that sort?

LIEUTENANT COLONEL DUNLOP: Along with anything else. It could be that a summons was issued, but it's on the patrol log, but it's not on the summons issued log. It was any type of discrepancy between any of the patrol related documents that we had available to us, yes.

MR. CHERTOFF: Okay. That was Phase I, right?

LIEUTENANT COLONEL DUNLOP: Phase I, yes, sir.

MR. CHERTOFF: What was Phase II?

LIEUTENANT COLONEL DUNLOP: Phase II, any troopers that we identified that had discrepancies that met a certain benchmark, we would then go out and conduct an investigation, which would include actually going out and talking to the motorist that was stopped, asking them -- first of all, confirming the race, finding out if they were indeed stopped on the New Jersey Turnpike, was a consent search asked for, all the specific questions that we needed to verify what was on the documentation -- the patrol activity documentation of the trooper. . . .

MR. CHERTOFF: And what was Phase III?

LIEUTENANT COLONEL DUNLOP: Phase III, the Internal Affairs Bureau came to us and Lieutenant Sachetti and said, "We really need a way to make sure that nobody fell through the cracks." In other words, from Phase I and Phase II, did we miss any troopers that we shouldn't have missed by just -- the looking at documentations. In other words, was there anybody out

there that was so good at maybe misrepresenting the facts in the patrol logs and radio logs that we may have missed them. So the suggestion was made to use a firm that dealt in statistics, specifically. And we found a firm by the name of Eco-Stat out of Metuchen, who gave us a statistically valid way that we could conduct these audits that wouldn't be quite as time consuming as what they were doing on Phase II.

MR. CHERTOFF: Is it fair to say that Phase I and Phase II were directed at finding situations where you can actually catch a discrepancy between the documents, whereas Phase III was designed to catch people who may be falsifying, but they're good at it, so they're consistent when they falsify?

LIEUTENANT COLONEL DUNLOP: No, sir. That would have been Phase III.

MR. CHERTOFF: That's right. That's Phase III.

LIEUTENANT COLONEL DUNLOP: Yes, Phase III. Phase II was to go out and actually conduct an investigation.

MR. CHERTOFF: Off of Phase I?

LIEUTENANT COLONEL DUNLOP: Off of Phase I, sir.

MR. CHERTOFF: So Phase III is the one that's designed to broaden out and capture people who may be very good at falsifying and therefore can falsify consistently?

LIEUTENANT COLONEL DUNLOP: Yes, sir.

MR. CHERTOFF: Now also, did you, at a point in time, move from Cranbury to include Moorestown as well.

LIEUTENANT COLONEL DUNLOP: We did. Yes, sir.

MR. CHERTOFF: Approximately when was that?

LIEUTENANT COLONEL DUNLOP: I'm going to say within several months we moved from Cranbury to Moorestown.

MR. CHERTOFF: And did this audit -- this Troop D audit commence sometime in the summer of 1998?

LIEUTENANT COLONEL DUNLOP: That's correct. Yes, sir.

MR. CHERTOFF: Were you getting regular updates?

LIEUTENANT COLONEL DUNLOP: Yes, sir, I was.

MR. CHERTOFF: How regular?

LIEUTENANT COLONEL DUNLOP: I would say in the beginning on a weekly basis, and then after that it slowed down.

MR. CHERTOFF: Were you communicating with Mr. Zoubek about that -- about the updates?

LIEUTENANT COLONEL DUNLOP: Yes, sir. We were.

MR. CHERTOFF: How did you do that? In person or by telephone?

LIEUTENANT COLONEL DUNLOP: Mostly by telephone. We did have, as I remember, there was two specific meetings where we gave them a thorough briefing as to where we stood.

MR. CHERTOFF: Yeah. We'll come to that in a second. But I just wanted to ask you this: Was this Troop D audit separate and apart from the investigation of falsification by Troopers Hogan and Kenna?

LIEUTENANT COLONEL DUNLOP: It was, yes, sir.

MR. CHERTOFF: Did there come a point in time that in September of 1998 that you attended a meeting at which Lieutenant Sachetti identified at least some individual troopers as to where there were discrepancies in the paperwork?

LIEUTENANT COLONEL DUNLOP: Yes, sir.

MR. CHERTOFF: And what was the decision made about how to handle that?

LIEUTENANT COLONEL DUNLOP: Now, are we talking about gross -- what we looked at as possibly gross violations--

MR. CHERTOFF: Yeah.

LIEUTENANT COLONEL DUNLOP: --or discrepancies. That we were to continue with a complete and thorough investigation, and it would be turned over to the Attorney General's Office for review.

MR. CHERTOFF: Did there come a point again in this September meeting that a decision was made to pursue any significant cases of discrepancies by doing a more focused investigation with respect to those troopers?

LIEUTENANT COLONEL DUNLOP: This is September of '98?

MR. CHERTOFF: Yeah.

LIEUTENANT COLONEL DUNLOP: I can't say specifically it was September of '98. At some point in time, we knew we had to look at these additional troopers, yes.

MR. CHERTOFF: Now, you said there was a meeting with -- a couple of meetings with Mr. Zoubek you remembered. Was there a meeting in December of 1998?

LIEUTENANT COLONEL DUNLOP: I don't remember any meeting in December of '98. I'm not saying that there could not have been. I remember, from looking at my calendar, there was one in October, and I think it was October 29th. And we also provided him a briefing on, I know, on February 10th which was more comprehensive.

MR. CHERTOFF: All right. Tell us about the October 29th meeting. Where was it and who attended?

LIEUTENANT COLONEL DUNLOP: This would have been down at the Division of Criminal Justice.

I'd like to look at my calendar just to make sure, if I could?

MR. CHERTOFF: Sure, go ahead.

LIEUTENANT COLONEL DUNLOP: On my calendar, I have a meeting listed with Deputy Director Debbie Stone, Prosecutor Jim Gerrow, Chuck Grinnell, reference Hogan and Kenna. I can't say specifically if Paul Zoubek was there on that particular meeting. And that may have sent it more so in the Hogan and Kenna case than the Troop A -- Troop D audit.

MR. CHERTOFF: Okay. That would have been in October of 1998.

LIEUTENANT COLONEL DUNLOP: That's correct. Yes.

MR. CHERTOFF: And the individuals you identified, Stone, Grinnell, and Gerrow, were prosecutors involved in the Hogan and Kenna case, right?

LIEUTENANT COLONEL DUNLOP: That's correct. Yes.

MR. CHERTOFF: Did you have a meeting in December of '98 with respect to the audits?

LIEUTENANT COLONEL DUNLOP: No, sir. I have no indication on my calendar that I had a meeting scheduled in reference to this.

MR. CHERTOFF: Well, let me refresh your memory. On Page 137 of your deposition, a question was asked about whether you remember meeting on December 4th with Colonel Williams and others in the State Police about the audit in early December '98. And then the question is: "And they were provided

to who at the Attorney General's Office?" And you answered: "Well, we had several briefings with Paul Zoubek as to where we were with the audit. I remember on one specific meeting where Paul Zoubek, I think it was Debbie Stone, Meddis, and Sachetti, and there were other people present, where we discussed where we were with audits. The audits were taking a lot longer than I think some people wanted them to take, but they had to be done." Do you remember giving that answer?

LIEUTENANT COLONEL DUNLOP: Absolutely. Yes, sir.

MR. CHERTOFF: Does that remind you that you had more than one meeting with Mr. Zoubek about this issue?

LIEUTENANT COLONEL DUNLOP: Yes, sir.

MR. CHERTOFF: And is it also fair to say, to kind of set the time frame, that you had a meeting on February 10th, which was your last meeting about this issue with Mr. Zoubek?

LIEUTENANT COLONEL DUNLOP: That's correct. On February 10th, I think, is when we actually turned over some documents to Paul Zoubek.

MR. CHERTOFF: So is it fair to say that there was at least one meeting earlier than February 10th, where you would have talked about the audits with him?

LIEUTENANT COLONEL DUNLOP: That's correct. Yes, sir.

MR. CHERTOFF: And again, was there-- What was the nature of that discussion in that earlier meeting?

LIEUTENANT COLONEL DUNLOP: It would have been a briefing as to where we were in the Troop D audit. And at that point in time-- It may have been at that point in time, when we had mentioned that we had additional people that we wanted to look at.

MR. CHERTOFF: When you say additional people, you mean potential subjects of investigation for misconduct -- for falsification.

LIEUTENANT COLONEL DUNLOP: That's correct. And if I used the date December 4th before I testified, I would have reviewed my documents, and somewhere, that date would have come out, I'm sure. And I'm sure, if it's important, I can still look through and try to find out that specific date.

MR. CHERTOFF: All right. Well, let's put that to one side.

You'd agree with me anyway that sometime before February, and before you completed your work, you had a conversation with Mr. Zoubek where you talked about where the audit was, right?

LIEUTENANT COLONEL DUNLOP: Yes, sir.

MR. CHERTOFF: And in the course of the conversation, I think you said a moment ago, there were other people that had to be looked at in connection with discrepancies, right?

LIEUTENANT COLONEL DUNLOP: That's correct, yes.

MR. CHERTOFF: When you say other, you mean other than Hogan and Kenna.

LIEUTENANT COLONEL DUNLOP: That's correct.

MR. CHERTOFF: And did you tell Mr. Zoubek at this point that the State Police was conducting an internal review of other cases to see whether there were other people who should be reviewed for possible criminal investigation?

LIEUTENANT COLONEL DUNLOP: Yes, sir. He was well aware of that from my conversations in telephone updates that we were continuing this audit and what we were coming up with.

MR. CHERTOFF: Now, was there any, in this earlier meeting -- any urgency or any request that came from Mr. Zoubek to do it as quickly as possible?

LIEUTENANT COLONEL DUNLOP: Not that I recall. I think we all wanted to do it as thoroughly as we could, and we weren't going to rush this thing to get it done.

MR. CHERTOFF: Now, in February of '99 -- February 10th, by coincidence, you actually turned over some results of the audit to Mr. Zoubek, right?

LIEUTENANT COLONEL DUNLOP: That's correct. And I'm just going to refer-- May I just refer--

MR. CHERTOFF: Sure.

LIEUTENANT COLONEL DUNLOP: --to make sure that that's--
Yes, sir, that's correct.

MR. CHERTOFF: And by coincidence, that's the same date that the State Police Review Team was announced.

LIEUTENANT COLONEL DUNLOP: That's correct. I believe ours was in the morning, and later on, we learned of the review team.

MR. CHERTOFF: So when you went in in the morning, was there any discussion about this State Police Review Team that was going to be announced in the afternoon?

LIEUTENANT COLONEL DUNLOP: No, sir.

MR. CHERTOFF: What was the discussion on February 10th where you handed over this material?

LIEUTENANT COLONEL DUNLOP: The discussion was where we were in reference to the Troop D audit, that we still had a lot more to go.

When I left that meeting, I was under the impression that they were very satisfied with the way the audit was being conducted, the methodology, the thoroughness of it, and that we were going to continue with the audit.

MR. CHERTOFF: Now, did there-- Now, when you say you were going to continue with the audit, at this point you were under way with the audit in Cranbury and Moorestown, right?

LIEUTENANT COLONEL DUNLOP: That's correct.

MR. CHERTOFF: Do you remember what phase you were at in Cranbury?

LIEUTENANT COLONEL DUNLOP: I don't. I'm pretty sure we probably completed Phase II. We had probably started Phase III. And then we wanted to move on to Moorestown.

MR. CHERTOFF: Now, in March, did you make a decision you wanted to now move on to Newark, which is the third barracks?

LIEUTENANT COLONEL DUNLOP: Yes, sir. I think that was always our plan. We wanted to do it incrementally, so -- because of the resources that we had.

MR. CHERTOFF: And did you assign additional people in March of 1999 to expand the amount of investigative resources that would be expended on this Troop D audit?

LIEUTENANT COLONEL DUNLOP: We did, yes, sir.

MR. CHERTOFF: And again, this is an audit principally focused on falsification, right?

LIEUTENANT COLONEL DUNLOP: Yes, sir.

MR. CHERTOFF: Is it also fair to say that at some point along the line, you actually told Lieutenant Sachetti that you wanted to make sure he kept

his focus on discrepancies that had to do with racial profiling rather than getting meshed in other kinds of discrepancies that might be more trivial?

LIEUTENANT COLONEL DUNLOP: That's correct. That happened at a meeting in Colonel Fedorko's office with IAB. And I can see it was starting to go off on a tangent. And we were going to lose valuable resources of what we needed to focus on.

MR. CHERTOFF: Now, also in this period in early '99, did there come a point that a decision was made to refer over to the Division of Criminal Justice approximately 10 cases of troopers where there was suspected falsification of records?

LIEUTENANT COLONEL DUNLOP: I'm just going to have to ask you to begin-- I don't understand the date.

MR. CHERTOFF: I'm sorry. Sometime in early '99--

LIEUTENANT COLONEL DUNLOP: Yes.

MR. CHERTOFF: --was a referral made from Internal Affairs to the Division of Criminal Justice of approximately 10 cases relating to troopers who had allegedly falsified records?

LIEUTENANT COLONEL DUNLOP: To my understanding, that's correct. But I did not have the Internal Affairs Bureau, so that would have come under Colonel Fedorko. But I had information, yes, that it was being sent down to the Attorney General's Office for criminal review.

MR. CHERTOFF: Well, Colonel Fedorko, do you recall, again in this time period in early '99, that approximately 10 cases, identified through the audit, had been sent down to Criminal Justice for intentional criminal investigation review based on discrepancies that had been found in the audit?

LIEUTENANT COLONEL FEDORKO: We-- I remember that we had sent 10 names down to the Attorney General's Office, and they were going to take a look at it and decide what to do.

MR. CHERTOFF: Now, those are 10 names in addition to Hogan and Kenna, right?

LIEUTENANT COLONEL FEDORKO: I'm not sure.

MR. CHERTOFF: Do you know, Colonel Dunlop, whether the 10 include or exclude Hogan and Kenna?

LIEUTENANT COLONEL DUNLOP: I do not know.

LIEUTENANT COLONEL FEDORKO: I thought it included them, but I'm not positive.

MR. CHERTOFF: Well, now, let me ask you this, just so we understand the process: The way it would typically work is the audit would identify discrepancies, right?

LIEUTENANT COLONEL DUNLOP: Yes, sir.

MR. CHERTOFF: And then there would be an investigation -- a more specific, focused investigation internally to see if it rose to the level that would require referral over to Criminal Justice, right?

LIEUTENANT COLONEL DUNLOP: Yes, sir, but also to uncover administrative problems that we may have, also.

MR. CHERTOFF: And then if, after this focused investigation, you seem to rise to the level of possible criminal misconduct, you would send it over to the Attorney General's Office, and they would do an investigation and make a judgment about whether this warranted an indictment, correct?

LIEUTENANT COLONEL DUNLOP: Yes, sir. They would make a prosecutorial review of that case.

MR. CHERTOFF: All right. So I want to just establish a state of affairs as of, approximately, March of 1999. Is it fair to say approximately 10 cases have been referred over involving falsification for possible criminal prosecution, correct?

LIEUTENANT COLONEL DUNLOP: Yes, sir. The only thing I would not like you to hold me to is the exact date. I don't know the exact date, and I can't say, specifically, if it was March of '99.

MR. CHERTOFF: Okay. Is that-- Would it be -- have been by March of 1999, do you think?

LIEUTENANT COLONEL DUNLOP: I believe so, but I don't like to go into this supposition if we could actually have the actual dates. It would be on record with Internal Affairs as to the exact date that they were transmitted over to Internal Affairs.

MR. CHERTOFF: All right. Putting aside the date, you remember the transmission over, correct?

LIEUTENANT COLONEL DUNLOP: Yes. I knew that they were sending them down. Yes, sir.

MR. CHERTOFF: Also, as of March, you had expanded the scope of Lieutenant Sachetti's audit, and he had 30 troopers, approximately, who were going to be working on the Troop D audit, including Newark, right?

LIEUTENANT COLONEL DUNLOP: Yes, sir.

MR. CHERTOFF: Now, did there come a point in time from March that you learned from Lieutenant Sachetti that he wasn't sure what he should do next?

LIEUTENANT COLONEL DUNLOP: Yes, sir, there did.

MR. CHERTOFF: Tell us about that.

LIEUTENANT COLONEL DUNLOP: There came a point in time in the spring of '99 where he came to me and also to Lieutenant Colonel Fedorko and said that his people just didn't have enough work to do to justify them being there.

MR. CHERTOFF: Well, was it your understanding that there wasn't enough work to be done in completing the audits to use up the manpower you had assigned to it?

LIEUTENANT COLONEL DUNLOP: No, I think what it was, was he was looking for direction as to where we should go with these audits.

MR. CHERTOFF: And what-- Did he come and talk to you about it?

LIEUTENANT COLONEL DUNLOP: He did. We also had a meeting about it in Lieutenant Colonel Fedorko's office, also, at some point in time.

MR. CHERTOFF: What direction did you give Lieutenant Sachetti?

LIEUTENANT COLONEL DUNLOP: When I was asked this at deposition, I didn't have a lot of recollection of it, but I have given it a lot of thought since that time. And I remember that the people from IAB were in -- at a meeting with us. And we were discussing this. And the fact was brought up that we have these people that really didn't have enough work to do, where were we heading with this thing.

I guess the big question was, are we going to continue with Phase III with Cranbury, Moorestown, and then also go into Newark with our Phase III. And at that time, I had discussions with Lieutenant Colonel Fedorko, and we were going to check with the Attorney General's Office as to where this should go.

MR. CHERTOFF: Who checked with the Attorney General's Office, you or Colonel Fedorko?

LIEUTENANT COLONEL DUNLOP: That would have been Colonel Fedorko.

MR. CHERTOFF: Colonel Fedorko, did you check with the Attorney General's Office?

LIEUTENANT COLONEL FEDORKO: I believe I talked to Mr. Zoubek on that.

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

LIEUTENANT COLONEL FEDORKO: I think, initially, he told us - He told me to hold off for a while, which we did. And then at some point, I think within a month, we sent the troopers back in increments.

MR. CHERTOFF: Well, when was this brought up, Colonel Dunlop? Is it fair to say it was brought up in May of 1999, this question by Lieutenant Sachetti about what he should do with these 30 people?

LIEUTENANT COLONEL DUNLOP: It was in the spring. I would say, probably April or May, somewhere in that vicinity.

MR. CHERTOFF: Actually, wasn't there a specific conversation you had on May 20th with Lieutenant Sachetti at the gym where you both work out where he said to you, "I'm not sure where we're going with this. I need some guidance."

LIEUTENANT COLONEL DUNLOP: Yes, sir. At that time, I think I stipulated to the date. I can't say with great certainty that it was that certain date, but if he says that that was the date, then I'm sure it was.

MR. CHERTOFF: Was it before or after the interim report, which was issued on April 20th -- was issued?

LIEUTENANT COLONEL DUNLOP: It was after the interim report.

MR. CHERTOFF: All right. So the interim report had been issued, correct?

LIEUTENANT COLONEL DUNLOP: That's correct.

MR. CHERTOFF: Did you know the interim report, by the way, made reference to the fact that there was going to be -- or there was an ongoing audit with respect to falsification?

LIEUTENANT COLONEL DUNLOP: Yes, sir.

MR. CHERTOFF: Okay. So that was actually something that was in the interim report, right?

LIEUTENANT COLONEL DUNLOP: That's correct.

MR. CHERTOFF: But as of your conversation with Lieutenant Sachetti in April or May, after the report came out, the Troop D audit was in suspense. Is that fair to say?

LIEUTENANT COLONEL DUNLOP: That's fair to say.

MR. CHERTOFF: It was awaiting further instructions, right?

LIEUTENANT COLONEL DUNLOP: Yes, the calls that we were making on Phase III -- we weren't getting responses back to -- at one of the stations. I don't even remember if it was Cranbury or whatever. But either Phase II or Phase III-- When we were sending letters out, we just weren't getting responses back.

MR. CHERTOFF: Well, here's my question: Did you believe that the audit ought to be completed?

LIEUTENANT COLONEL DUNLOP: Yes, sir.

MR. CHERTOFF: And did you say that to Lieutenant Colonel Fedorko -- that it should be completed?

LIEUTENANT COLONEL DUNLOP: I don't think I specifically said that it should be completed. I think that what we were waiting to hear from is the direction that the Attorney General's Office wanted us to go. The interim report had been released. I think it was obvious to myself, and I don't want to speak for Lieutenant Colonel Fedorko, but I think it was obvious that -- to me, at least, that in a matter such as what we were doing, that we needed to run this past the Attorney General's Office.

MR. CHERTOFF: So we understand it, you have-- You believe-- You initiated this order, right?

LIEUTENANT COLONEL DUNLOP: That's correct.

MR. CHERTOFF: You-- Going into 1999, you expected that there would be three phases and that it would cover all the barracks of Troop D, right?

LIEUTENANT COLONEL DUNLOP: That's correct.

MR. CHERTOFF: You assigned additional resources in March to allow the order to be completed, correct?

LIEUTENANT COLONEL DUNLOP: That's correct.

MR. CHERTOFF: Sometime after the interim report is issued, you're approached by Lieutenant Sachetti, who tells you he's not sure what direction to go in -- whether he should continue with the audit, right?

LIEUTENANT COLONEL DUNLOP: That's correct.

MR. CHERTOFF: You then have a--

LIEUTENANT COLONEL DUNLOP: Not that he shouldn't-- But where should we go next. Where are we going next?

MR. CHERTOFF: But the audit was not completed at that point.

LIEUTENANT COLONEL DUNLOP: No, it was not. No, sir.

MR. CHERTOFF: So you say you're going to get further guidance for him, correct?

LIEUTENANT COLONEL DUNLOP: That initial one-- I think I had already spoken to Colonel Fedorko in reference to this, because he had-- I believe he had even mentioned to me, earlier on-- And I think there was some dialogue, too, if I'm not mistaken, with Colonel Fedorko and his IAB people with reference to the same matter. I believe that he was handling -- you know, he was discussing this with the Attorney General's Office -- as to where we were going to go.

And one of my discussions with Colonel Fedorko was that we're going to see what the Attorney General's Office -- where they want us to go.

MR. CHERTOFF: Well, Colonel Fedorko, what did you hear from the Attorney General's Office about what -- where they wanted you to go with this?

LIEUTENANT COLONEL FEDORKO: Well, I think what was said to me by Mr. Zoubek was that-- I had asked him, "We have these 30 troopers who are sitting around doing nothing, and what's the next step here?" I told them that the majors of the other sections are asking for their people back. And he said, "Well, just hold off a little while, and I'll let you know."

MR. CHERTOFF: Did he tell you why he wanted you to hold off?

LIEUTENANT COLONEL FEDORKO: No.

MR. CHERTOFF: Now, were you also aware of the fact that in the interim report, there's a specific discussion about the fact that there's an ongoing examination of the issue of falsification?

LIEUTENANT COLONEL FEDORKO: I think I remember.

MR. CHERTOFF: And that's, of course, the Troop D audit we're talking about, right?

LIEUTENANT COLONEL FEDORKO: Right. Correct.

MR. CHERTOFF: So a little bit of time goes by, and you finally get guidance from Mr. Zoubek, correct?

LIEUTENANT COLONEL FEDORKO: Correct.

MR. CHERTOFF: What does he tell you?

LIEUTENANT COLONEL FEDORKO: About the Troop D audit?

MR. CHERTOFF: Yeah.

LIEUTENANT COLONEL FEDORKO: Now, I'm a little confused here. Are you talking about after the phone call?

MR. CHERTOFF: After he told you, "Wait for a while, I'll get back to you," does he get back to you?

LIEUTENANT COLONEL FEDORKO: We had talked about it at some point, and I believe he told me to start sending the troopers back.

MR. CHERTOFF: And did you understand that to mean, basically, suspend the audit permanently?

LIEUTENANT COLONEL FEDORKO: Yeah. Yes.

MR. CHERTOFF: Did you tell that to Colonel Dunlop?

LIEUTENANT COLONEL FEDORKO: I believe I did. Yeah.

MR. CHERTOFF: And, Colonel Dunlop, did you start sending the people back?

LIEUTENANT COLONEL DUNLOP: We did start to send people back, yes.

MR. CHERTOFF: Now, at this point, were there ongoing-- Within this order, were there ongoing examinations of the discrepancies that had to be finished up and a conclusion reached about?

LIEUTENANT COLONEL DUNLOP: Yes, the discrepancies were going to be handled by the Internal Affairs Bureau to conduct an investigation of the discrepancies.

Understand, what our purpose of that, originally, was to see if there was selective enforcement or racial profiling, if you would like to say, in regards to the patrol activities of the New Jersey Turnpike. We knew, at the time, that we would probably come up with some administrative violations. A lot of these cases were administrative violations -- violations of the rules and regulations and SOPs of the Division.

Other ones that we sent down to the Attorney General's Office, subsequently, focused more on possible discrepancies with regard to race.

MR. CHERTOFF: Well, let me ask you this: When you're-- When were you finally told to send troopers home?

LIEUTENANT COLONEL DUNLOP: I think we were told to send the people that we had augmented to the IAB sometime in May, I would think.

MR. CHERTOFF: All right. And that's May of 1999, right?

LIEUTENANT COLONEL DUNLOP: That's correct, yes, sir.

MR. CHERTOFF: And was anything further done for the rest of the year with respect to the Troop D audit?

LIEUTENANT COLONEL DUNLOP: Not to my knowledge. I really backed off of this thing, because now it was an IAB -- more of an IAB operation, strictly.

MR. CHERTOFF: Well, were any conclusions drawn? Did you get a report or something that kind of reported on the results of what had been done since February?

LIEUTENANT COLONEL DUNLOP: No, sir. In fact, earlier on, I remember-- There was a discussion I had with Sachetti about a final report. And I think he asked me, you know, "Should I do a final report?" My answer to him was no, because we weren't done at that point in time.

MR. CHERTOFF: You weren't done, but you had been told not to continue.

LIEUTENANT COLONEL DUNLOP: That's correct.

MR. CHERTOFF: Did you ever have any discussion with anybody from the Office of the Attorney General as to why they just suspended it without it being completed?

LIEUTENANT COLONEL DUNLOP: Well, I think once Paul Zoubek became the acting attorney general, I didn't have much conversation with him. That would have been through Colonel Fedorko, who, when he was the first assistant, I had a lot of conversations -- a lot of back-and-forth. But I think protocol-- I just felt that I should back off this thing and let most of the dialogue go through the acting superintendent.

MR. CHERTOFF: What about you, Colonel Fedorko? Did you talk to Mr. Zoubek afterwards about, you know, the need to achieve some closure with respect to this Troop D audit?

LIEUTENANT COLONEL FEDORKO: No, I didn't.

MR. CHERTOFF: Why not?

LIEUTENANT COLONEL FEDORKO: Well, he was the attorney general. I didn't question it. If he told me to do something, I did it.

MR. CHERTOFF: Now, would you agree with me--

LIEUTENANT COLONEL FEDORKO: That's not to say--

Excuse me for a minute.

It's not to say if I thought something was wrong I wouldn't have said something to him. I would have, but-- This issue was a done deal.

MR. CHERTOFF: Well, is it-- Did there ever come a point in time that either of you know of a further report, or final report, was filed or submitted by Lieutenant Sachetti?

LIEUTENANT COLONEL FEDORKO: I don't remember.

LIEUTENANT COLONEL DUNLOP: As of my retirement, there had not been.

MR. CHERTOFF: You-- As of October 2000, you were both gone, right?

LIEUTENANT COLONEL FEDORKO: Yes.

LIEUTENANT COLONEL DUNLOP: That's correct.

LIEUTENANT COLONEL FEDORKO: In '99 I was gone.

MR. CHERTOFF: So, if I were to tell you that finally, in October of 2000, something was submitted, you would not have any firsthand knowledge, because you would have been gone by then, right?

LIEUTENANT COLONEL FEDORKO: Correct.

LIEUTENANT COLONEL DUNLOP: Yes.

MR. CHERTOFF: And you'd have no way of explaining why there would be a year delay in doing that, right?

LIEUTENANT COLONEL FEDORKO: Correct.

MR. CHERTOFF: Now, let me ask you this, Colonel Dunlop: Would you agree with me that also as of May of 1999, when the Troop D audit

was suspended, there were a lot of administrative violations out there that were basically left hanging without a clear and decisive answer?

LIEUTENANT COLONEL DUNLOP: That is correct.

MR. CHERTOFF: And when you say-- These would be administrative violations relating to individual troopers, right?

LIEUTENANT COLONEL DUNLOP: Yes, sir.

MR. CHERTOFF: Now, would you agree with me that that presents kind of a problem, because you have some troopers who are being administratively disciplined for doing things wrong, you have investigations of other troopers for potential problems, but you never achieve closure on the open cases. So some people are getting administratively disciplined for things that other people aren't getting administratively disciplined.

LIEUTENANT COLONEL DUNLOP: That's correct. It was a large problem.

MR. CHERTOFF: Did any-- Did either of you ever raise that issue with Mr. Zoubek and say, "Look. We've got to achieve closure."

LIEUTENANT COLONEL DUNLOP: Well, if I can speak on that. If you remember, the selection for a superintendent had started almost immediately after Colonel Williams had been terminated. I think we were under the impression that we would have a new superintendent fairly quickly. It didn't happen. In fact, we didn't get one until November. But I think in our discussions that I had with Colonel Fedorko is that the proper thing to do with this is to allow the new superintendent to make a decision as to where he wants to go forward.

MR. CHERTOFF: I'm just going to-- I want to make sure I understand, and then I'm going to move on to something else.

The way that the situation with the audits operates is, as of March you enhanced the audits. Mr. Zoubek had told you that the -- he was pleased with the work that had been done in February. There's then a pause where there doesn't seem there's any direction. Lieutenant Sachetti asks for direction. Ultimately, you wind up getting direction from the Attorney General's Office to suspend the work on Troop D -- on the Troop D audits and send the augmented troopers back to their duties.

Is that a fair summary of what happened?

LIEUTENANT COLONEL FEDORKO: That's my recollection.

LIEUTENANT COLONEL DUNLOP: Yes.

MR. CHERTOFF: Whatever happened to those cases -- those 10 cases that were referred over to Criminal Justice? Did any of those, to your knowledge, get -- result in indictment, or were they sent back for administrative discipline?

Colonel Dunlop.

LIEUTENANT COLONEL DUNLOP: To my knowledge, they were sent back. Specifically, I think Colonel Fedorko could answer that better.

MR. CHERTOFF: Colonel Fedorko, do you know were they sent back or was anybody indicted?

LIEUTENANT COLONEL FEDORKO: I don't think anybody was indicted, but my understanding was, and this is-- I think I was retired by then, but somewhere along the line, I had heard that they had come back to the State Police to be handled administratively.

MR. CHERTOFF: Is it fair to say then that the only cases involving falsification relating to racial profiling, as far as you know, were ultimately prosecuted were Hogan and Kenna?

LIEUTENANT COLONEL DUNLOP: Yes, sir.

MR. CHERTOFF: Let me turn to one last thing -- two last things.

In November 1998, Colonel Dunlop, were you present at a meeting regarding whether certain documents should be turned over to the Department of Justice?

LIEUTENANT COLONEL DUNLOP: Yes, sir, I was.

MR. CHERTOFF: Who was at that meeting?

LIEUTENANT COLONEL DUNLOP: It was Colonel Williams, myself, Colonel Fedorko, as I recall, Sergeant Gilbert, and DAG George Rover.

MR. CHERTOFF: And was the question about a request by the Department of Justice to get certain audit data?

LIEUTENANT COLONEL DUNLOP: That's my understanding. Yes, sir.

MR. CHERTOFF: Did Colonel Williams express a position about whether that ought to be turned over?

LIEUTENANT COLONEL DUNLOP: Well, originally, when you asked me this at deposition, I didn't have a real clear recollection, but I can tell you now that I do remember some of the substance of that meeting. And one of them was in reference to a request that was being made by the Department of Justice for certain materials. I don't have a clear recollection as to what that material was.

MR. CHERTOFF: What was the decision that was made at the meeting about turning it over?

LIEUTENANT COLONEL DUNLOP: I don't have a-- I can't say I have a very clear recollection on that. I know there were some decisions or --

there was some decision not to turn certain material over, and that counsel was going to take it back to the Attorney General's Office.

MR. CHERTOFF: Was that Mr. Rover?

LIEUTENANT COLONEL DUNLOP: Yes, sir.

MR. CHERTOFF: All right.

Now, finally, let me ask you, with respect to the interim report, were you involved in the preparation of the interim report?

LIEUTENANT COLONEL DUNLOP: No, sir.

MR. CHERTOFF: Were you given an opportunity to weigh in on the interim report?

LIEUTENANT COLONEL DUNLOP: No, sir, I wasn't. Although, I would say the interim report was released, if I'm not mistaken, on--

MR. CHERTOFF: April the 20th.

LIEUTENANT COLONEL DUNLOP: --the 20th. On the 16th, which was a Friday--

If I can back up one more day, I believe it was Thursday the 15th, I had received information that the interim report was going to go out. I didn't know the specific date, but it was -- it looked like it was going to be very quickly or imminent.

I called Paul Zoubek, because we had a team together made up from our intelligence analysts, our Records and Identifications Section, and our Investigation Section, plus some other people including Tom Gilbert -- Sergeant Tom Gilbert -- that were looking at the statistics and trying to do a statistically valid review of consent searches as they related to 1997 and 1998. And when I heard that this was going out, and we hadn't completed that study yet, I wanted to make sure that we could give Paul Zoubek an overview of what we had so far.

MR. CHERTOFF: And what was his response to that?

LIEUTENANT COLONEL DUNLOP: Well, originally, when I had the telephone conversation, he told me it was too late.

MR. CHERTOFF: Did he tell you why it was too late?

LIEUTENANT COLONEL DUNLOP: No, he did not. No, sir. The impression I had was because this was, in fact, going out very quickly.

MR. CHERTOFF: And was there any change in that? Did you eventually get your data into the report?

LIEUTENANT COLONEL DUNLOP: Well, we went down on a Friday. And I remember this conversation was, "Well, then you better get down here first thing tomorrow morning."

So I called over to intelligence, and I spoke with the intelligence officer and told him that we have a meeting scheduled with Paul Zoubek tomorrow, and it's probably going to be first thing in the morning. And I had been told that they weren't ready yet, but they would work through the night to try to get something together for a briefing for Paul Zoubek.

MR. CHERTOFF: And then what happened?

LIEUTENANT COLONEL DUNLOP: The next day-- The next morning, we did go down. I went down with-- I went down with Sergeant Serrao, myself. I don't want to speak out of turn, but I think Colonel Fedorko may have been with me. And in the meeting was Paul Zoubek and also Ron Susswein from the Attorney General's Office.

MR. CHERTOFF: And did you make a presentation?

LIEUTENANT COLONEL DUNLOP: We did. Sergeant Serrao presented a PowerPoint presentation to him.

MR. CHERTOFF: What years was the data covering?

LIEUTENANT COLONEL DUNLOP: It would have been '97 and '98. And I don't think we had completed '98 thoroughly yet.

MR. CHERTOFF: It was through this computerized assisted dispatch system?

LIEUTENANT COLONEL DUNLOP: Some of it was CAD. Other stuff, in reference to the actual consent searches-- We were concerned with the validity of the data which was being sent down. Sergeant Gilbert was putting this stuff together by himself and doing a good job, but we were really concerned about the validity of the data which was down there. In other words, this stuff was hand collected. There could be a lot of error, especially in the documents which you saw, that were contained in this red book where it was an analysis of Cranbury and Moorestown.

So we wanted somebody that had knowledge in how to do this correctly -- take a look at it.

MR. CHERTOFF: So, after you made this presentation, what did they do?

LIEUTENANT COLONEL DUNLOP: Well, Ron Susswein mentioned to me that he'd be working throughout the weekend on this thing -- with this new information that we gave. But eventually, when I saw that the interim report came out on the 20th, all they did was footnote that information.

MR. CHERTOFF: You say, footnoted the information.

LIEUTENANT COLONEL DUNLOP: That's correct. It was listed in a footnote.

MR. CHERTOFF: Did anybody ever tell you why there was a huge rush to get this out on April 20th?

LIEUTENANT COLONEL DUNLOP: No, sir.

MR. CHERTOFF: In your mind, had you suggested that a delay of a few weeks to allow your information to be analyzed and compared with Sergeant Gilbert's and maybe, ultimately, refined-- Did you suggest that that might be a worthwhile thing to do?

LIEUTENANT COLONEL DUNLOP: Well, I didn't suggest that. And I don't think it would have done any good. I mean, from the position that I saw that the Attorney General's Office was taking, it wouldn't -- my recommendation was something that wouldn't have mattered. This thing was going forward.

MR. CHERTOFF: You thought it was going forward?

LIEUTENANT COLONEL DUNLOP: It was going to go forward.

MR. CHERTOFF: And you believed it was going to go forward by a certain deadline, regardless of what you presented.

LIEUTENANT COLONEL DUNLOP: That's right. I did not know what the deadline was. It wasn't until the next couple of days had elapsed that I realized what was going on.

MR. CHERTOFF: What was going on? What do you think was going on? (laughter)

LIEUTENANT COLONEL DUNLOP: Well, the fact that on April the 19th, they indict Hogan and Kenna -- make the announcement of the indictment. The next day they release the interim report. And then my conversation with Zoubek was that they had -- were just about 16 hours ahead of Justice of filing a complaint in Federal court.

MR. CHERTOFF: I'm sorry. Could you repeat that? You said you had a conversation with Mr. Zoubek where someone indicated that these actions

were taken 16 hours before the Federal government was going to file a complaint?

LIEUTENANT COLONEL DUNLOP: No, sir. Let me make this perfectly clear--

MR. CHERTOFF: Yeah, be clear.

LIEUTENANT COLONEL DUNLOP: --so that there's no more misunderstanding.

I had a conversation with Zoubek -- with Paul Zoubek where he indicated to me that these things were moved forward, and at one time he told me that they were about 16 hours ahead of Justice filing a complaint. Yes, sir.

MR. CHERTOFF: When you say Justice, you mean in -- the Justice Department in Washington.

LIEUTENANT COLONEL DUNLOP: The Department of Justice filing a civil action complaint against them.

MR. CHERTOFF: Did you-- So is it your understanding from that -- the reason these things were moved forward quickly was to try to avert an actual civil case being filed by the Federal government in the Justice Department?

LIEUTENANT COLONEL DUNLOP: Well, I think you're asking for my opinion.

MR. CHERTOFF: Is that your understanding of what Mr. Zoubek told you?

LIEUTENANT COLONEL DUNLOP: Yes.

MR. CHERTOFF: You don't actually know one way or the other what the Department of Justice was going to do, right?

LIEUTENANT COLONEL DUNLOP: I have no idea. No, sir.

MR. CHERTOFF: I have no further questions.

SENATOR GORMLEY: Jo.

MS. GLADING: Mr. Zoubek-- Mr. Zoubek--

Mr. Dunlop, when you went down to the meeting with Mr. Zoubek and the others from the Attorney General's Office in February, did Mr. Zoubek seem satisfied with the progress of Mr. Sachetti's audit at that point?

LIEUTENANT COLONEL DUNLOP: This would have been the February 10th meeting?

MS. GLADING: Yeah.

LIEUTENANT COLONEL DUNLOP: Yes, ma'am.

MS. GLADING: Was he fully apprised at that meeting of the methodology that Lieutenant Sachetti was using?

LIEUTENANT COLONEL DUNLOP: Yes, sir -- yes, ma'am. I believe even before that meeting he was aware of our methodology. I had discussed this with Mr. Zoubek on many occasions.

MS. GLADING: So he knew that you were doing a series of phone calls and then certified mail if that didn't work?

LIEUTENANT COLONEL DUNLOP: Yes, I believe that he was aware of the -- that we were doing that type of work. I don't know if he knew how it was broken down into the three phases, but I think he knew how thorough the investigation was being conducted.

MS. GLADING: Did you think that the Sachetti audit, at some point, should have been expanded to cover the entire State Police force?

LIEUTENANT COLONEL DUNLOP: Well, I had made a suggestion to him that we go somewhere outside of Troop D also. Yes, I had made a recommendation to him that maybe we should look somewhere else, like the Parkway or some other station. Yes.

MS. GLADING: What was your view on the findings that Lieutenant Sachetti was coming up with in terms of the value of them to the State Police?

LIEUTENANT COLONEL DUNLOP: I think they were important to us to identify the administrative problems that we were having. I think what was more important is that we weren't finding selective enforcement based on race, that it was systemic throughout the Turnpike or Troop D.

We had several cases that were still pending that we needed to really look at, and they were the ones that were eventually sent down to Criminal Justice.

MS. GLADING: Do you mean that you weren't finding race falsification?

LIEUTENANT COLONEL DUNLOP: That's correct. Not that race may not have been misrepresented, but after the investigation was conducted, we found out the reasons for that.

MS. GLADING: Were-- To your knowledge, were some of the-- Were there some serious cases in which there were a larger number of discrepancies?

LIEUTENANT COLONEL DUNLOP: Yes. I believe there were several cases where there was serious misrepresentation. Yes.

MS. GLADING: To your knowledge, did the misrepresentation-- Did the discrepancies in those cases come close to the level, or reached the level, that Hogan and Kenna had reached?

LIEUTENANT COLONEL DUNLOP: Well, I don't think it would be appropriate for me to discuss that here.

MS. GLADING: In the February meeting at the Attorney General's Office, who was present there?

LIEUTENANT COLONEL DUNLOP: I'm sorry, which date?

MS. GLADING: The February meeting with the Attorney General's Office on the progress of the audits.

LIEUTENANT COLONEL DUNLOP: It would have been, and I'm not taking this-- I might have it on my calendar, but as I recall, it would have been Paul Zoubek, Debbie Stone, myself, the people from IAB, which would have included Al Sachetti -- Lieutenant Al Sachetti. I believe that Detective Sergeant Cuzzupe may have been there and other people that were necessary to provide a proper briefing on the audits. And we also provided a briefing on the status of the Hogan and Kenna investigation, also.

MS. GLADING: Was it your understanding that Detective Sergeant Cuzzupe was involved -- was the lead investigator in the Hogan-Kenna case?

LIEUTENANT COLONEL DUNLOP: He was, yes.

MS. GLADING: Okay. What was your understanding of the-- Was the-- Did you have an understanding that the timing of Lieutenant Sachetti's work was related to the separate investigation that was proceeding concerning the falsification of records by Troopers Hogan and Kenna?

LIEUTENANT COLONEL DUNLOP: I'm going to ask you to please repeat that.

MS. GLADING: Was there a relationship, to your knowledge, between -- in the timing of the work that Lieutenant Sachetti was doing and the completion of the investigation into Troopers Hogan and Kenna regarding records falsification? Did they need to know Lieutenant Sachetti's results for the purposes--

LIEUTENANT COLONEL DUNLOP: I think, yes. Yes. I think that was relevant to the investigation in regards to Hogan and Kenna.

MS. GLADING: What was your understanding of the relevance?

LIEUTENANT COLONEL DUNLOP: You know, I can't say specifically, from a prosecutorial standpoint, what they thought their relevance was. And I may be talking out of line.

MS. GLADING: Okay.

LIEUTENANT COLONEL DUNLOP: You may want to best get that from the prosecutors themselves.

MS. GLADING: When the decision was made to-- Well, when Lieutenant Sachetti's troopers-- And I guess his detail was up to over 30 guys at this point.

LIEUTENANT COLONEL DUNLOP: Yes, ma'am.

MS. GLADING: When they were on hiatus, was it your understanding that he wanted to complete the audit?

LIEUTENANT COLONEL DUNLOP: Yes, ma'am, I think he did. And I wouldn't use the word hiatus. I mean, we're at a point where they're not being productive.

MS. GLADING: But it was your understanding that he thought the audit should be finished?

LIEUTENANT COLONEL DUNLOP: Yes, ma'am.

MS. GLADING: Okay.

Colonel Fedorko, did-- Was that your understanding, also?

LIEUTENANT COLONEL FEDORKO: What?

MS. GLADING: That Lieutenant Sachetti believed the audit should be completed?

LIEUTENANT COLONEL FEDORKO: I believe so, yes.

MS. GLADING: So the direction to the ultimate decision that was made in June of 1999 to stop the audit-- Whose decision was that?

LIEUTENANT COLONEL FEDORKO: I believe it was Mr. Zoubek's.

MS. GLADING: Do you know what he based that decision on?

LIEUTENANT COLONEL FEDORKO: My recollection is that we weren't finding the kinds of problems in Cranbury -- I'm sorry -- in Moorestown and Newark that we had found in Cranbury.

MS. GLADING: Colonel Fedorko, did you have an understanding that the timing of Lieutenant Sachetti's work was related to the work on the Hogan-Kenna records falsification investigation?

LIEUTENANT COLONEL FEDORKO: I really wasn't involved in that.

MS. GLADING: Colonel Fedorko, what was your knowledge about the Attorney General's decision to release the interim report at the pace that it did? And by that, I mean, at the speeded up pace, as opposed to completing the entire review team's work in June.

LIEUTENANT COLONEL FEDORKO: Just that they were doing it fairly quickly.

MS. GLADING: Do you know why?

LIEUTENANT COLONEL FEDORKO: No.

MS. GLADING: The data that was contained in Sergeant Gilbert's red book that he gave you-- Did you ever discuss that data with Colonel Fedorko?

LIEUTENANT COLONEL DUNLOP: I don't believe I did.

MS. GLADING: At the time, in March, when the Attorney General's Office received this information, did Colonel Fedorko know that you were bringing that material down with Sergeant Gilbert -- on March 15th when you brought it down?

LIEUTENANT COLONEL DUNLOP: I don't know. You'd have to ask him.

MS. GLADING: Colonel Fedorko, you testified that documents didn't leave the State Police unless they went through you, since you were at the top of the chain of command. Did you know that Sergeant Gilbert was bringing that material down to the meeting on the 15th?

LIEUTENANT COLONEL FEDORKO: No, but if it dealt with the audit or with what Tom Gilbert was doing-- I mean, I was not involved in what Tom Gilbert was doing, so--

MS. GLADING: Did you have familiarity with what kind of audit activity was going on in the Department?

LIEUTENANT COLONEL FEDORKO: The Troop D audit?

MS. GLADING: No, audit activity other than the Troop D audit.

LIEUTENANT COLONEL FEDORKO: No, I mean, only by the information that they were requesting. And I don't remember specifically what it was. I mean, it had to do with traffic stops and summonses and those kind of things.

MS. GLADING: Do you have a copy of Lieutenant -- Sergeant Gilbert's notebook in front of you? Oh, yeah, you do.

LIEUTENANT COLONEL DUNLOP: Is this the one that was turned over to Paul Zoubek?

MS. GLADING: The copied one.

I beg your pardon?

LIEUTENANT COLONEL FEDORKO: This one?

MS. GLADING: Colonel Fedorko, that's right.

If you could go a couple of pages into that, there's a-- There's a memo from 1998 from Major Sparano, via you, to Colonel Williams.

LIEUTENANT COLONEL FEDORKO: What's the date?

MS. GLADING: Well, the first digit is cut off, but it says 20/98 -- just a few pages into it.

It's the fifth page in the document.

LIEUTENANT COLONEL FEDORKO: Fifth?

MS. GLADING: Fifth, right.

LIEUTENANT COLONEL FEDORKO: This is from-- The fifth one is from Lieutenant Hinkle to Captain Touw.

MS. GLADING: I think you might have a different version.

Do you recall seeing that document?

LIEUTENANT COLONEL FEDORKO: No.

MS. GLADING: You don't.

It did pass through you, though, didn't it?

LIEUTENANT COLONEL FEDORKO: Right. But these are-- As I mentioned in my deposition, reports would go through my office, and if I wasn't there, my assistant would initial them. And these are his initials.

MS. GLADING: Okay. That document reflects that it's a six-month audit of activity on the southern part of the Turnpike, I believe. And it was written by Major Sparano. Is that right?

LIEUTENANT COLONEL FEDORKO: Right. It's from Major Sparano to Colonel Williams.

MS. GLADING: Were you aware that these kinds of audits were ongoing by the Division?

LIEUTENANT COLONEL FEDORKO: Yes.

MS. GLADING: And to your-- And you knew that this is an area that Tom Gilbert was working on?

LIEUTENANT COLONEL FEDORKO: No, I knew that these audits were being done.

MS. GLADING: Okay. This document is contained in Tom Gilbert's -- Sergeant Gilbert's notebook. Why do you think that would have been? Why would he have been collecting this audit information?

LIEUTENANT COLONEL FEDORKO: I don't know.

MS. GLADING: Colonel Dunlop, when you had the conversation around the time of the release of the interim report with Mr. Zoubek concerning what you had heard about Colonel Williams and recounting to him the details of the May 20th meeting in 1997, did Paul Zoubek ever indicate to you that that was just a baseless rumor, that they were planning to take steps to indict, potentially?

LIEUTENANT COLONEL DUNLOP: No. All he said was we're not going that way. We're not going there--

MS. GLADING: Okay. He never used--

LIEUTENANT COLONEL DUNLOP: --with Colonel Williams.

MS. GLADING: To your recollection, he never used the word rumor in that conversation or suggested to you that this was just a baseless rumor that was circulating around?

LIEUTENANT COLONEL DUNLOP: No, absolutely not.

MS. GLADING: And he didn't say we're not going that way until he called you -- we're not going to go there -- until he called you back. Is that correct?

LIEUTENANT COLONEL DUNLOP: That's is correct.

MS. GLADING: Okay. When did Mr. Zoubek first learn of the work that Sergeant Serrao had undertaken -- the audit activity that he had undertaken?

LIEUTENANT COLONEL DUNLOP: I can't give you a specific date.

MS. GLADING: When did that audit work begin?

LIEUTENANT COLONEL DUNLOP: It began sometime in February. I'm going to say February 23rd, maybe. That seems to ring a bell. February 23rd of 1999.

MS. GLADING: Did you have pretty regular communication with Mr. Zoubek during this period of time?

LIEUTENANT COLONEL DUNLOP: I did.

MS. GLADING: Would you have told him when something like that began right about the time that it began?

LIEUTENANT COLONEL DUNLOP: Yes.

MS. GLADING: Okay. So it would not have come as a surprise in April that this audit activity was under way. Is that right?

LIEUTENANT COLONEL DUNLOP: It should not have.

MS. GLADING: Okay. Is it correct that Lieutenant Sachetti's audit around the time of the shooting actually began with an audit involving Troopers Hogan and Kenna?

LIEUTENANT COLONEL DUNLOP: We were looking-- We conducted an audit of the patrol activities of Hogan and Kenna immediately following the shooting, yes -- within a short period of time of the shooting.

MS. GLADING: Okay. And after the February meeting with Mr. Zoubek, and others from the Attorney General's Office, the detail was subsequently increased to 30 troopers, right?

LIEUTENANT COLONEL DUNLOP: That's correct, yes.

MS. GLADING: That took place in March, didn't it?

LIEUTENANT COLONEL DUNLOP: The meeting occurred February 10th.

MS. GLADING: The increase of the detail to more than 30 troopers.

LIEUTENANT COLONEL DUNLOP: That's correct.

MS. GLADING: Okay. And was that detail increased because there was some urgency to finish this work?

LIEUTENANT COLONEL DUNLOP: I think, yes. We wanted to get it to complete it, yes.

MS. GLADING: To your knowledge, and you may have been gone before this took place-- Were the-- Well, let me ask you this: When you left-- When you retired, the cases-- The 10 cases had been referred back from CJ. Is that correct?

LIEUTENANT COLONEL DUNLOP: That's correct.

MS. GLADING: To the knowledge of either of you gentlemen, were those cases ever sent back to CJ by Colonel Dunbar?

LIEUTENANT COLONEL DUNLOP: I do not know that. I know I had conversations with Colonel Dunbar and had expressed my concerns that this was going to be a problem.

MS. GLADING: And as this work was going on by Lieutenant Sachetti, were both of you being apprised of it on a regular basis -- of the progress of this work?

LIEUTENANT COLONEL DUNLOP: I was, yes.

MS. GLADING: Colonel Fedorko?

LIEUTENANT COLONEL FEDORKO: I was being apprised of it weekly. I would meet with IAB weekly, and they would -- on other issues, and somehow, this would work itself into the conversation just to let me know what was going on.

MS. GLADING: Were you satisfied with the way the work was progressing and the methodology he was using?

LIEUTENANT COLONEL FEDORKO: (indiscernible)

LIEUTENANT COLONEL DUNLOP: Yes. Yes, ma'am.

MS. GLADING: Colonel Dunlop, some of the players in this series of events have gone on to bigger things. Alexander Waugh became a judge, Colonel Fedorko went on to the Casino Control Commission, Captain Blaker became a prosecutor. Was anything ever offered to you -- any kind of position or job ever offered to you?

LIEUTENANT COLONEL DUNLOP: I was offered a job, yes.

MS. GLADING: By whom?

LIEUTENANT COLONEL DUNLOP: More than one job.

MS. GLADING: More than one job.

LIEUTENANT COLONEL DUNLOP: Yes.

MS. GLADING: By whom?

LIEUTENANT COLONEL DUNLOP: Well, I had a conversation with Attorney General Farmer in reference to possible employment.

MS. GLADING: Was there any--

LIEUTENANT COLONEL DUNLOP: And from another Department within the State of New Jersey.

MS. GLADING: With another Department within the State of New Jersey?

LIEUTENANT COLONEL DUNLOP: Yes.

MS. GLADING: Did you have any thoughts about why you were being offered positions?

LIEUTENANT COLONEL DUNLOP: Yes.

MS. GLADING: What were those thoughts?

LIEUTENANT COLONEL DUNLOP: Well, I would like to think it was because I'm -- of my capabilities. But in lieu of what had all transpired, I was very leery in reference to the job offer.

MS. GLADING: Why were you leery?

LIEUTENANT COLONEL DUNLOP: Excuse me?

MS. GLADING: Why were you leery?

LIEUTENANT COLONEL DUNLOP: My relationship with the Attorney General's Office was not good after October the 9th -- after a banquet where I had given a speech in reference to retirees. And in fact, I think from that point forward, my relationship with the Attorney General's Office wasn't what it was, especially with Paul Zoubek -- was not what it was prior to--

MS. GLADING: Was there something in the content of that speech that-- What year was that speech?

LIEUTENANT COLONEL DUNLOP: That was given October the 9th, 1999.

MS. GLADING: What content of the speech would -- do you think would have been -- was found disturbing?

LIEUTENANT COLONEL DUNLOP: Well, the purpose of my speech-- The morale was absolutely at the lowest I had ever seen it. We had-- I forget the exact number, but I'm going to guess around 80-some people retiring, and I wanted them to go out-- And I also wanted the road troopers that were still on the road-- I wanted to try to build up their morale also, because as many of you know, poor morale can lead to injuries and poor performance.

So I gave the troopers and the retirees a speech at the banquet in October down in Atlantic City. And subsequent to that, I was called in and reprimanded, I would say.

MS. GLADING: What was the essence of the speech you gave?

LIEUTENANT COLONEL DUNLOP: Basically, that sometimes we, as troopers, or people that are involved either in military -- troopers can feel that they've been abandoned by the political process, and that I was trying to stress for them to continue on -- that after all the political rhetoric was done, that their actions would speak louder than their words. In there, I mentioned that certain -- that I knew that they felt that certain political leaders had abandoned them.

MS. GLADING: I beg your pardon?

LIEUTENANT COLONEL DUNLOP: I felt-- The troopers felt that the political process, and some of the political leaders in Trenton, had abandoned them when they needed them most.

MS. GLADING: What kind of feedback did you get after that speech from people outside the State Police?

LIEUTENANT COLONEL DUNLOP: I think it was well taken. It was taken for what it was meant to do.

MS. GLADING: Did it upset anyone, to your knowledge?

LIEUTENANT COLONEL DUNLOP: Yes, it did.

MS. GLADING: Who?

LIEUTENANT COLONEL DUNLOP: Well, at a meeting that I had with-- Carson Dunbar came in -- I think it was in October. I can't remember the exact date. I was the acting superintendent as of October 1st until Colonel Dunbar came on board. And at that meeting, where we first met Colonel Dunbar down at the Attorney General's Office, Attorney General Farmer asked me to come into his office, where he questioned me in reference to-- He told me it was at the direction of the Governor, and he questioned me in reference to my speech.

MS. GLADING: What did you say?

LIEUTENANT COLONEL DUNLOP: Well, I like to think that our conversation was confidential, but I-- Basically, that the purpose of the speech was discussed with him. And the words that I said were to stand.

MS. GLADING: I beg your-- I'm sorry?

LIEUTENANT COLONEL DUNLOP: And the verbiage that I used was not something that I put together haphazardly. The meaning that I used was what I felt.

MS. GLADING: The verbiage you used in the speech, you meant?

LIEUTENANT COLONEL DUNLOP: That's correct, ma'am.

MS. GLADING: And so, after the series of events--

You retired when?

LIEUTENANT COLONEL DUNLOP: I retired July 1st of 2000.

MS. GLADING: Okay. So what was your relationship like with the Attorney General's Office from that point forward?

LIEUTENANT COLONEL DUNLOP: I had no problem with the Attorney General's Office. I don't think that-- I think that I was maybe considered as an instructor.

MS. GLADING: So, when you were offered two jobs, why were you-- What did you think the reasons were, aside from your talents?

LIEUTENANT COLONEL DUNLOP: Well, I was suspect, to be perfectly frank. I was -- had announced my retirement. They knew it was July 1st. I received no phone call from Paul Zoubek whatsoever. We had a very good working relationship prior to that period of time.

MS. GLADING: When did your relationship with Mr. Zoubek deteriorate?

LIEUTENANT COLONEL DUNLOP: I believe it was after the speech that I gave in Atlantic City.

MS. GLADING: So, after the interim report, it was still okay.

LIEUTENANT COLONEL DUNLOP: It was-- I would say it was strained, but we were still professionals working together, yes.

MS. GLADING: So you were suspect that the job had been offered, why?

LIEUTENANT COLONEL DUNLOP: Well, I think a lot of the troopers felt that there were a lot of people that were offered jobs, and maybe that the hierarchy of both the Attorney General's Office and the State Police --

were selling them out. And I didn't think it was proper for me to take it at that point in time.

MS. GLADING: Did you think you had information that could be damaging or that could be embarrassing?

LIEUTENANT COLONEL DUNLOP: I think that-- I think if the truth came out in a form such as this, I think that prudent people would ask questions that a reasonable person would be able to make some conclusions from, yes.

MS. GLADING: Just to clarify, when exactly were these job offers made to you?

LIEUTENANT COLONEL DUNLOP: The exact date that I--

MS. GLADING: Not the exact date, the month and year is fine.

LIEUTENANT COLONEL DUNLOP: Well, originally, I was supposed to meet with the Attorney General I think in June, but we canceled it to early July, and the other one was subsequent to that.

MS. GLADING: This is 2000?

LIEUTENANT COLONEL DUNLOP: This would have been 2000. Yes, ma'am.

MS. GLADING: Okay. I think that's all I got.

SENATOR LYNCH: Can I follow that line of questioning?

Colonel Dunlop, the other job offer was when?

LIEUTENANT COLONEL DUNLOP: It was subsequent to that. I don't really remember.

SENATOR LYNCH: Subsequent to July of 2000.

LIEUTENANT COLONEL DUNLOP: That's correct. Shortly after my retirement, but after July of 2000, I believe it was.

SENATOR LYNCH: So it was sometime in the summer or early fall of 2000.

LIEUTENANT COLONEL DUNLOP: I'm going to say it was probably right around the same time.

SENATOR LYNCH: All right. Who offered you that job?

LIEUTENANT COLONEL DUNLOP: I'd rather not say, because it was another Department, and I think it was based on my merit, on my competence.

SENATOR LYNCH: Did you ever have a conversation with Zoubek about another job?

LIEUTENANT COLONEL DUNLOP: I did not. I think Paul Zoubek-- I had told Paul Zoubek that I was probably going to be moving, also, out of the state.

SENATOR LYNCH: One of the reasons that you were suspicious of -- to some extent of the job offer was because of the flurry of activity you had seen occurring in February of '99 leading through June of '99 and what you considered to be -- I guess, as part of your speech of the politicization of the process--

LIEUTENANT COLONEL DUNLOP: I think there's a lot to it. It's just not one or two things. I think that, from what I was seeing, I was up close and personal to this thing from the beginning. To rush to get an indictment against Hogan and Kenna for falsification before the other grand jury came out-- It's just a litany of things that was going on at the time.

SENATOR LYNCH: The rush to get the interim report out.

LIEUTENANT COLONEL DUNLOP: Yes. The fact that in the final report-- These reports-- I think any of us that had been in law enforcement

knew how damaging these reports could be. It was like a second-party confession against the New Jersey State Police that we were racially profiling and that we showed disparate treatment towards our own members.

There was a rush to get this interim report done. I don't think it was done properly. There were errors in these reports, both these reports, including the final report, where, in fact, one of the graphs -- and it was in reference to the 95th class -- reported that -- I believe it was 49 minorities entered the academy and none graduated, when, in fact, I believe we had as many as 29 graduate. So there was gross errors. And I brought this to the attention--

In fact, I had a conversation with Al Ramey. And the position was, that's behind us. We're moving forward. But I knew the ramifications of what they did. I knew-- And in fact, I told Paul Zoubek. I said, "What every defense attorney in this state is going to do is throw your confession down, and they're going to move to have their cases dismissed."

SENATOR LYNCH: Did the shutting down, temporarily, of the first instance of the Sachetti audit also concern you?

LIEUTENANT COLONEL DUNLOP: I don't think it concerned me as much as some other things.

SENATOR LYNCH: Wasn't it significant, however, that the -- at least from Lieutenant Sachetti's vantage point, that the Phase III of the audit, which was never completed, was a significant portion of the audit, because it would have, in effect, through statistical sampling, gotten to violators who were able to escape through Phases I and II?

LIEUTENANT COLONEL DUNLOP: Absolutely. If we were going to do this right, we should have went all the way through, not to say that we

would have come up with what we needed from Phase III, because quite a bit of time had elapsed. This was now a year after some of these violations occurred. And from what I was getting from Lieutenant Sachetti was some of these violators really didn't remember facts. And I don't know how productive we would have been. A lot of people weren't answering our requests for interviews, that type of thing.

SENATOR LYNCH: But it was Lieutenant Sachetti's position that if you're really going to be fair to the troopers who were in some way penalized for having been caught in Phases I and II, you really have to do Phase III, because they may be more significant violators, and why should they be able to escape that kind of a review?

LIEUTENANT COLONEL DUNLOP: That's correct.

SENATOR LYNCH: Colonel Fedorko, you weren't kept abreast of what Lieutenant Sachetti was doing on a weekly basis?

LIEUTENANT COLONEL FEDORKO: On a weekly basis, yes, Senator, I was. But through another-- I had weekly meetings with IAB, which I had done since I was promoted to Lieutenant Colonel. And during the course of the meeting, they would just bring this in -- just let me know what was going on.

SENATOR LYNCH:--Lieutenant Sachetti testified in the interview that you, in fact, had told him to put his -- 30 people on hold sometime in May of 1999 and not to go forward with the rest of the Phase III audit until he heard back from you, and that you were waiting for instructions from the Attorney General's Office. Is that correct?

LIEUTENANT COLONEL FEDORKO: That's my recollection.

SENATOR LYNCH: Is that what you told them?

LIEUTENANT COLONEL FEDORKO: Yes.

SENATOR LYNCH: And then he ultimately said that after all the profile hearings and confirmation hearings were concluded, that he was told to shut down the review.

LIEUTENANT COLONEL FEDORKO: I believe that was the instructions I got from Mr. Zoubek.

SENATOR LYNCH: And that would have been sometime in June of '99.

LIEUTENANT COLONEL FEDORKO: It may have even been later than that -- summertime.

SENATOR LYNCH: And you're-- At that point, you're the--

LIEUTENANT COLONEL FEDORKO: Acting superintendent.

SENATOR LYNCH: --acting superintendent.

Was it significant to you that Sachetti file a formal final report, at least to the point where he had gotten?

LIEUTENANT COLONEL FEDORKO: I had retired not too long after that, Senator, so I don't know what--

SENATOR LYNCH: Colonel Dunlop, in terms of your skepticism about the job offer from the Attorney General, did you take into consideration, anecdotally -- while there may be no connection that people in the hierarchy of the Attorney General's Office and the State Police somehow received various promotions or other jobs -- a couple people winding up in the cabinet, people becoming a judge, Colonel Fedorko going to Casino Control, at least one other high-ranking person in the State Police getting a major promotion, ultimately, Lieutenant -- Captain Blaker winding up as the acting prosecutor in Cape May, Roberson and his brother becoming the assistant commissioner of

Transportation, and that all these things were happening in a period around -- from '98 through 2000? Was that part of why you were concerned about this job offer?

LIEUTENANT COLONEL DUNLOP: Sir, I'm not saying that they didn't get that on their credibility. I just thought that by my taking the job at that point in time, with my relationship with the Attorney General's Office, that I was risking my credibility.

SENATOR LYNCH: You were risking your credibility if you took a job.

LIEUTENANT COLONEL DUNLOP: That's right. That's correct.

SENATOR LYNCH: Well, was the fact that all these other circumstances were evolving, including these new jobs -- newfound jobs and so forth that others wound up in-- Was that part of the decision making by you?

LIEUTENANT COLONEL DUNLOP: Not to take that job?

SENATOR LYNCH: Yes.

LIEUTENANT COLONEL DUNLOP: I would say it had some bearing, yes.

SENATOR LYNCH: No further questions.

SENATOR GORMLEY: Okay. Well, we first have Senator Zane, then Senator Furnari, and then Senator Martin.

SENATOR ZANE: Colonel Dunlop, if I followed your earlier testimony, and tried to, very carefully and very attentively, you indicated that rumors were about that then Superintendent Williams-- There was possible criminal charges coming. You also testified that you heard that there was efforts to -- that you were concerned that there were efforts to discredit him. Then there were allegations that the State Police and had not provided data pertaining

to racial profiling, and that was represented to you, I think, by Paul Zoubek. And then data was provided to Paul Zoubek. And after that, you were told, in essence, that they were -- that no one was really going to be proceeding against Williams. Is that accurate, what I'm saying?

LIEUTENANT COLONEL DUNLOP: I don't think it is.

SENATOR ZANE: Okay.

LIEUTENANT COLONEL DUNLOP: I think it's a little to convoluted. I think--

There had been rumors going around, and I'm not saying that these rumors-- They were just that. And many times, the rumors we heard were not factual whatsoever. But there was an underlying current that the Attorney General's Office, and I'm not saying it's specifically one person -- but that they were going to try to discredit the New Jersey State Police and also discredit Colonel Williams. And this is prior to the issuance of the interim report and final report, to the best of my knowledge.

Somewhere-- And maybe the interim report had been released. I can't pinpoint the time. But that rumor surfaced again, which made me make a phone call to Paul Zoubek. I think it was even-- That was a little bit stronger than-- I believe, previously, I heard rumors that they were hoping -- they were looking to discredit him. This particular rumor that came to my attention was that they were actually considering possible criminal charges or indictment. At that point in time is when I called Zoubek.

SENATOR ZANE: Colonel, when you say they, just to make it clear, are you talking about the Attorney General's Office?

LIEUTENANT COLONEL DUNLOP: Attorney General's Office, yes, sir.

SENATOR ZANE: And that is based primarily on a feeling you had.
Am I correct?

LIEUTENANT COLONEL DUNLOP: That's correct.

SENATOR ZANE: Was--

LIEUTENANT COLONEL DUNLOP: And, sir, if I may.

SENATOR ZANE: Sure.

LIEUTENANT COLONEL DUNLOP: Remember, the main purpose of this call was to notify Director Zoubek that there had been a May 20th, 1997 meeting in which the consent decree information was discussed. So the fact that you're trying to say that the Attorney General's Office was not provided with information is not factual, according to the information I had.

SENATOR ZANE: Do you have any idea or recollection as to how long Zoubek had been in his position at that time?

LIEUTENANT COLONEL DUNLOP: I do not. I don't think he was there long as the first assistant.

SENATOR ZANE: You indicated earlier, I think, and correct me with this, that-- Well, let me ask you this way. Did you get a sense that Zoubek had been told that the information had not been provided, or did you have a sense that he did know that information had been provided, but he was trying to-- I don't know what-- I got to--

When you had testified before to Mr. Chertoff's question in that area, I got a sense that you were saying you felt he knew but that he was going through some sort of a charade with you that--

You're shaking your head. Should I stop--

LIEUTENANT COLONEL DUNLOP: No, no. You're fine. I'm just trying to stay with you, that's all.

SENATOR ZANE: And that you had the sense that he knew what -- that we were going through something that just didn't make sense to you because you felt, and knew, that he knew. Am I correct?

Let me ask you this way: Did you believe, at the time you had that conversation with Paul Zoubek, that he knew that the State Police, through Sergeant Gilbert, had, in fact, provided the information?

LIEUTENANT COLONEL DUNLOP: No, I don't think he did know. From my conversation with him, when he said he was going to go in and talk to the General-- Then he came back. In my second conversation, I don't think he knew anything about that meeting.

SENATOR ZANE: Did you have a sense that he had been told that the Attorney General's Office did not have that information?

LIEUTENANT COLONEL DUNLOP: I only can go with what he said to--

SENATOR ZANE: Okay.

LIEUTENANT COLONEL DUNLOP: That the Attorney General said to him -- that he had no recollection of this.

But I think we're getting a little confused here. I think we're getting mixed up with my conversation in reference to the May 20th, 1997 meeting where the rumors were that they were going to try to discredit him. And my only purpose of that was to say, "Don't go there, Paul. Your Attorney General -- your office knew about that data, our consent search rates, back in May 20th of 1997."

The second issue was, when we turned documents over to him, after he had requested it on March the 11th -- and March 15th I went down to Gilbert, and he delivered this blue binder of documents, which the Senate has.

And I think at that point in time is when I got a subsequent call from him, Senator, where he said, "I need all these documents. You can't withhold documents from us. We need all these documents." That's when I became really skeptical, because I had had conversations with Sergeant Gilbert, and he assured me that the Attorney General's Office had all the knowledge that he had.

SENATOR ZANE: Did you say that after giving additional data -- or the data to Zoubek, that he indicated, in a subsequent conversation, I don't know that you said how it came up, but that they would not be proceeding against Williams?

LIEUTENANT COLONEL DUNLOP: That was my conversation in reference to the May 20th, 1997 meeting with Colonel Williams and Verniero.

SENATOR ZANE: Did you see any correlation between the giving of that information and the comments by Zoubek that they would not be proceeding against Williams in a criminal nature?

LIEUTENANT COLONEL DUNLOP: My impression when I got off that phone call was that my telephone conversation, in regards to that May 20th meeting, were-- I was basically reminding the Attorney General that there was such a meeting and that consent searches had been discussed -- put an end to it. I can't say specifically. Paul Zoubek would have to address that.

SENATOR ZANE: --Okay. It's clear to you that the Attorney General's Office, through Zoubek, was making representations. Plus, I think you indicated that you had heard it elsewhere, that the State Police had withheld information regarding racial profiling, correct?

LIEUTENANT COLONEL DUNLOP: Yes.

SENATOR ZANE: Okay.

LIEUTENANT COLONEL DUNLOP: Sir, I'm going to ask you to repeat that.

SENATOR ZANE: Yeah. I wrote a note here, when you were testifying before, to ask you, do you have an opinion as to why the Attorney General's Office would suggest that the State Police withheld data pertaining to racial profiling? You had a-- I think you testified that Zoubek's call to you would suggest that they were clearly going -- more than suggest it-- They were saying that there was information they did not have that the State Police had about racial profiling, correct?

LIEUTENANT COLONEL DUNLOP: That's correct.

SENATOR ZANE: Okay. That took place when? That is-- Is that March?

LIEUTENANT COLONEL DUNLOP: That would have been sometime, I believe, in March.

SENATOR ZANE: Do you have an opinion as to why that happened?

LIEUTENANT COLONEL DUNLOP: At the time, we -- they were appealing the *Pedro Soto* case. I think that, and this is just an opinion-- I think they were looking for some reason to be able to say we're not going to go further on the *Pedro Soto* case, and this would have been a prime reason not to do that. "Here's the new revelations that we just received from the New Jersey State Police that we didn't have prior to, so therefore, we're going to back out on the *Pedro Soto* appeal." That's an opinion, sir.

SENATOR ZANE: Colonel, two other-- I understand.

Two other questions. You chose not to discuss one job offer because it was from another Department after you had left and retired from the State

Police. And when you said to Senator Lynch's question that you were afraid it would affect your credibility, can you elaborate on that? How would your credibility have been affected by taking a position, in your mind?

LIEUTENANT COLONEL DUNLOP: I think my credibility with the troopers -- both former and current troopers would have been affected. I just felt that people would look at it as if I was -- sold them out.

SENATOR ZANE: In your opinion, do you feel the credibility of those who got jobs during that period of time -- that something was amiss after that with their credibility--

LIEUTENANT COLONEL DUNLOP: No, sir.

SENATOR ZANE: --among troopers.

LIEUTENANT COLONEL DUNLOP: No, sir, I do not.

SENATOR ZANE: Why do you--

LIEUTENANT COLONEL DUNLOP: I can't say that. I just don't think-- I think that-- Let me withdraw that. Do I think--

Would you repeat that?

SENATOR ZANE: Yeah. Other people then-- If you were going to be affected in the minds of fellow troopers if you had taken a position-- I'm asking you, do you feel that those that took positions -- those that Senator Lynch enumerated, and others here-- Do you feel that their credibility fell in the eyes of those same troopers that you were concerned about?

LIEUTENANT COLONEL DUNLOP: I don't think that's a fair question for me to answer.

SENATOR ZANE: Okay. When you made your speech of October the 9th, 2000 -- October 9th, 1999-- Am I right?

LIEUTENANT COLONEL DUNLOP: Yes, sir.

SENATOR ZANE: When you made that speech, you made reference to the politicians have abandoned the State Police.

LIEUTENANT COLONEL DUNLOP: I used the analogy. I had just given a speech before the Jewish War Veterans Association up in North Jersey. And the parallel that I made was I saw those soldiers from World War II, Korea, some of them winning some of the highest decorations that could be awarded. And some of them were -- still showed scars of their injuries from war.

And at that point in time, the discussion up there was the fact that the VA hospitals were being shut down, that they weren't getting the services from the VA hospitals. And they really felt abandoned by the political process. I was trying to make that parallel in my speech down to the troopers that, you know, these troopers were -- dedicated 25 or 30 years of their lives, some of them sacrificing an awful lot for the citizens of New Jersey -- and that they should never hang their heads in reference to this, that this would work its way out, and that they should still be proud to be New Jersey State Troopers. And my purpose was to not only give the retirees a proper send-off, but also to send a message to the troopers to try to raise their morale in some way.

SENATOR ZANE: But you were suggesting that politicians had abandoned them.

LIEUTENANT COLONEL DUNLOP: I was suggesting that some may have-- It could be perceived as abandoning them. Yes. And that is in light of the fact that the information that was put out, and the way the interim report was put out, and the final report was put out, and the way they were going about also the changes for the -- I would say the changes that were going to occur within the Division of State Police.

SENATOR ZANE: Thank you.

SENATOR GORMLEY: Senator Furnari.

SENATOR FURNARI: Colonels, I'm not really sure. I think the question is probably appropriate for either of you, but I'm just trying to get a reference.

We know that there was the Hogan and Kenna audit, for want of a better word, as to their reports and the like. And we know that there was the Sachetti audit, which I assume -- were making the same kind of evaluations, whether or not the reports are being filled out accurately, whether there's other deceptive practices that are going on in the filling out of the reports--

Were there any other audits going on relating to those kinds of activities in the Division during, let's say, a year prior to that, that we're aware of?

LIEUTENANT COLONEL DUNLOP: Yes. I can't say a year prior, but we did have other audits. I don't think-- Nothing to the extent of which we did -- starting in 1998. But there had been internal complaints made, either by civilian motorists or even within our Division, by members -- minorities within our Division that did result in audits being conducted. Yes, sir.

SENATOR FURNARI: Now, the ordinary procedure would be once they're -- these audits were conducted, information was passed up the chain of command for action, if need be. In other words, when you did an audit, there must have been a time where someone was disappointed as a result.

LIEUTENANT COLONEL DUNLOP: Well, I believe that-- The one I'm thinking of, specifically, was done by Lieutenant Hinkle in the Inspection Staff Unit of the Internal Affairs Bureau. I think the purpose of that was to go out to see if there was validity to allegations that were being made at

the time, not necessarily that there had to be disciplinary action, but to see if there was validity to claims being made.

SENATOR FURNARI: Well, to your knowledge, was any trooper ever disciplined for failure to -- or for falsifying his documents or things like that prior to the--

LIEUTENANT COLONEL DUNLOP: Yes. I would say-- Understand that I was not assigned to the Internal Affairs Bureau, and they didn't come under my command, and I didn't really move into an area, until 1998, where I became the executive officer. But just from general knowledge, there had been other investigations regarding falsification, misrepresentations on reports. And yes, there had been disciplinary action, to my knowledge, in reference to those.

SENATOR FURNARI: And that normally would pass up the line of command to the -- I guess at times to the superintendent, if it was severe enough.

LIEUTENANT COLONEL DUNLOP: Yes, sir.

SENATOR FURNARI: To your knowledge, were there ever indictments as a result of this kind of activity on troopers?

LIEUTENANT COLONEL DUNLOP: I don't have that knowledge.

SENATOR FURNARI: Now, if the matters were so severe that they would be passed up on to the superintendent-- If there was going to be an indictment, then the superintendent would pass the matter over to the Attorney General's Office for evaluation.

LIEUTENANT COLONEL DUNLOP: If I understand the question-- If it wasn't-- If it didn't involve criminality, and it was going to be handled within the Division of State Police--

SENATOR FURNARI: Then it would stay in State Police.

LIEUTENANT COLONEL DUNLOP: Then it would stay in the State Police.

If there was going to be disciplinary proceedings, for instance like a summary disciplinary hearing or general disciplinary hearing, especially at a general-- Then someone from the Attorney General's Office would represent the State Police in the matter.

SENATOR FURNARI: Okay. So now I'm getting to the Hogan and Kenna situation.

At the time that they were indicted, you were, effectively, the number one and number two men within the Division of State Police.

LIEUTENANT COLONEL DUNLOP: That's correct.

SENATOR FURNARI: Were there discussions from the Attorney General's Office with either of the -- you gentlemen that they believe that the conduct of Hogan and Kenna warranted action by a grand jury -- again, just dealing with their conduct of the, for want of a better word, administrative things, falsification of reports, etc.

LIEUTENANT COLONEL DUNLOP: Well, I don't think we should go there, sir, since it's a pending -- since there's pending litigation. I just don't think it would be proper to go there.

SENATOR FURNARI: Well, I'm only interested -- not in the details of it. I'm interested in whether or not the number one and number two men in the State Police were, at some point, involved in these discussions. I'm not going to go into the details about it.

LIEUTENANT COLONEL DUNLOP: I think to answer your question, the decision whether or not to present that to the grand jury and when

it was going to be presented was not a decision-- At least, I had no decision in making it.

SENATOR FURNARI: Or knowledge of it at all.

LIEUTENANT COLONEL DUNLOP: That's correct. I knew the investigation was going forward. I knew what the findings of the investigations were revealing, or what was being revealed in the investigations. But as far as to the timing and, in fact, if it was going to be presented to the grand jury, that was not our decision.

SENATOR FURNARI: Or even the discussion about whether or not that was the appropriate course of conduct.

LIEUTENANT COLONEL DUNLOP: That's correct, not with me.

SENATOR FURNARI: And did the Attorney General's Office have conversations with the superintendent's office regarding those issues as to whether it was appropriate, whether this was peculiar, or in the regular course of business, or whether or not there are any recommendations from the State Police at all.

LIEUTENANT COLONEL DUNLOP: Are you asking me?

SENATOR FURNARI: No, I was asking--

LIEUTENANT COLONEL FEDORKO: On what, Hogan and Kenna?

SENATOR FURNARI: Yes.

LIEUTENANT COLONEL FEDORKO: I never had any discussions with the Attorney General's Office on Hogan and Kenna once it was in the court system -- once it was in the grand jury.

SENATOR FURNARI: Okay. Well--

LIEUTENANT COLONEL FEDORKO: I never had any discussions about what to do. That's something that, clearly, lawyers handle. I'm not an attorney.

SENATOR FURNARI: Well, what I'm suggesting is that there were two grand juries, right? There was one that was investigating some conduct of the officers, and another one that was just dealing with their procedural deficiencies, as those kinds of activities we were discussing before, that would be in the Sachetti reports.

Now, you were getting reports about what was going on with the audits and the officers' conduct. But the Attorney General's Office never had any discussion with you as to whether or not you thought or felt it was appropriate to move on and indict them at this time?

LIEUTENANT COLONEL FEDORKO: No, not with Hogan and Kenna.

SENATOR FURNARI: And there were no discussions about whether Hogan and Kenna's deviations, for want of a better word, were any different than any of the officers that may have been discovered through the Sachetti audit? Was there ever a discussion--

LIEUTENANT COLONEL FEDORKO: That information was given to them.

SENATOR FURNARI: The information was provided to them.

LIEUTENANT COLONEL FEDORKO: With regard to Hogan and Kenna and the other troopers, yes.

SENATOR FURNARI: And as I understand it, some of the other officers may very well have identical or similar deficiencies as Hogan and Kenna.

LIEUTENANT COLONEL FEDORKO: As I recall, yes.

SENATOR FURNARI: And there was never any, from a policy standpoint, a discussion with the State Police as to whether or not that would warrant going forward with criminal charges instead of the process that was moving along?

LIEUTENANT COLONEL FEDORKO: Not while I was there, but again, I left not too long after that, so--

SENATOR FURNARI: Okay. Thank you.

SENATOR MARTIN: I think I was next.

I had a couple of questions.

LIEUTENANT COLONEL DUNLOP: Sir, can you speak up just a little bit, please?

SENATOR MARTIN: You testified earlier about, Colonel Dunlop, the fact that you were given a very short time to produce some important statistics if they were going to be included in the interim report that was issued on April 20th, 1999. Is that correct?

LIEUTENANT COLONEL DUNLOP: Sir, I wasn't given any specific deadline. We initiated that February 23rd with the understanding that we would be able to get it completed, having no idea that the interim report was going to be released as quickly as it was.

SENATOR MARTIN: But if I understood your testimony, I guess it would have been April 19th, you were advised that if you -- if it were going to be included in the interim report, you would have to work -- you would have to have it by the next morning, which is why your staff was directed to work, or at least they volunteered to work around the clock that evening in order to be able to have that -- what do you call it -- point--

LIEUTENANT COLONEL DUNLOP: PowerPoint, sir.

SENATOR MARTIN: --presentation on the morning of April 20th?

LIEUTENANT COLONEL DUNLOP: No, sir. The dates are wrong, sir.

SENATOR MARTIN: Oh, I got the wrong dates.

LIEUTENANT COLONEL DUNLOP: Can I correct the dates for you?

SENATOR MARTIN: Yeah.

LIEUTENANT COLONEL DUNLOP: All right. On the 15th -- on April 15th is when I called Paul Zoubek and told him that we had this data -- that we had to look at it. And he said, "Well, you better get back down here the first thing tomorrow morning, because--" Well, first of all, if it was-- It was too late, but I insisted that he had to see this data. On the 16th is the day we went down and provided the-- The very next day, which was a Friday, we provided him with the PowerPoint presentation, plus some other data that he had requested earlier.

SENATOR MARTIN: So he gave you to the 16th, and apparently, he was trying to assemble this together, either through his own direction or through some other policy decision, which ultimately produced the interim report four days later on April 20th.

LIEUTENANT COLONEL DUNLOP: That's correct, yes, sir.

SENATOR MARTIN: I'm interested in a series of events. Our booklet lists a number of activities, all of which were of some import to us, in that time frame. And you suggested that the only information you had received as a rationale for getting this done was that you were aware that the Department of Justice was, at least, suggesting that they were going to file a civil suit if some

remedial action wasn't taken. That was, at least, one explanation or rationale why you would have to do this rush job.

LIEUTENANT COLONEL DUNLOP: Sir, I don't think it had anything to do with remedial action or whatever. I think-- And the way this came about was, I think it was general knowledge that we knew that Justice was conducting an inquiry. And if I could just refer to my chronologies just for a minute, I think it would help.

And I had given this at deposition, but what I had said at deposition, also, is that there was a lot of things that were happening in February into March that, I think, changed the complexion of the way we were doing our audits and the rush to get the interim report out. And I testified as to what I thought -- or the events which had transpired, which I thought had led up to the rush to get this interim report out when it did.

SENATOR MARTIN: Well, there were, at least as I count them -- at least four other events shortly after that April 16th, in addition to the fact that there was some indication that there was any pending, or at least the possibility of a civil suit filed by the Department of Justice. And what I'm talking about is that on April 19th, as Senator Furnari was referring to earlier, there was-- The indictment came down regarding the falsification or tampering of records.

On April 20th, New Jersey decided to withdraw its appeal in the *Soto* case. On April 26th, Mr. Zoubek and General Verniero testified before this committee on racial profiling. And on April 5th and 6th, (sic) the Attorney General testified regarding his nomination to be a justice of the New Jersey Supreme Court.

My question is, all of those events-- Was there any indication to you that would suggest that they -- any of those events was putting some

pressure on you to get your report and get the interim report out prior to those events, which followed almost on a daily basis?

LIEUTENANT COLONEL DUNLOP: No, sir. I didn't have any explicit conversation with anybody in regards to that other than my one conversation. After the interim report-- After the indictments of Hogan occurred on the 19th, the interim report came out on the 20th. And there -- very shortly thereafter, I would say within days -- a day or two, the fact that I had a conversation with Paul Zoubek that mentioned that they were only ahead of the Department of Justice by 16 hours--

SENATOR MARTIN: You definitely felt that with more time, you could put together better data that could be assembled into this interim report, which would be the guideline for the Division as to how it was handling this issue of racial profiling.

LIEUTENANT COLONEL DUNLOP: Well, sir, I was convinced that the methodology we were using, by using our analyst -- our professional analyst, was going to give us a lot better product and understanding of the data that was going to go into the interim report. What came out of the interim report-- And I told Paul Zoubek at the time -- and Ron Susswein was -- we were questioning the validity of that data. I don't think that data had ever been verified. And that's what we were doing. We were trying to verify the data before we released it, because we knew the importance of it.

If it would have substantially changed the data that was being referred to back in '94 or '95, I don't know. But I don't think that-- I don't think it was properly looked at, and I don't think it was properly validated.

SENATOR MARTIN: One other question.

There was-- At the time the interim report was released on April 20th, there's an indication that the Attorney General at that time basically indicated, at least according to our brief notes, that -- AG Verniero says that he had called for this portion of the State Police Review Team's report on racial profiling on the Turnpike to be expedited in order to allow the State to better assess its position in *State versus Soto*.

Your indication, however, from what you've told us-- I just want to clarify a point that was, at least, important to me, that despite sort of a representation that this interim report included a big piece that was going to continue the operations you had talked about with these 30 troopers carrying on various types of audits and investigations, that shortly thereafter, this effort seemed to dissipate for some period of time. Is that-- Do I have that right?

LIEUTENANT COLONEL DUNLOP: Yes, the audits in May of 1999 basically ceased, other than the follow-up by IAB on some of the violations of administrative -- or administrative violations.

But to be perfectly frank, sir, your question that was so long, I think I didn't answer it properly. I don't remember the beginning of the--

SENATOR MARTIN: Well, let me try it again with a shorter version.

Was there-- And I'll break it into--

There was some suggestion in the interim report that there would be increased and continuing efforts to carry on appropriate steps to make sure that racial profiling didn't continue to occur in the Department.

LIEUTENANT COLONEL DUNLOP: That's right. That was in the interim report. Yes, sir.

SENATOR MARTIN: And as you understand the period sometime shortly thereafter, those efforts actually decreased rather than continued or increased, as far as their activity?

LIEUTENANT COLONEL DUNLOP: Well, yes, the audit actually came to a halt. And Lieutenant Sachetti was looking for direction as to where we should go.

SENATOR MARTIN: And the 30 individuals who were engaged in those activities were put back into various other operations.

LIEUTENANT COLONEL DUNLOP: Well, to their original assignment, where we had gotten them from. Yes, sir.

SENATOR MARTIN: And there were no new troopers or other personnel brought in to engage in those activities.

LIEUTENANT COLONEL DUNLOP: No, sir.

SENATOR MARTIN: Thank you.

SENATOR GORMLEY: Senator O'Connor.

SENATOR O'CONNOR: Colonel Dunlop, the position that Attorney General Farmer offered to you, was that a position you could share with us -- tell us what it was?

LIEUTENANT COLONEL DUNLOP: I don't think it would be appropriate, because there's somebody sitting in there now. And I would think that-- I don't think that I would be doing that person justice by saying which position it was.

SENATOR O'CONNOR: Well, was that a position that was offered to you in the presence of anyone else, or was it--

LIEUTENANT COLONEL DUNLOP: Attorney General Farmer and myself had lunch together, and he made the offer.

SENATOR O'CONNOR: You strike me as you might be someone who would be on the short list for inspector general. If I were to guess that, would I be correct?

LIEUTENANT COLONEL DUNLOP: I don't know if I should comment on that, sir. I just don't think that that's fair.

SENATOR O'CONNOR: You got a smile, though.

LIEUTENANT COLONEL DUNLOP: Well, I don't think it's fair to whoever may be sitting in that position now.

SENATOR O'CONNOR: All right. I appreciate that.

SENATOR GORMLEY: Excuse me, who has one more question?

MR. CHERTOFF: Senator Robertson.

SENATOR GORMLEY: Senator Robertson.

SENATOR ROBERTSON: Thank you, Mr. Chairman.

Colonel Fedorko, let me -- well, actually, I'll ask both of you, but let me start with you, Colonel.

LIEUTENANT COLONEL DUNLOP: Could you pick on him for a while, sir?

SENATOR ROBERTSON: I know, I figured I'd give you a rest.

There was a hearing on racial profiling on April 26th, 1999. During the course of that hearing, Attorney General Verniero and First Assistant Zoubek testified. And we got into a discussion I can represent to you. I don't know if -- were you present at those hearings, do you recall?

LIEUTENANT COLONEL FEDORKO: Are you talking about the press conference, Senator?

SENATOR ROBERTSON: No, I'm talking about the Judiciary Committee hearings on racial profiling on the 26th of April, in '99, six days after the interim report was released.

LIEUTENANT COLONEL FEDORKO: No. I don't believe I was there.

SENATOR ROBERTSON: Oh, okay. Well, I can represent to you that there was a discussion at one point about the nature of the statistical information and the problems with it, and how it was difficult for us to draw certain conclusions. Specifically, we had some questions about the nature of the statistics that were concerned with stops, and whether or not they were disproportionate, how many people were stopped, how fast were they going, and that there was some concern, as well as in the *Soto* case, with the fact that there wasn't a good, reliable baseline about what is the percentage of minority drivers, minority drivers going at certain speeds, and so forth.

There was a second problem with statistics with respect to consent searches in that there wasn't an adequate amount of detail done between consent searches, those who refused to consent, and arrest rates, as well, and find rates.

During the course of that discussion -- this is really actually a simple question, even though it has a long preface. The simple question is this. During the course of that testimony, we were told that many of these gaps would be filled in, that this would be the subject of some ongoing concern and attention. And my question to you is this: In the months following that hearing and that appearance before this Committee, what steps, if any, were taken to develop that statistical baseline on stops, or to get better data with respect to the consent searches?

LIEUTENANT COLONEL FEDORKO: Senator, while I was there, all of the recommendations that were put forth in the report were -- not put in place, but the working -- the workings of them were put in place.

SENATOR ROBERTSON: In terms of reforms within the--

LIEUTENANT COLONEL FEDORKO: State Police.

SENATOR ROBERTSON: --in the State Police. Now refresh my recollection, if you would. In that respect, what was done with respect to the compilation of statistics?

LIEUTENANT COLONEL FEDORKO: I really don't recall.

SENATOR ROBERTSON: Colonel Dunlop, do you recall?

LIEUTENANT COLONEL DUNLOP: Yes, if I understand the question right, you're saying that at a hearing in which -- or at a briefing at which the Attorney General, I guess--

SENATOR ROBERTSON: It was a hearing.

LIEUTENANT COLONEL DUNLOP: He made the comment that they were trying to get a better handle on consent search statistics?

SENATOR ROBERTSON: Well, when we were asking questions of Mr. Zoubek during that period -- during that hearing -- he indicated that, yes, there were problems with the data, the way it was assembled, that we need better data with respect to establishing a baseline -- by that I mean, you know, how many drivers are there, what is their ethnicity, under normal circumstances, not just taking a look at the population figures, but actually the drivers on the Turnpike, that more would be done to establish a reliable baseline against which we could take a look at statistics, and that more detailed statistics would be put together with respect to consent searches and arrests.

Was that ever done?

LIEUTENANT COLONEL DUNLOP: Well, I know, going all the way back to 1997, in a letter which General Verniero had written to Justice, that he made mention that they were going to do a violator survey or a traffic survey -- or let's just say -- we could say a demographic survey of the New Jersey Turnpike. That was ongoing until the time -- that discussion was still ongoing until the time I left in July 1st of 2000. There had been RFPs, I believe, sent out, in regards to companies that were interested in conducting such a survey, but to date -- or at least I can say as of the date I retired, there was nothing done in regards to the traffic surveys.

In regards to trying to get a better handle on consent searches and stop data, I think the CAD system -- the computer aided dispatch system -- was certainly going to give us a lot of credibility in regards to stop data.

And they also were working -- because this had been brought to my attention also. They also were working to reform or to improve the reporting process of the consent searches. We wanted more qualitative data as to reason for the search and the reasonable suspicion that was developed.

So, at that point in time, when I left, they were still trying to develop that type of document that would give us that ability to better account for consent searches, that type of thing.

SENATOR ROBERTSON: And that would be approximately 15 or 16 months later?

LIEUTENANT COLONEL DUNLOP: Yes. Yes, sir.

SENATOR ROBERTSON: Thank you, Mr. Chairman.

SENATOR GORMLEY: Thank you.

SENATOR GIRGENTI: Mr. Chairman, if I might, just very quickly, just to refresh my memory.

Detective Gilbert, who appeared before us earlier -- Lieutenant Colonel Dunlop, maybe you could answer this question. Was there ever any doubt in your mind of the statistics that he had gathered and the information, and did you -- were you privy to the information over that period of time when he was doing statistics, or did you notice?

LIEUTENANT COLONEL DUNLOP: I don't understand the question. Is the question--

SENATOR GIRGENTI: Were you aware of him doing these statistics at any point in time?

LIEUTENANT COLONEL DUNLOP: As of February 1998 I was, when I received a report that came up from Field Operations, which is that one where it breaks down consent search stop data, at Cranbury and Moorestown, yes. And I believe that -- then I started asking Sergeant Gilbert what this data meant and what it was.

SENATOR GIRGENTI: All right. And that's when, at some point, he provided you with the blue book, for your information.

LIEUTENANT COLONEL DUNLOP: He provided me -- yes, a briefing book -- a red briefing book. Yes, sir.

SENATOR GIRGENTI: The red one, all right. When this meeting that's been referred to a number of times, in May of 1997, with the Attorney General, you weren't at that meeting, right?

LIEUTENANT COLONEL DUNLOP: No, sir, I was not.

SENATOR GIRGENTI: No. At that meeting, did there seem to be -- the information had been given to the AG, from what you've understood, right, in terms of this data?

LIEUTENANT COLONEL DUNLOP: Yes. I was getting this -- understand, sir, I was getting this all from Gilbert at that point in time, that he was briefed in reference to -- and we later found this, an agenda, which was later produced, but--

SENATOR GIRGENTI: Yeah, he was sitting on the -- he was actually taking minutes of the meetings.

LIEUTENANT COLONEL DUNLOP: Who was that, sir?

SENATOR GIRGENTI: Gilbert.

LIEUTENANT COLONEL DUNLOP: Gilbert. I can't say if he was taking minutes or not.

SENATOR GIRGENTI: All right.

LIEUTENANT COLONEL DUNLOP: All he was doing was briefing me as to what transpired during that meeting -- I was not there.

SENATOR GIRGENTI: All right. After the *Soto* decision, they made a -- they had a committee, a Littles committee -- Lieutenant Colonel Littles was the head of it.

LIEUTENANT COLONEL DUNLOP: I had heard and I've read in reference to that, but I had no direct knowledge.

SENATOR GIRGENTI: Okay. And over that period of time, he documented it. He had information. And evidently this was passed along through this -- either John Fahy at one time, and then Rover at another time -- George Rover, Deputy AG. When it came to the end, in terms of them saying they did not have the information, you went to bat for him strongly, because you did have the data at that point.

LIEUTENANT COLONEL DUNLOP: Well, I had every reason to believe that what Tom Gilbert was telling me, that he had been turning this stuff over, consistently, to the Attorney General's Office, was, in fact, true.

And I also corroborated, through Blaker, the fact that there was that May 20th, 1997 meeting, which he had told me about.

SENATOR GIRGENTI: And--

LIEUTENANT COLONEL DUNLOP: But, sir, if I may just qualify. A lot of this -- a lot of this -- documents that were turned over, or the information that was provided by Gilbert to the Attorney General's Office was well in advance of when I became the Executive Officer.

SENATOR GIRGENTI: Okay. All right, and I understand that. So, now, Zoubek -- I guess he's the head of Criminal Justice at that point in time -- '99 now, going into '99, when you were dealing with him -- was the feeling that -- you said before that you sincerely believed that he did not get that information?

LIEUTENANT COLONEL DUNLOP: No. I can -- I don't know if he got that information or not. My belief was that the Attorney General's Office was fully aware of the information that the State Police had, that we weren't holding back any information at all. And that was based on the fact that I knew, from Gilbert's conversations with me, that he was turning everything over -- that all the data was turned over.

SENATOR GIRGENTI: All right. Thank you. That clears it up. Thank you.

MS. GLADING: One.

SENATOR GORMLEY: One question? Okay, go ahead.

MS. GLADING: Colonel Dunlop, I want to ask you about the memo that you wrote on March 11th, 1999, and gave -- and sent to Paul Zoubek. Just to refresh your recollection of it -- I don't have a copy with me -- but you discussed alternatives to dealing with concerns about consent to search numbers. And one of the alternatives you recommended was requiring, I think, a sergeant to go out whenever a consent to search was executed.

LIEUTENANT COLONEL DUNLOP: Yes, ma'am. I made four distinct proposals.

MS. GLADING: You also recommended another alternative, ending consent to searches completely, didn't you?

LIEUTENANT COLONEL DUNLOP: Yes, I did.

MS. GLADING: Okay. This was March 11th -- this was four days prior to when Sergeant Gilbert and you went down to bring his blue notebook. Is that correct?

LIEUTENANT COLONEL DUNLOP: That's correct.

MS. GLADING: Why were you discussing concerns about consent to searches at this point in time?

LIEUTENANT COLONEL DUNLOP: What I wanted to do was to discuss with Paul Zoubek something that we could do in reference to alleviating the problem that we had, which was basically consent searches. And there was other data here -- I have it in my file -- as to what recommendations we were making. If I'm not mistaken, some had to do with training. Some of it had to do with an understanding of a trooper's -- how serious this falsification was. My fear was that some of these troopers didn't realize that any type of falsification is not tolerable.

So those were included in this recommendation. And also, since I knew -- and I think Paul Zoubek was well aware also -- that the biggest concern we had in drug interdiction, or criminal interdiction, was our consent searches.

MS. GLADING: Well, let me ask you this. It's been represented to us by various witnesses and documents that the issue of the consent to search as being the primary concern really didn't come to the Attorney General's Office and attention, and to the attention of who were actually drafting the interim report, until they got the Gilbert numbers, but that was still four days away. So my question is, why -- why were you having this kind of a discussion with Mr. Zoubek about consent to search numbers? What was his concern based on, at that point, if they didn't yet have these Gilbert numbers that apparently enlightened them to the severity of the problem that was going on out on the roads with consent searches?

LIEUTENANT COLONEL DUNLOP: I can't speak for the Attorney General. But I would say that they certainly should have known that consent searches were of great concern to the New Jersey State Police, going back to May 20th of 1997. Because at that point in time, as you know, that was one of the topics that was on the agenda.

So I think that at least Paul Zoubek -- and I don't want to put words in his mouth -- but I think he was well aware, because we've had discussions that consent to search was a real problem. That's the reason I formulated these recommendations to him, based on conversations that I had. You know, "Listen, Paul, the consent search, the highway interdiction, is really getting us into problems." In fact, we had had discussions that maybe the best thing we can do -- and I had discussed this with Lieutenant Colonel Fedorko -- maybe the best thing we could do was suspend highway interdiction until we get a clearer

policy from both the Department of Justice and the Attorney General's Office as to where we should go.

Those recommendations were made to Zoubek in reference to consent search that would handle the problem right then and there, until we had a chance to really discuss it further and get into -- and figure out what a long-term policy was going to be in reference to our highway and drug interdiction, or criminal interdiction, and also our consent search policies.

SENATOR FURNARI: Can I just--

SENATOR GORMLEY: Senator Matheussen.

SENATOR MATHEUSSEN: I know I'm stretching this, for everyone's sake tonight, but I have to ask this question.

Colonel Dunlop, we have a sequence of events that was handed to us, and it's dated April 1999. And I know you testified about this before. When you had this conversation with Deputy Attorney General Zoubek at the time, when did that conversation take place? Did it take place before April 26th, or after April 26th?

LIEUTENANT COLONEL DUNLOP: Sir, this is the conversation--

SENATOR MATHEUSSEN: This is the conversation where you told him, "I wouldn't go there, Paul." And he's upset, because he hasn't received any information, he claims, out of the State Police office -- out of State Police.

LIEUTENANT COLONEL DUNLOP: Yes, sir. To the best of my recollection, and this is very, very difficult--

SENATOR MATHEUSSEN: I understand.

LIEUTENANT COLONEL DUNLOP: --for me to pinpoint, because I didn't make any notation on this. But I -- to the best of my recollection, it was

just prior to, or it would have been just immediately after the interim report was released.

SENATOR MATHEUSSEN: And the interim report was released in--

LIEUTENANT COLONEL DUNLOP: On April 20th.

SENATOR MATHEUSSEN: April 20th.

LIEUTENANT COLONEL DUNLOP: And, sir, if I could just clarify that a little bit more. I think the reason I gave validity to the fact of this rumor that I heard, and I wanted to nip it in the bud, so to speak, with Paul Zoubek, was the fact that it lent credence to the fact that the interim report would be more widely acceptable, and the termination of Colonel Williams would be more acceptable to the public if there was some discrediting done.

SENATOR MATHEUSSEN: Is it possible that Paul Zoubek did not know about the information because he was not, at the time, involved -- up until that time, really involved in racial profiling, but everybody else--

LIEUTENANT COLONEL DUNLOP: That's correct. He may have had no knowledge whatsoever. And like I said before, my telephone conversation with him in reference to the May 20th, 1997 memorandum and meeting, I was convinced that he did not know.

SENATOR MATHEUSSEN: Nothing further, Mr. Chairman.

SENATOR GORMLEY: Anything further? (no response)

All right. I will end with my one question of the day. I'll end with my one question of the day.

Did either of you, at that time, in and around April of 1999, when the interim report was issued, when there was the falsification indictments announced, was there any conjecture, any conversation that you had that this --

that this rush was caused by the fact that this Committee had said there'd be a profiling hearing prior to the time that there would be a nomination hearing?

LIEUTENANT COLONEL FEDORKO: Not to me.

LIEUTENANT COLONEL DUNLOP: No, sir. I didn't know that there was going to be a profiling hearing.

SENATOR GORMLEY: Okay. Thank you.

Just for the record, without objection, the exhibits presented to the witnesses and the depositions taken prior to this time shall become a part of the record. The Committee will reconvene tomorrow. The first two witnesses will be George Rover and John Fahy.

Thank you.

(HEARING CONCLUDED)

EXHIBIT 14

Minority Report Supplementing the Report of the New Jersey Senate Judiciary Committee's Investigation of Racial Profiling and the New Jersey State Police

The four Democratic members of the Senate Judiciary Committee offer the following minority report to expand upon the report released by the Judiciary Committee.

Consent Searches

The Committee's report recommends that an Executive Order be issued imposing a moratorium on consent searches made in connection with Title 39 violations on major highways. Under the Committee's recommendation, before the use of such searches could be reinstated, the Office of the Attorney General would be required to provide information to the Committee demonstrating that sufficient safeguards exist to monitor the use and prevent the abuse of consent searches.

The Democratic members of the Committee believe, however, that this recommendation should go further. In the event that the Governor fails to end consent searches by Executive Order, the Legislature should enact legislation banning the use of consent searches in connection with traffic stops. Furthermore, any ban on the use of consent searches in connection with traffic stops, whether by Executive Order or legislation, should apply to all law enforcement agencies, regardless of the type of roadway on which the traffic stop takes place.

During his testimony before the Committee, Attorney General John Farmer conceded that consent searches yield "very little" in the way of contraband, thus supporting the view that their questionable utility is outweighed by the significant risk

they pose to the civil liberties of motorists. It should also be noted that the only specific example cited by AG Farmer in defense of the use of consent searches was that of a terrorist who was stopped on his way to New York and a consent search revealed explosives. But AG Farmer's public testimony was incorrect. Later research by the Committee revealed that the case he cited, U.S. v. Kikumura, 706 F. Supp. 331 (1989), did not involve a consent search. It involved a probable cause search because the State trooper who stopped Kikumura for a motor vehicle violation saw cylinders of gunpowder and lead shot in the back seat of the car. AG Farmer also conceded that he himself came close to issuing a directive ending consent searches.

The Committee heard compelling testimony from motorists and troopers illustrating the potential for abuse of consent searches. The Committee reviewed disturbing data concerning consent searches on the Turnpike during 2000. The data showed that despite the extensive attention that has been trained on consent searches since the Interim Report in April, 1999, minorities continued to be subject to consent searches at a widely disproportionate rate and most of the time, those searches yielded nothing. Little had changed in the two years following the Interim Report, despite a federal Consent Decree.

The evidence before the Committee was clear: the marginal value of consent searches in the context of traffic stops is greatly outweighed by the risk they pose to the civil rights of law-abiding motorists. Furthermore, the Committee heard testimony from troopers who also questioned the value of consent searches, and who said they are simply not a substitute for good police work. The Committee also heard expert testimony that was highly critical of the use of consent searches as a law enforcement tool.

The Democratic members of the Committee emphasize that banning consent search does not in any way limit the ability of law enforcement personnel to conduct automobile searches based on probable cause, which has historically been the standard for such searches. In the weeks since the Judiciary Committee's hearings, AG Farmer has not provided any additional information that alters these findings.

Failed Leadership

The Democratic members of the Judiciary Committee are of the belief that the full Committee's report fails to explicitly discuss one of the central problems identified as a result of the Committee's investigation. It is the view of the Democratic members of the Judiciary Committee that a failure of leadership at the highest levels of the Department of Law and Public Safety permitted the racial profiling problem to be ignored or concealed for many years.

The Committee reviewed troubling evidence and testimony indicating that in the years following the March 1996 ruling in State v. Pedro Soto, and during the course of the investigation by the United States Department of Justice (DOJ) investigation in 1997 and 1998, State officials gathered significant evidence suggesting that Judge Francis' conclusions in Soto had been correct. The evidence included statistical data that clearly indicated that on the southern part of the Turnpike, minority drivers were subjected to traffic stops and consent searches at disproportionately high rates. The Committee's investigation also found that this evidence was apparently widely circulated within the highest levels of the Department of Law and Safety, but was not acted upon for at least two years, until it was used to form the basis for the Interim Report in April, 1999.

This evidence demanded greater scrutiny and honest examination as it was

gathered. But instead, it was met with inaction at the highest levels of State government. In the aftermath of Soto, even modest reforms intended to improve training, accountability and supervision were delayed or abandoned midstream. Critically important reforms, such as the Computer Aided Dispatch and Records Management System, were riddled with delays, problems and failure. In the face of an inquiry by the U.S. Department of Justice into the issues identified in Soto, the leadership within the Department of Law and Public Safety again failed to look inward and to investigate whether there was a basis for the federal government's concerns. Rather than attempting to get to the truth, and confronting whatever problems existed, leadership within the Department of Law and Public Safety responded to DOJ with foot dragging, delays, repeated failures to produce relevant information, and efforts to limit the scope of the federal inquiry.

This persistent failure of leadership was a disservice to the public, and a disservice to the rank and file within the State Police.

The Intervening Indictment

The Democratic members of the Committee also believe that specific concerns should be raised concerning the manner in which the indictment of Troopers Hogan and Kenna for records falsification was handled.

Testimony before the Committee indicated that the grand jury investigation into the shooting incident was suspended in order to pursue the indictment for records falsification charges more quickly, and those steps were taken solely to respond to perceived pressure from the public for action in the matter. The candid witness testimony on this issue indicated that the decision to seek the lesser indictment and publicize it was

made against the advice of career prosecutors, and at the risk of tainting the grand jury investigation into the more serious shooting charges. It is troubling that this inappropriate and unusual process has now received the imprimatur of the Appellate Division in State v. Hogan, 336 N.J. Super. 319 (App. Div. Jan. 5, 2001).

That ruling also suggests that State officials left the Appellate Division with the impression that the alternative option -- delaying the false reports investigation until the grand jury investigation into the shooting incident was concluded -- was "highly impractical and self defeating," and would have posed a risk to the defendants' rights. This is disturbing because that alternative course, bringing the records falsification charges before a separate grand jury only after the shooting grand jury concluded its work, was exactly the route that had been planned by the career prosecutors who were handling the case, and in their view it was the preferable route. Indeed, it was clear from the testimony that the records falsification indictment was speeded up for precisely the reason Judge Smithson identified in his ruling: "there existed powerful and intimidating forces driving the decision making of the Office of the Attorney General.... the motivation to allow the return of the indictments at that time was considerably more a matter of political expediency than of concern for the substantive rights of defendants Hogan and Kenna."

Senator John A. Lynch

Senator Edward T. O'Connor

Senator John A. Girgenti

Senator Garry J. Furnari

EXHIBIT 15

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EDITORIAL

PUT EGO ASIDE

BRIDGE SCANDAL INVESTIGATION SHOULD BE A JOINT LEGISLATIVE EFFORT

Assemblyman John Wisniewski, chairman of the Assembly committee investigating the George Washington Bridge saga, has done excellent work uncovering key facts surrounding this outrageous abuse of government authority. He's been tenacious, but careful not to overreach.

However, he rejected requests from the Senate to form a joint committee now that this has flowered into a full-blown scandal. So we have two committees conducting separate investigations of the same material. That is not only a waste of time and money, but it also will needlessly disrupt the Christie administration from doing the work of governing. The bulk of Gov. Chris Christie's senior aides have been subpoenaed to testify, so this is no small matter.

Senate Majority Leader Loretta Weinberg (D-Bergen), who represents the victims of this little caper from Fort Lee and the surrounding towns, is pushing for a joint committee. She was the first to bang alarms about these manufactured traffic jams back in September, when everybody else shrugged it off. She wrote to the governor and the Port Authority of New York and New Jersey on behalf of her constituents, demanding to know why the access lanes to the GWB had been closed. She attended meetings of the Port Authority board and warned its members that she would use subpoena power to pry out information if they continued to stonewall her.

Wisniewski (D-Middlesex) attended one of those

meetings with her. And because his committee in the Assembly already had authority to issue subpoenas, Weinberg accepted his offer to issue them himself.

But more recently, her request to form a joint committee was rebuffed.

This seems irrational. Wisniewski says that because his committee is doing well, he does not want to disrupt its work with a new structure.

Wisniewski has gotten the lion's share of attention. Weinberg deserves half the spotlight now.

Our guess is there are other reasons as well. Wisniewski may be worried about the unfounded rumors that Senate President Stephen Sweeney (D-Gloucester) is reluctant to press this investigation. And given that Wisniewski is mentioned as a possible gubernatorial candidate in 2017, he may not want to share the spotlight.

Weinberg deserves half that spotlight. But the more important reason to form a joint committee is that it will cause less disruption and cost less money.

The two committees are discussing ways to cooperate, which is a relief. They could hold joint meetings, even though that could be unwieldy. They could rely on the same outside counsel, rather than each hire its own.

Our hope is that they coordinate along those lines as much as they can.

EXHIBIT 16

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Joint N.J. legislative committee probing Christie's 'Bridgegate'

Mon, Jan 27 2014

By Noreen O'Donnell

(Reuters) - New Jersey state legislators voted on Monday to merge parallel investigations into the George Washington Bridge traffic scandal ensnaring Republican Governor Chris Christie.

The newly-formed joint committee will have the power to subpoena witnesses and correspondence and to order testimony under oath as part of its investigation into allegations that a gubernatorial aide engineered the traffic jam to punish the Democratic mayor of Fort Lee, New Jersey, which abuts the bridge.

It will also examine the abuse of government power, the investigating committee of eight Democrats and four Republicans from the state's Assembly and Senate said in a statement.

"Throughout the earlier stages of this investigation, it became clear that for every answer we uncovered, many more questions arose," Democratic Assemblyman John Wisniewski, a leader of the probe as the head of the Assembly Transportation Committee, said in a statement.

"Forming this joint committee is the best way to streamline and expedite our inquiry in order to obtain the answers we need to prevent future abuses of power," Wisniewski said.

He and Senate Majority Leader Loretta Weinberg, another Democrat, will co-chair the new panel. They said in a joint statement that 20 subpoenas issued previously by the Assembly committee will now be reissued by the joint committee "with an unchanged return date of February 3."

The committee's special counsel is Reid Schar, a Chicago lawyer who as an assistant U.S. attorney, prosecuted both corruption trials of former Illinois Governor Rod Blagojevich.

The U.S. Attorney's Office in New Jersey is also looking into the traffic tie-ups over four days in September 2013, nicknamed "Bridgegate" by local newspapers, which angered commuters and delayed school buses and ambulances. It has issued subpoenas to Christie's campaign as well as the state Republican Party.

Christie, seen as a top Republican contender for the White House in 2016, has denied being part of a scheme to snarl traffic at the bridge linking New York and New Jersey by abruptly closing access lanes. He has promised cooperation with the federal probe.

E-mails released earlier this month link two of his former top aides to the traffic tie-ups after Fort Lee's mayor refused to support Christie's re-election. Christie won a second term decisively.

A recent poll shows that his support has fallen almost 20 points since his landslide re-election.

Other Democratic allegations about Christie administration strong-arm tactics have surfaced in recent weeks, including Hoboken Mayor Dawn Zimmer's charge that Christie withheld recovery funds for Superstorm Sandy for political reasons.

Christie's office has strongly denied Zimmer's allegations.

(Editing by Barbara Goldberg, G Crosse)



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EXHIBIT 17



New Jersey LEGISLATURE

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EXHIBIT 18

A NEW JERSEY LEGISLATIVE SELECT COMMITTEE ON INVESTIGATION RESOLUTION authorizing the issuance of subpoenas and such other action as is necessary to further the Committee's investigation of all aspects of the finances, operations, and management of the Port Authority of New York and New Jersey and any other matter raising concerns about abuse of government power or an attempt to conceal an abuse of government power including, but not limited to, the reassignment of access lanes in Fort Lee, New Jersey to the George Washington Bridge.

WHEREAS, On January 27, 2014, pursuant to Senate Concurrent Resolution No. 49, the Senate and General Assembly constituted the New Jersey Legislative Select Committee on Investigation Committee as a special committee to investigate all aspects of the finances, operations, and management of the Port Authority of New York and New Jersey and any other matter raising concerns about abuse of government power or an attempt to conceal an abuse of government power including, but not limited to, the reassignment of access lanes in Fort Lee, New Jersey to the George Washington Bridge; and

WHEREAS, The Committee was conferred with all the powers pursuant to chapter 13 of Title 52 of the Revised Statutes, including, but not limited to, the power to issue subpoenas, to compel the attendance and testimony of persons, and the production of books, papers, correspondence, other documents and materials, and electronic records and data, and to use any and all reasonable means of interviewing or fact gathering, including, but not limited to, preliminary conferences or interviews; now, therefore,

Be It Resolved by the New Jersey Legislative Select Committee on Investigation:

1. a. The Committee authorizes its Co-Chairs, Loretta Weinberg and John S. Wisniewski, to issue, with prior notification of the other Co-Chair and in accordance with the Code of Fair Procedure, subpoenas under her or his signature to compel the production of relevant documents and other information, compel the attendance and testimony before the Committee of any individuals with information relevant to the investigation. Each Co-Chair is authorized to direct Committee staff to sign that Co-Chair's name on behalf of that Co-Chair.

b. Any documents and other information received by the Committee shall be in the custody and control of the Co-Chairs and the Co-Chairs shall be authorized to determine access and availability of those documents. The President of the Senate and the Speaker of the General Assembly shall be granted access to documents and other information received by the Committee.

2. This resolution shall not be construed as a limitation on either the powers of the Committee or its Co-Chairs under the Senate Rules and the General Assembly Rules and specifically under Senate Concurrent Resolution No. 49 of 2014, which authorized this investigation and granted subpoena powers.

3. To aid the Committee in carrying out its investigation, the Co-Chairs of the Committee are authorized, on behalf of the Committee to:

- a. engage the assistance of the Office of Legislative Services;
- b. with the approval of the President of the Senate and the Speaker of the General Assembly, engage any outside resources or services, including but not limited to, legal counsel and process servers, and to incur miscellaneous expenses related thereto;
- c. pursue any legal redress available pursuant to Senate Concurrent Resolution No. 49 for noncompliance with a subpoena;
- d. agree to conditions on evidence gathering as necessary and appropriate;

e. respond to any judicial or other process, or to make application to the courts of this State, any other state, or the United States;

f. respond to Open Public Records Act requests;

g. report possible violations of any law to appropriate federal, State, or local authorities; and

h. report possible violations of any ethics rules, regulations, or codes to the appropriate body.

4. A copy of this resolution shall be delivered to the Secretary of the Senate and the Clerk of the General Assembly.

Approved January 27, 2014

EXHIBIT 19

The Record: Democrats unite

JANUARY 23, 2014
THE RECORD



The George Washington Bridge.

DEMOCRATIC LEADERS in Trenton wisely have decided to create a joint committee to investigate the Christie administration's involvement in closing two access lanes to the George Washington Bridge last fall.

The Democrats' original idea called for two investigatory panels, one in the Senate and one in the Assembly.

There was a lot wrong with that plan: Two committees likely would have resulted in lawmakers on one committee trying to outshine those on the other. Dueling committees also would have meant the hiring of two counsels and perhaps other duplicative support staff.

Additionally, the 20 individuals and organizations subpoenaed probably would have had to answer the same questions twice if there were two committees. That would have wasted time, and it also would have taken many of those subpoenaed away from the government functions they were hired to perform. Many of those subpoenaed have substantive positions with the governor's office, including chief counsel, communications director and chief of staff.

Plans are for the joint committee to be led by state Sen. Loretta Weinberg, D-Teaneck, and Assemblyman John Wisniewski, D-Middlesex. Reid Schar, who was hired as counsel for the Assembly committee, will serve a similar role with the joint committee.

Both houses of the Legislature unanimously agreed to create the separate committees. New votes will have to be taken on creating a joint committee. Those votes also should be unanimous, although Republicans have a legitimate gripe over how party membership on the joint committee is proposed to play out. Senate Minority Leader Thomas H. Keam Jr., R-Union, noted that an authentic bipartisan committee needs an equitable mix of members.

Plans call for a 12-member committee, with eight members coming from the Assembly and four from the Senate. The proposed party breakdown would be five Democrats and three Republicans from the Assembly and three Democrats and one Republican from the Senate.

While Democratic control of both houses means Democrats will be dominant on the committees, the panel should have more than one Republican senator. Why not two senators from each party? That would still give Democrats control of the committee by a 7-5 ratio.

It's important for Democrats to do all they can to ensure that the committee is seen as a legitimate investigatory panel and not a partisan tool. Increasing Republican membership on the committee would help make that point.

EXHIBIT 20

When Boards Seek Outside Counsel

by Craig C. Martin and Devlin Su

In today's legal environment, the scrutiny of corporate management and boards continues to grow more focused, more intense, and pose more challenges. Management and boards also face challenges to how they address issues of risk and liability. In these situations, boards need to assess whether to retain independent outside legal counsel.

The most common scenarios for retaining independent outside counsel include audit committee investigations, shareholder derivative lawsuits, and risk committee investigations and analyses. Beyond the expertise that outside counsel bring to bear on such legal matters, their independence and judgment is perhaps the most valuable service they provide.

An independent outside counsel can help resolve some of the most serious audit committee investigations.

Internal investigations of corporate behavior have become increasingly common among U.S. companies, large and small. Legislative and regulatory forces like the 2010 Dodd-Frank Act increased the incentives for the plaintiffs' securities bar, often with the assistance of whistleblowers, to bring cases against financial services companies and other large corporations. In addition, in the wake of the 2008 financial crisis, the Department of Justice, the Securities and Exchange Commission, and other regulators have escalated their enforcement efforts, particularly under the Foreign Corrupt Practices Act (FCPA).

These efforts seek to punish fraud, accounting irregularities, and other types of misconduct, and raise the stakes significantly for board members. The best defense to these serious allegations starts with a full understanding of the facts through a thorough investigation.

Often, these investigations begin once manage-

ment raises serious allegations to the board level. Given the general responsibility of a board's audit committee to oversee internal controls and reporting, the board frequently taps the audit committee to oversee the investigation.

Unlike a general internal audit, this type of investigation targets specific events or allegations. Depending on the specific committee charter, though, the allegations do not always have to be of a purely accounting or financial nature.

Specific examples of audit committee investigations may include:

- Illegal payments to gain business, especially in foreign countries.
- Senior management theft, fraud, or harassment.
- Improper accounting for business activities, backdated stock options, or falsified accounts.
- Conflicts of interest among fellow directors.
- Leaks of confidential information to competitors.

These examples often share common characteristics, such as:

- Financial reporting irregularities.
- Potential for major financial damage.
- Allegations of misconduct by senior management or directors.
- Potential for corporate reputational damage.
- Regulatory or law enforcement involvement.

Once problems rise to this level of seriousness, an audit committee's first step is deciding whether to engage outside investigatory experts, including outside legal counsel. At first, working with in-house counsel may seem more attractive than retaining outside counsel. In-house counsel have a working understanding of the corporation's structure; its policies, procedures, and record-keeping practices; and some of the personalities and politics involved in the underlying claims. In-house counsel will also

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Craig C. Martin and Devlin Su

likely be less expensive than outside counsel, who may require some start-up time to ramp up their resources and do preliminary work.

More damaging than any real lack of independence for your investigation is the *perception* of a lack of independence.

On the other hand, using in-house counsel to investigate serious wrongdoing can have serious disadvantages. Chief among them is the potential lack of independence from company management. Given that the allegations may implicate senior management (often, their immediate supervisors), in-house counsel may face practical constraints on the objective analysis they can provide.

More damaging than any real lack of independence is the *perception* of a lack of independence. Criticism now travels faster and reaches more people than ever before. The mere perception by a regulator, shareholder, or even the public that an internal investigation suffered due to a conflict of interest with the investigator can cause them to question the investigation's findings. Such reputational damage may have serious effects not just on a company's public brand, but also on a regulator's assessment of its problems.

Thus, the choice of an independent outside counsel lends the investigation instant credibility, which is most tangibly helpful when a regulatory or law-enforcement authority is involved. Over the past few years, and certainly since the financial crisis, that prospect has become increasingly likely. The number of SEC enforcement actions has trended up since the financial crisis, and the average price to settle an FCPA enforcement action spiked dramatically in 2013 (*see chart on page 13*).

These trends depict an involved (and expensive) government presence. As a result, boards should understand how to limit their potential exposure. Often, the best way is to conduct a robust internal investigation.

The SEC's 2001 Seaboard Report set 13 criteria that it will consider in determining whether, and how

much, to credit self-policing, self-reporting, and cooperation by a company during an SEC enforcement action. Criteria include the company's response to learning of the misconduct, including whether the company promptly and completely disclosed the violation to investigators and the authorities; and the quality of the information provided to the SEC, including whether the company prepared a thorough report about its findings.

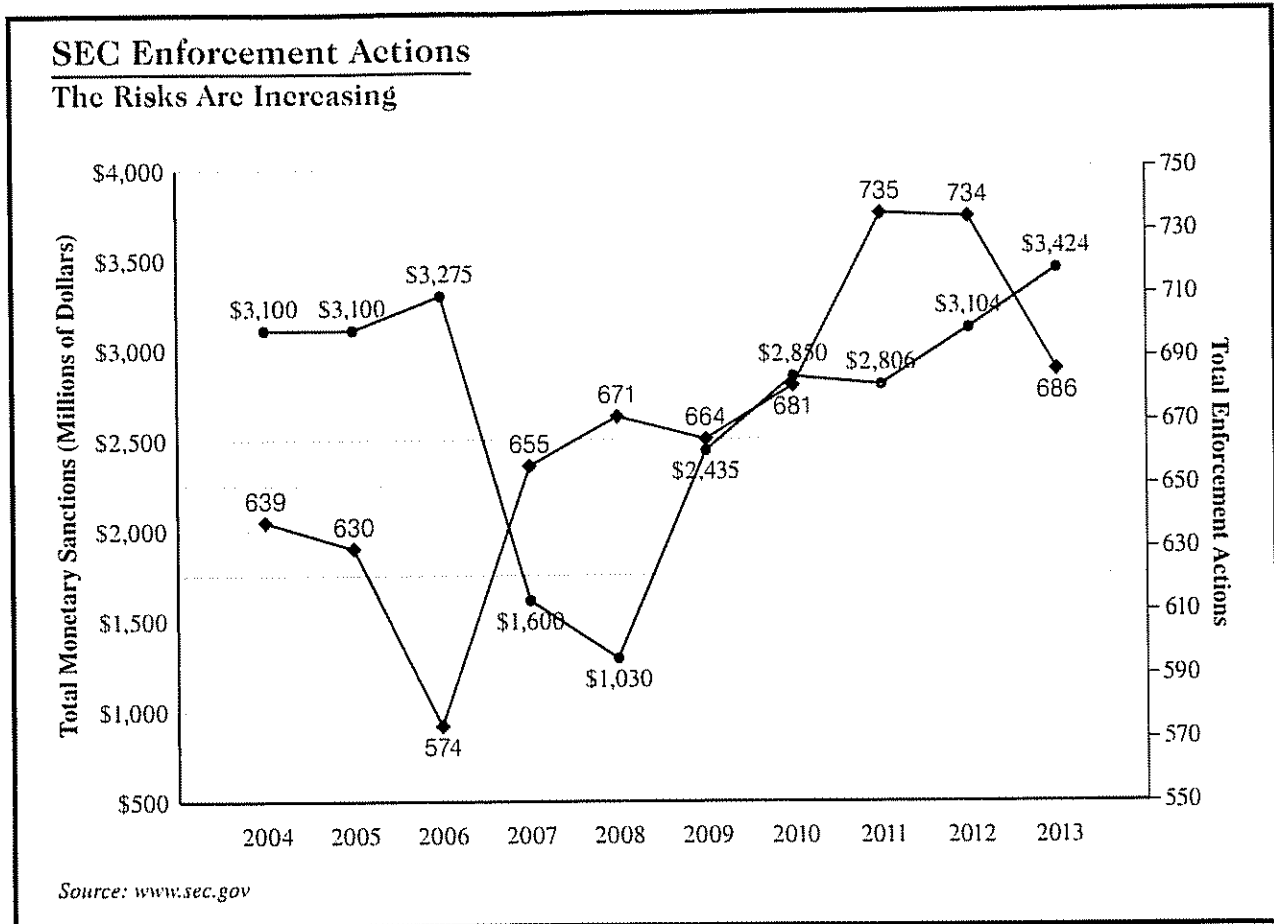
Retaining independent outside counsel can signal to regulators and the public that the board investigation will be thorough, complete, and objective.

Further, the SEC has stated that it would specifically account for whether independent advisors like outside legal counsel conducted the investigation, and whether the company placed any scope limitations on the investigation. As an example of this policy statement in action, the SEC in 2010 did not levy a monetary penalty against a heavy-vehicles manufacturer despite significant financial fraud and false accounting practices. In its administrative proceeding opinion, the SEC explained this decision by pointing to the company's decision to conduct an independent outside investigation and its remedial steps.

The policies laid out on the SEC's Seaboard Report also match some of the practices of the DOJ. For example, the DOJ's internal guidelines for the prosecution of corporations highlight certain mitigating factors that may support a no-charge decision, including full cooperation with the government and its investigation, complete and voluntary disclosure of violations, and effective remediation of violations.

Retaining independent outside counsel can thus signal to regulators and the public that the audit committee investigation will be thorough, complete, and objective. While retaining outside counsel may appear more expensive than working with in-house counsel, outside counsel can recoup those expenses by delivering a favorable outcome down the road.

Retaining independent outside counsel is just as essential when facing a shareholder derivative



suit. In a shareholder suit, a plaintiff sues on behalf of the corporation over some perceived wrong—self-dealing, waste of corporate assets, regulatory sanctions, accounting restatements, misconduct by officers or employees, massive business losses, and many, many other potential injuries.

In order to sue derivatively on behalf of a corporation, a shareholder plaintiff must overcome a number of legal hurdles. One is to demand formally that the corporation's directors act to address the alleged injury, or demonstrate that making that demand would be futile. Thus, shareholder derivative suits will frequently rise to the board level, bypassing management altogether.

From the plaintiff's perspective, there are a few drawbacks to making a formal demand on the board. The chief drawback is that courts will presume that a board that rejects the demanded action acted in good faith and in the best interests of the company

and its shareholders. This is a tough presumption to overcome, so most plaintiffs instead choose to demonstrate that making the demand on the directors was futile.

However, the corporation can still retain control of the litigation by appointing a special litigation committee (SLC) of independent and disinterested directors to investigate the complaint's allegations. The ultimate job of an SLC is to determine whether litigation is in the corporation's best interest after considering factors like the merits of the shareholder allegations, the size and likelihood of a recovery of damages, and any remedial steps already taken by the corporation.

If an SLC's objective, thorough investigation concludes that dismissal of the lawsuit is in the best interests of the corporation, the committee may move, in the corporation's name, to dismiss the derivative suit. If the motion is granted, then the SLC investi-

Craig C. Martin and Devlin Su

gation will have saved the corporation considerable time, effort, and expense.

An SLC investigation, however, will only defeat a derivative suit if a judge dismisses the case. In deciding whether to dismiss, the judge reviews the findings of the committee investigation, taking great care to determine if it remained independent and disinterested throughout.

A key factor in this decision is the SLC's choice of legal counsel. Indeed, the likelihood of a court's dismissing the suit can depend considerably on the choice of truly independent legal counsel. For example, SLCs that hire outside counsel who have previously represented the company on the very subject matter of the shareholder's demand frequently lose their motion to dismiss the derivative suit.

Often, the company's regular outside corporate counsel is unsuitable to represent the special litigation committee.

Courts also vary across the country about whether outside counsel to the SLC who have represented the company in the past (even on matters wholly unrelated to the derivative suit) are truly independent. Some courts flatly reject the independence if outside counsel had a prior working relationship with the company. Others inquire into the role that outside counsel played in the company's past, or examine whether business from that company comprises a significant percentage of outside counsel's revenues. Still others may scrutinize the most trivial connections (including personal ties) between a committee's chosen counsel and management, directors, or the plaintiff's attorney. If a court questions the impartiality of any of these relationships, the SLC often loses its motion to dismiss and its investigatory work will have been for naught.

This practical legal requirement of independence often means that the company's regular outside corporate counsel is unsuitable to represent the SLC. The same often goes with in-house counsel. Thus, before embarking on their investigations, SLCs should interview potential outside counsel carefully about

any conflicts. This requirement of independence may make the counsel-selection process exacting at times, but the potential reward—defeating a shareholder derivative suit at an early stage—can be worth the effort.

One of the most important responsibilities of a board is to understand and manage the risks inherent in the company's business strategy at the entire enterprise level. To that end, a board may allocate specific risk oversight responsibilities to several pre-existing committees. Most commonly, that means a board's audit committee pulls double duty, which is often sensible in light of the committee's role in managing financial reporting risk. In fact, for companies listed on the New York Stock Exchange, one of the audit committee's chartered responsibilities is to discuss with management the company's policies about risk assessment and risk management.

Some boards, however, have begun to separate risk-management responsibilities from the audit committee to house them in an independent risk committee. Many of these companies operate in the financial services sector and are governed by the Dodd-Frank Act. This requires a separate risk committee (made up of independent directors) for large public banks and for public nonbank financial companies supervised by the Federal Reserve. Other non-financials, especially those that face complex market, credit, liquidity, or commodity pricing risks, have followed suit. This governance structure allows their audit committees to focus on their core financial-reporting responsibilities, while encouraging and focusing director attention on those complex risks.

Outside counsel should work with the board, rather than management, to implement its risk analysis.

No matter the specific governance structure, independent outside counsel can provide a board with a fresh and objective risk analysis. Although outside counsel will tailor their analysis to the specific needs of the board, a typical risk-analysis engagement may include:

OUTSIDE COUNSEL

- Ensuring that management has installed a comprehensive risk-management system with no material gaps.
- Assessing the functionality of that system in practice.
- Evaluating the chief risk officer's role and responsibilities.
- Reviewing management's determination of key on and off-balance sheet risks.
- Monitoring the risk-taking behavior of management and recommending appropriate actions.
- Advising the board on insurance policies and practices as a possible risk-transfer strategy.

Most of these tasks necessarily involve a top-down review and evaluation of management procedures and decision-making. Outside counsel thus should work with the board, rather than management, to implement this risk analysis.

Independent outside counsel can also help a board manage its overall compliance risk, or the risk of failing to comply with external laws, internal policies, and voluntary commitments. Reducing compliance risk is likely of particular interest to a board given the increased willingness of courts to hold, or at least consider holding, individual directors personally liable for insufficient oversight of the company's compliance efforts.

To help manage compliance risk, outside counsel can advise boards how to adopt the appropriate information and reporting systems to ensure compliance with relevant obligations. This type of objective advice, provided from a neutral advisor outside the company, can help avoid potential director liability.

No matter the type of investigation, the following considerations may help a full board, or a board committee, manage the relationship with outside counsel.

- Decide early to retain separate counsel.** In general, retaining outside counsel at the outset of an important legal matter sends positive signals to co-defendants or opponents. On the other hand, when a board is initially represented by in-house counsel, but decides partway through the case to retain outside counsel, others cannot help but suspect that something has gone awry. Such reputational damage can be hard to overcome, especially in the court of

public opinion. For that reason, consider resolving any uncertainty in favor of outside counsel early on.

- Assess D&O liability insurance coverage.** Even though retaining outside counsel has benefits in their independence and objectivity, those benefits come with a cost. Consider whether the board's directors and officers (D&O) liability insurance policy will cover those legal fees.

Typically, D&O policies extend not only to the directors and officers, but also to the corporate entity in derivative actions. D&O policies have also been providing broader coverage for government investigations. Of course, policy language may vary. Either way, experienced outside counsel can help minimize expenses by focusing their efforts on the critical inflection points in an investigation or lawsuit.

- Continually communicate the scope and progress of the engagement.** Finally, before engaging outside counsel, carefully consider the scope of the engagement and communicate the objectives to counsel as early as possible. For example, if the full board or audit committee sets parameters for an internal investigation early on, the less likely the investigation is likely to spin out of control, and the more likely that outside counsel will tailor the investigation to meet budgetary and time constraints.

All of this may require actively supervising the relationship with outside counsel, including keeping in constant contact to understand the progress of the investigation or litigation. A collaborative effort is especially important in investigations or risk analyses, which often lack clearly predictable endpoints once the engagement starts (especially when they involve government regulators). Staying in constant contact can help ensure that the board and outside counsel understand when to move on to the next phase of the investigation or analysis (typically, remediation or implementation).

When resolving a shareholder derivative suit, the special litigation committee—not counsel—must be driving the investigation in order for courts to give it full effect. This requires constant contact with outside counsel, in order to balance a robust investigation with efforts to maintain secrecy from plaintiffs' counsel in the underlying lawsuit. ■

EXHIBIT 21

SPOTTS FAIN

Publications

THE ABCS OF INTERNAL INVESTIGATIONS

April 28, 2014

By: Christine D. Mehford

Your legal team receives a government subpoena seeking records indicating that a criminal investigation is underway for violations of an environmental statute. Your human resources department learns that employees regularly adjust their numbers in order to meet performance goals.

Regardless of the trigger, these types of scenarios require a response. Conducting an internal investigation when confronted with evidence or allegations of potential wrongdoing is a critical response of an effective ethics and compliance program. In fact, the government will consider a company's ability to monitor its compliance with laws and regulations as well as its cooperation and responsiveness in determining whether to commence or how to resolve an enforcement action. In order to receive credit in the government's eyes, organizations must have an effective compliance and ethics program that: "(1) exercise[s] due diligence to prevent and detect criminal conduct; and (2) otherwise promote[s] an organizational culture that encourages ethical conduct and a commitment to compliance with the law."^[1]

Although each internal investigation is unique and should be tailored to the situation at hand, there are some basic rules to keep in mind. Internal investigations may be conducted by an internal compliance team, legal department or human resources, or they may be conducted by outside counsel. The guidelines below are intended to provide a better understanding of the internal investigation process as a whole and useful to both investigations conducted by outside counsel and those conducted by internal investigators.

1. Analyze the Risk

Not all internal investigations are created equal. At the outset, the company should determine into which of the following three categories the allegations fall:

- **High-stakes** – These are "bet-the-company" type scenarios that involve serious financial, reputational or criminal risk to the company. High-stakes investigations require that the highest echelon of the company be involved, including senior management and the board. High-stakes investigations will likely also include government involvement.
- **Significant** – These are serious threats and could involve possible government reporting, whistleblowers or



Christine D.
Mehford

Related Practice Areas

- Business Immigration and Compliance
- Compliance and Government Investigations
- Labor and Employment Law for Management

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significant liability. Significant investigations will typically require board notification and senior management oversight.

- **Routine** – These are regular investigations as part of a continuous compliance process. They do not involve any allegation of board or senior management involvement and include more routine matters such as internal theft, minor accounting fraud and employee misconduct. They generally involve senior management review and approval. Most routine internal investigations are human resources issues.

Internal investigations don't always remain in the same category. What begins as a routine issue could turn to a significant one as the investigation progresses. Likewise, allegations that initially appear to fall in the significant category may later be found to have no meat once the investigation gets underway and ultimately fall into the routine category.

Good internal investigations are flexible as the course changes and always mindful of striking the right balance between thoroughly investigating the issue and minimizing interruption of the business.

2. Determine Who Should Conduct the Internal Investigation

Generally, routine investigations are conducted by human resources, internal compliance and/or the legal department. Significant and high-stakes investigations typically involve outside counsel and, in some cases, related professionals. For matters that could be reviewed by a regulatory agency or investigated from a criminal perspective, companies almost always turn to outside counsel.

All investigators, whether internal or external, must be impartial and able to maintain confidentiality. Investigators should not be in the reporting chain of the alleged wrongdoer or the complainant. Similarly, if the allegation involves advice provided by outside counsel, the same outside counsel should not serve as the investigator. An effective investigator must have independence, impartiality and integrity.

3. Plan Scope and Objectives

Investigations can get away from you if you don't determine the scope of the investigation at the outset. One of the common pitfalls of internal investigations is tackling too much and lacking focus. While investigations must be thorough, they need not be all encompassing. Striking the right balance is an art, not a science.

If government action (i.e., subpoena, search warrant or agent inquiry) triggered the investigation, investigators should first seek to clarify the scope of the investigation with the government. Avoiding overbroad investigations and the production of thousands of irrelevant documents is in both the

company's and the government's best interest. If the investigation is triggered by an employee complaint, an initial background interview with the complainant and initial collection of documents may be beneficial to define the scope.

In addition to defining the scope of the investigation, it is also important to identify the key players. Attorney investigators must also understand who their client is (i.e., the company, individual employees, board, shareholders). Neither is an easy task. Both may be moving targets. Investigators must initially and continuously identify the alleged perpetrators and witnesses, determine whether separate legal representation is required, preserve the attorney-client privilege, and if possible, decide the ultimate form and destination of the final report (oral, written, internal only, regulator, FBI or DOJ with criminal implications). Investigators should wall-off any subjects of the investigation, meaning they should not involve any subjects in the management, oversight, approval or reporting of investigation results.

4. Control, Collect and Review Documents

Once the scope is defined and players identified, the company must ensure that any potentially relevant documents (including emails and text messages) are preserved by issuing a document hold that suspends normal documentation destruction practices and instructs relevant parties to preserve documents related to the investigation. In addition to the document hold, investigators should work with the company's IT team to determine the possible locations of relevant documents and preserve those locations electronically as soon as possible. It is best to take a belt-and-suspenders approach of instructing employees to preserve documents while at the same time electronically preserving documents through the company's information systems. Investigators should also create formal procedures for identifying and tracking documents so that documents remain linked to their author and recipients.

Once the documents are under control, investigators should search the documents to cull out those important to the investigations. To do so, investigators should work closely with the IT team to identify and prioritize search terms and custodians. If the government is involved, coordinating search terms and custodians with the government may be appropriate. Internal company experts are also extremely valuable at this point. In-house counsel or upper management (so long as not walled off) can assist with identifying where potentially relevant documents are likely to be found.

In most investigations, using the documents to create a working timeline is extremely helpful. The document review

process should also connect the key documents to witnesses and be used to prepare outlines for witness interviews. Investigators must balance the costs with the reward of a full document review. A full document analysis is expensive, could take months, and is not necessary in most investigations. The goal is to quickly and efficiently identify the key documents.

5. Conduct Witness Interviews

Investigators should be guided by the documents and allegations to identify witnesses for interviews. In an ideal world, the pace of the investigation will allow investigators time to review and analyze documents prior to conducting witness interviews. However, the pace of events often requires that investigators be flexible. Investigators must balance the need to be prepared when interviewing witnesses against the need to act quickly. If there is the chance that witnesses will leave the company, forget facts, be influenced by others, or be interviewed by the government, witness interviews may have to occur prior to a full analysis of documents.

Witness interviews can be particularly tricky. The investigator should be mindful of the employees' and the company's rights and duties. For example, the employee may have certain contractual rights (e.g., union agreements) or legal rights (e.g., the privilege against self-incrimination) that may come into play.

Investigators must also appropriately plan the order of interviews. The general rule of thumb is to start with the complainant and then witnesses who can "set the stage" before moving through the key witnesses and ending with the alleged wrongdoer(s). At some point, it may be helpful to circle back to the complainant once investigators have a better grasp of the facts. Again, the process should be flexible and witnesses added or removed from the list as new information dictates.

Investigators should also consider the location and attendees for each interview. At a minimum, two investigators should interview each witness – one to interview and one to take notes and serve as a witness to the interview. Whether additional attendees are required should be determined on a case-by-case basis. For example, sometimes it is helpful to include a subject matter expert or in-house counsel in the interview. In other cases, more attendees only serve to reduce the value of information gained from the interview. Generally, less is more. Witness interviews should not be recorded or videotaped for a number of reasons. The interview will be far more productive without a video camera or recorder in the room. And, the investigator should be free to make credibility

determinations based on body language and other intangibles. Witnesses should not be required to create, review or sign a witness statement.

Usually a conference room away from the complainant and alleged wrongdoer is the best location for the interview. Some investigations may call for removing witnesses from the company's premises altogether; others call for meeting with an employee in their office. The goal is to find a place that will be comfortable for the witness and will allow the witness to speak openly and honestly with the investigator.

Prior to each interview, the investigator should focus on the main points to address with the witness and consider the approach to take with the witness. Some thoughts to consider:

1. Is the witness hostile?
2. Was the witness recently passed over for a big promotion?
3. Does the witness have any motivation to protect anyone?
4. Will the witness require a translator?
5. Is the witness a brand new employee?
6. Is the witness a minor player that really is not needed?
7. Interviewing new employees or minor players may not advance the goal of the investigation and instead, may only increase concern and confusion among the workforce.

All witness interviews conducted by attorneys must begin with what has been affectionately referred to as the "Upjohn warning."^[2] The Upjohn warning informs the employee that the lawyer conducting the interview represents the company, not the witness individually, and that the company may choose to waive that privilege and produce the information received during the interview to the government or other third parties. If given correctly, the Upjohn warning allows the company to use the information gained in the interview in future civil litigation or to defend itself during a government investigation. It is also a good practice to instruct the witness that to protect the attorney-client privilege, he or she should not disclose the substance of the interview to any third party, including other employees.

Non-attorney investigators might want to use this time to remind employees of the importance the company places on compliance and that the company expects all of its employees to cooperate with the investigation.

After the Upjohn warning (for attorney investigators) or the compliance program reminder (non-attorney investigators), it's a good practice to start the interview with background questions to develop a rapport with the witness before delving into possibly sensitive topics. Keep in mind that for most witnesses, being interviewed by internal investigators or outside counsel is an unusual and uncomfortable event in their career. Although it may be routine for you, it is anything but routine for most of your witnesses.

It's important to maintain a level of professionalism and always maintain the integrity of the investigation. Investigators should press for an understanding of the situation, using documents to lead evasive witnesses as necessary or on difficult questions. Investigators should always maintain the integrity of the investigation by not educating the witnesses about facts or events of which the witness was previously unaware or by disclosing information provided by his or her peers during the course of the investigation.

It is a good idea to pinpoint the witness' exact memory of events before pushing for more clarity on points that don't make sense given other interviews, other documents or basic common sense. The key is to be able to juggle multiple pieces of information from multiple sources, maintain the integrity of that information, and piece the information together to complete the story.

After the interview, the note taker should draft an interview memo for the file and the interviewer should review, edit and approve the interview memo. The interview memo should document any Upjohn warning provided to the witness. Generally, the witness interview memos should be considered protected by the attorney-client privilege and held tight.

6. Analyze and Draw Conclusions

Once the document review and witness interviews are complete, the investigators must carefully consider all facts received in conjunction with their assessments of witness credibility. Investigators must use their judgment and should document the reasons for their conclusion where facts conflict. It is important to understand the elements of any potential offense involved as the analysis involves weaving together the law or policy with the facts to determine whether a violation has occurred. It also involves understanding how the company's policies may have allowed the violation to happen so that the investigators can recommend improvements to the process that could prevent future violations.

Once the analysis is complete, the investigators should inform the appropriate parties of the results of the investigation and coordinate with human resources and legal as needed to recommend remediation efforts.

7. Report

There are many shapes and sizes for reporting the results of an internal investigation. In some cases, an oral report is all that is necessary. In other cases, a formal written report will be helpful. The seriousness of the allegations, the complexity of the investigation, the status of external investigation and the audience should all be considered when determining the format of the final report. Regardless of the format, the report

1. a discussion of the impetus of the investigation;
2. the scope of the task requested;
3. an outline of the steps taken during the investigation;
4. a summary of the relevant facts uncovered from documents and witnesses;
5. an acknowledgement of inconsistencies and explanation of how the team resolved the inconsistency;
6. the conclusions made by the investigator; and
7. recommendations for remediation. Unless and until it is disclosed, always include a conspicuous notice that the report is privileged.

8. Protect Any Relevant Privileges

Throughout an internal investigation, investigators must protect any relevant privileges, including the attorney-client privilege and attorney work product protections. Although the company may ultimately choose to waive the privilege, the best approach is to preserve the privilege during the investigation to provide the company with the most flexibility to address the allegations internally and defend itself if necessary. Once the company decides to waive the attorney-client privilege and disclose the information, the privilege is waived forever. The impact of waiving the privilege can be enormous, including requiring the company to produce previously privileged documents to plaintiffs in subsequent civil actions.

9. Other Considerations

Depending on the circumstances, an internal investigation may also require consideration of an ongoing government investigation. It is important for investigators to define the scope of cooperation with the government and develop a strategy for dealing with the government. Companies may also need to consider a strategy for handling third party witnesses (e.g., vendors or contractors) and former employees.

Some companies will also have to consider whether mandatory disclosure requirements obligate them to disclose their findings. For example, the FAR Mandatory Disclosure Rule

requires that companies "timely disclose" upon the receipt of "credible evidence" of (1) "a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code" or (2) any "violation of the civil False Claims Act."^[3] In addition, Sarbanes-Oxley, 15 U.S.C. §§ 7201 et seq., other federal law and administrative agreements may also require disclosure. There may also be situations where voluntary disclosure is appropriate. It is a good practice to identify a possible mandatory disclosure requirement at the outset of the

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investigation so that the investigator can consider that the
report may become public.

These issues highlight the complexities of conducting internal investigations. Investigators must remain flexible with a moving target, working without much information and ever mindful of the need to preserve privileges and handle employees with care. The possibility of future criminal or civil litigation must continually be assessed.

[1] 18 USCS Appx § 8B2.1; see also *Principals of Federal Prosecution of Business Organizations*, U.S. Attorney's Manual §§ 9-28-000 to 9-28-300.

[2] *Upjohn Co. v. United States*, 449 U.S. 383 (1981); see also *In re Grand Jury Subpoena*, 415 F.3d 333 (4th Cir. 2005).

[3] 73 Fed. Reg. 67064; see also 31 U.S.C. §§ 3729-3733.

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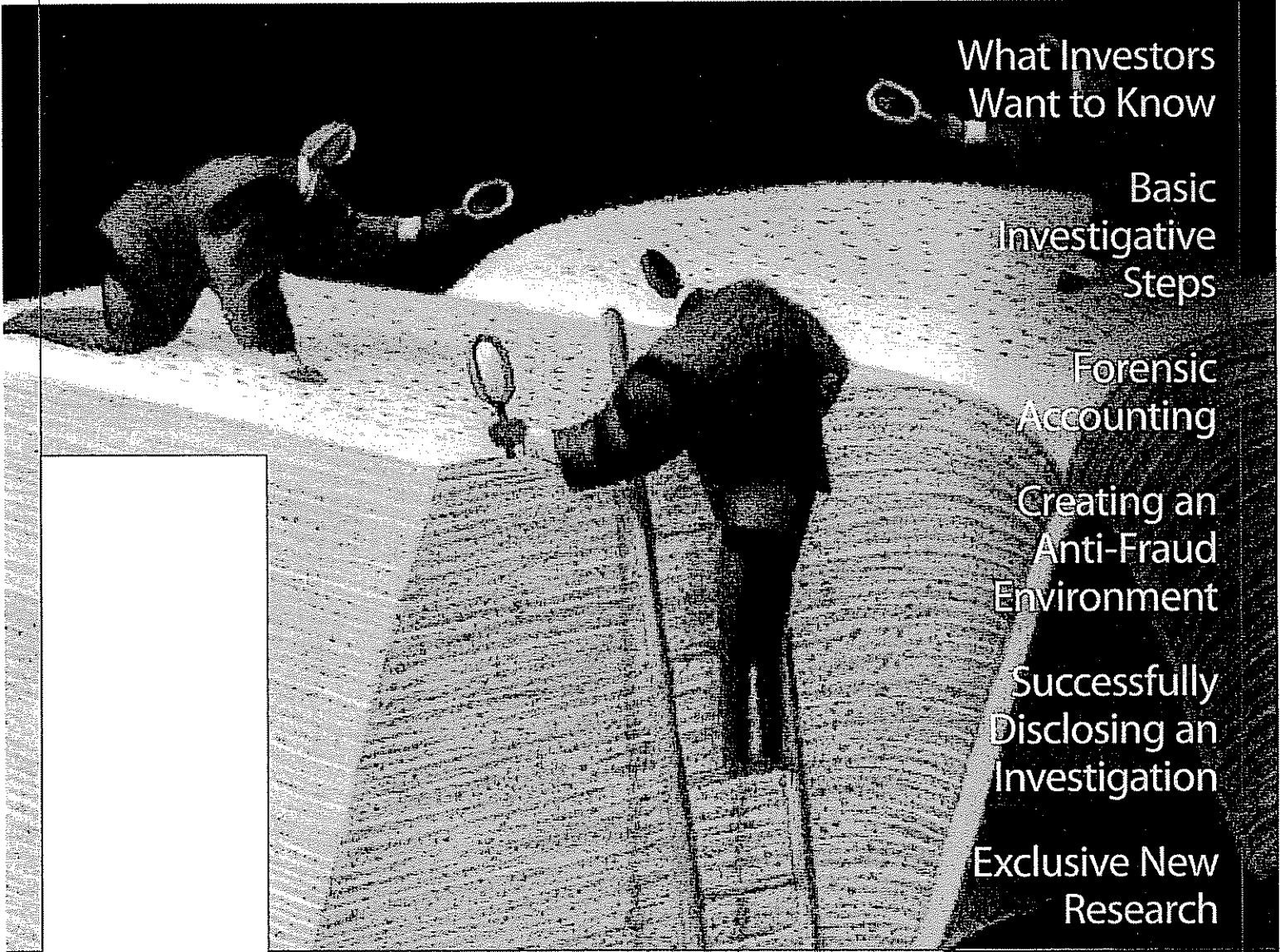
EXHIBIT 22

Directors
& Boards

Boardroom Briefing

A publication of Directors & Boards magazine

Corporate Internal Investigations



What Investors
Want to Know

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Investigative
Steps

Forensic
Accounting

Creating an
Anti-Fraud
Environment

Successfully
Disclosing an
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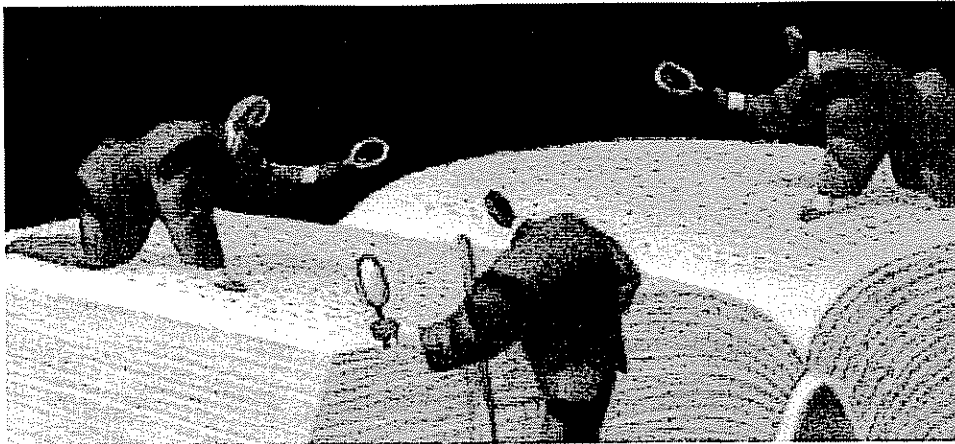
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Boardroom Briefing

A publication of
Directors & Boards magazine

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Boardroom Briefing:
Corporate Internal Investigations
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Boardroom Briefing: Corporate Internal Investigations

By James Kristie

An internal investigation is a launch pad for the board's reversal of misfortune.



James Kristie

A few years into my tenure as editor of **Directors & Boards**, I met with a fellow who rescued companies from the brink of disaster. Victor Palmieri in the mid-1980s was one of the country's

premier "turnaround artists," as we called his breed during those Wild West years of takeovers, LBOs, MBOs, restructurings, and heavy use of debt-financed leverage. He played a central role in salvaging the Penn Central Transportation Co. and had just worked through the complex reorganization of Baldwin-United Corp. He was a busy man when I visited with him to talk about how boards got into big trouble.

I asked him a question—the answer to which has stayed with me since:

"Are information systems to the board adequate?"

Palmieri's answer: "I think most companies are willing to give their directors meaningful information, but I'm not sure most boards want to take the time and trouble to understand it—particularly in the area of accounting information, where many directors surprisingly do not understand the financial statements of the company. They do not understand the auditing process. They do not understand the conventions which govern carrying values, writedowns, noncash charges, tax credits, and so many of the items that creep into the bottom

line but which, in effect, tend to distort a realistic assessment of the company's operations."

Fast-forward 15 years from Palmieri's critique and we come to Enron's bankruptcy in 2001. And WorldCom's. And a recurring stream of balance sheet blowups and "restatements." Lots of board members are still having trouble grasping the intricacies of accounting information or getting snookered despite their best efforts.

Another article that made an impression upon me as I prepared it for publication in **Directors & Boards**—and which also turned out to be quite prescient—was "Detecting Financial Statement Fraud." The year was 1998, just as the "bubble market" was working itself into a lather. The author was Howard Fielstein, a certified fraud examiner, and he walked our board readers through a lengthy bullet-point list of potholes to get swallowed up in.

"The perpetration of financial statement fraud," Fielstein advised, "is possible by anyone who has the opportunity and the motive to omit or misstate the data presented in furtherance of their purpose. Adding to the opportunity quotient are factors such as:

- A dominant top management with little or no accountability.
- Minimal (if not nonexistent) requirements for executive disclosures or examination of executives' activities.
- A highly computerized operation.

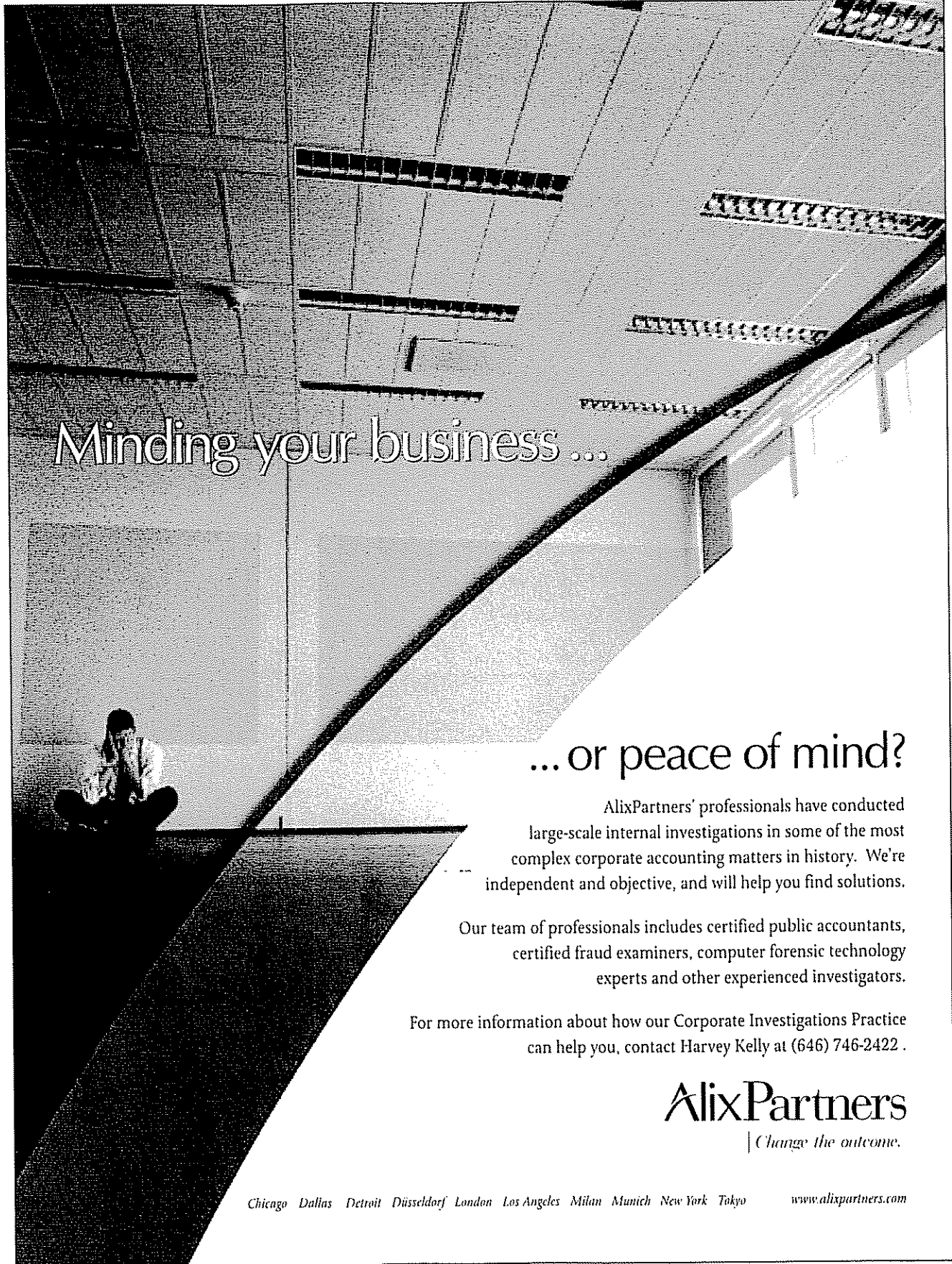
- A company with related-party transactions.
- A company without an effective internal auditing staff.
- A company that uses several different auditing firms, none of which can see the big picture.
- A company that changes auditors frequently or hires inexperienced auditors.
- A company that has many surprises for the auditors."

End Fielstein. Any companies—and their troubled boards—come to mind?

Not every company is an accident waiting to happen. But when trouble of any kind rears its ugly presence in the boardroom, directors need help. They need to suit up for a siege and map a strategy to get through the crisis.

An internal investigation is a launch pad for the board's reversal of misfortune. We trust the package of advisories included in this Boardroom Briefing, our third in a series of in-depth reports on vital matters of board accountability and activity, will be well-read and referenced. We would hope that it occupies a place on every director's bookshelf. Whether to help get you through a current difficulty or to be at your fingertips for a future challenge, this focused report on "Corporate Internal Investigations" should serve you well in getting out of big trouble, or avoiding it entirely.

James Kristie is editor and associate publisher of **Directors & Boards**. He can be contacted at jkristie@directorsandboards.com.



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What Investors Want to Know About Internal Investigations

By Nell Minow

Investors want to know that the directors have thought carefully about the testing of the internal controls and have participated thoughtfully and personally in any investigations of allegations of impropriety.



Last year, one large company's board was informed that the CEO had been accused of violating the law. It convened a special committee of independent directors to

investigate, and the committee retained counsel. So far, so good.

But the counsel the board selected was the same lawyer who represented the company in a number of other matters. When asked whether it would not have been a better idea to find counsel with no previous connection to the company, a corporate spokesperson said they would have done that if the CEO were guilty.

This shows just how easy it is to lose the forest of genuine independent oversight in the trees of compliance checklists. The company's response showed that its investigation was all form and no substance. There might be some legitimate reasons for retaining that counsel; the response it gave, however, was not.

Internal investigations have been commonplace within American corporations for the past 20 years. They serve a variety of purposes. They are offered to the public or to government authorities when a credible explanation for questionable behavior is necessary.

They are used for compliance with government reporting requirements in connection with Consumer Product Safety Commission product recalls and other regulatory programs. They are used internally to affix blame, make sure that the problems do not recur, or to chart corporate strategy.

Rules and Procedures

The rules and procedures for internal investigations, as well as the purposes to which their end products may be put, have become well established. For example, a body of case law has developed regarding the attorney-client privilege for internal investigations, and a protocol has been established for the independence of outside experts that are selected to oversee such investigations. Some investigations have become noteworthy for accomplishing their purpose, while others have been discredited as superficial, or even as a whitewash.

Partially in response to this mixed track record for internal investigations, some types of internal investigations now report directly to the board, or to the audit committee of the board. This trend has increased in recent years, often at the insistence of a regulatory agency such as the SEC, or the plaintiffs in shareholder lawsuits who are skeptical about internal investigations conducted by a general counsel or line management of a company. For

example, the SEC has sometimes indicated that it is willing to forego its own investigation or audit of a company until the board has conducted its own investigation and turned over the results to the SEC. In the current environment, the SEC seems less inclined to give deference to an investigation conducted by the CEO or a compliance officer. Even when the investigation is conducted by the board, the SEC will generally test the methodology and conclusions of the investigation. If the SEC is satisfied with the board's work, it will give credit for the investigation and act on the basis of its findings.

The Internal Investigation Issues for Boards

Because board supervision of internal investigations is still a relatively recent phenomenon, there are a number of issues with board involvement that have not been fully worked out:

- Boards rarely have the time, infrastructure or resources to oversee internal investigations in any kind of hands-on way. Large corporations, which may have several internal investigations ongoing at any given moment, pose a particular challenge.
- Boards are still attempting to work out issues regarding selection of counsel. Many boards are concluding that to make independence complete,

"Shareholders are entitled to information about what boards are doing to make sure that the actions and financial reports of corporate employees are honorable and reliable."

they cannot rely upon one of the corporation's existing law firms, which means that the board will start an investigation with all of the disadvantages and increased cost of a law firm that is new to the company's managers and procedures.

- As the personal liability of directors is redefined, their involvement in internal investigations becomes more problematic.
- The knowledge that accompanies internal investigations at the grassroots level adds more uncertainty to the scope of Sarbanes-Oxley disclosures.
- The directors have to figure out how to explain what they are doing to investors and other observers.

Those disclosures must be clear enough to inspire confidence in the company's internal controls, but they should not include substantive details that impinge on confidential information. For that reason, the disclosure should be specific with regard to the process, but less specific with regard to the findings. And any findings must be disclosed promptly and candidly. Counsel will certainly advise boards to be vague due to concerns about litigation. But shareholders are entitled to information about what boards are doing to make sure that the actions and financial reports of corporate employees are honorable and reliable.

The Dos and Don'ts of Disclosure

In particular, boards should avoid the embarrassment of a 'don't trust us' disclosure like this November 5, 2004, filing from DPL after it settled a shareholder suit, with board approval, then had an internal whistleblower, the comptroller, point the finger at top management, who were only then, finally, ousted:

As expected, this review has revealed some control weaknesses, which the Company has reported to the Audit Committee. The Company has since taken steps to strengthen its internal controls in these areas, including increasing segregation of duties, writing policies where necessary, adding checks at key decision points and increasing supervisor review of transactions. These actions have been successful in eliminating a large percentage of the deficiencies noted, but additional remediation activities continue. Corrected control deficiencies are being retested by management to assure that remediation efforts were successful, and the Company's auditors will perform independent testing of the Company's internal controls as part of their year-end review. At this time, the Company has not completed its review of the existing controls and their effectiveness. Unless the material weaknesses described above, or any identified during this review, are remedied, there can be no assurances that the Company will be able to assert that its internal

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How to Structure an Internal Investigation

By Jerry Barbanel and G. Elaine Wood

Each internal investigation must be structured, conducted, and monitored in a way that builds credibility with federal and state regulators, corporate customers, the media, and other external stakeholders.



Jerry Barbanel



G. Elaine Wood

Prior to the recent spate of U.S. corporate fraud scandals, structuring an internal investigation at a company was relatively straightforward. These investigations typically were conducted by the general counsel or the company's outside law firm, involved little input from board members, treated high-ranking employees

deferentially, and produced reports that ultimately gathered dust in the corporate library.

In today's far more punitive regulatory environment, the stakes have gotten much higher for companies conducting internal investigations, and the rules have changed accordingly. The law—particularly sections of Sarbanes-Oxley—now places corporate directors squarely in the crosshairs if a company fails to effectively police itself. In fact, the personal assets of directors are more at risk than ever.

Step One: Deciding to Launch an Investigation

The first judgment board members and senior executives must make

is whether an incident demands an internal inquiry or not. This is not a decision to be taken lightly; investigations can be costly, time-consuming, jarring to employees, and—if word leaks out—both appetizing grist for the media and a red flag to regulators. Moreover, in the event that regulators decide to launch their own inquiry, there is a good chance that any report arising out of an internal investigation will become "Exhibit A" in the government investigation.

On the other hand, in the current aggressive regulatory climate, a decision not to launch an internal investigation could well be scrutinized down the road by government regulators curious about just how seriously a particular board was taking its fiduciary and shareholder representative duties. An internal investigation—and remedial action—can be the company's best affirmative defense.

When weighing whether to authorize an internal investigation, directors should work closely with management to understand the alleged impropriety (unless, of course, senior management members are potential targets of the investigation).

There are two broad categories of triggers that prompt potential internal investigations: external and internal. External triggers include notification of an SEC or Attorney General investigation, a prosecutor allegation, a point of

contention with an outside audit firm, or perhaps an allegation made in the business press. An internal trigger could be a whistleblower alleging financial fraud or financial conflicts of interest (a good example being the now-famous memo that Enron's Sharon Watkins wrote to CEO Ken Lay about the accounting irregularities at the company), evidence collected by the IT department suggesting that employees are mishandling proprietary documents, or the company's own internal audit procedures that point to a problem.

Not all of these triggers carry the same heft or place an organization at risk to the same degree, of course, meaning that board members and the management team must consider the source, context, and timing of any allegations before deciding to act.

In fact, it's a good idea for every public company board to put in place a standard, highly-specific process to evaluate all manner of accusations. This will guarantee that, if and when the government launches its own investigation, the transparency and fairness with which all allegations are handled will be clear. After all, the decision *not* to launch an investigation can be scrutinized just as closely as an investigation's findings, so board members should be well-prepared to defend the company's decision.

Establishing this rigorous screening process will also reduce the

possibility of employees panicking and taking matters into their own hands (destroying documents, reaching out to the media, etc.) when an allegation surfaces. The corporate scandals of the past few years have shown—over and over again—how the actions of a few rogue (or even well-meaning, but ill-informed) employees acting without guidance can have a devastating affect on an organization.

Simply put, regardless of whether a company board believes that an incident calls for no investigation, a relatively modest investigation, or for a more far-reaching effort, each of these decisions must be supported by the available evidence.

Step Two: Defining Ownership and Scope

If a company does decide to launch an internal investigation, it must be structured, conducted, and monitored in a way that builds credibility with a wide audience: federal and state regulators, corporate customers, the media, the company's shareholders, and also the company's own employees.

Once the decision to launch an investigation has been reached, the next issue is deciding who owns the investigation—management, the board, the audit committee, or some combination of each. Factors affecting who leads the investigation include the size of the potential fraud's financial impact, the investigation's potential targets, and the overall risk to the company. Whatever the factors, it's important that a board has a rationale for why it was, or was not, a major player in any internal investigation.

The scope of the investigation is also directly correlated to the level of risk. In some instances,

“An internal investigation—
and remedial action—can be the company's
best affirmative defense.”

an internal investigation may consist simply of several one-off interviews with employees and the reviewing of a hard drive or two. Others will include a Herculean effort of legwork and coordination, consisting of, among other things: a document search across the enterprise, a review of those documents and other records, and interviews with employees from all facets of the company. Witnesses from outside organizations may have to be interviewed as well.

After defining the scope, the next consideration is how closely to cooperate with any concurrent—or subsequent—regulatory investigations.

Step Three: Establishing a Regulatory Cooperation Strategy

There's no doubt that we are in the midst of an unprecedented era of government regulator/prosecutor activity. In 2001, fines levied by the SEC totaled \$44 million. In contrast, for each of the past two years, the SEC has levied more than \$1 billion in fines.¹

Government regulators—particularly the SEC—have in recent years placed a higher premium on the level of cooperation shown by companies being investigated. In fact, the SEC specifically mentioned uncooperative behavior as a factor in the large fines levied on Qwest, Dynegy, and Computer Associates.² Conversely, companies such as Homestore and Electro Scientific Industries were not penalized or charged after the SEC investigated

them, and the regulatory body specifically cited their cooperation with the investigation.

Common sense, then, would dictate that a company should cooperate in every way with a regulatory investigation. But it's not that simple. They are practical costs to cooperating, such as the time and resources spent gathering documents and meeting with regulators, likely accompanying negative media attention, the provision of an investigatory roadmap for government prosecutors, and the possibility of opening the company up to potential shareholder litigation.

Then there is the fact that the government has recently raised the bar as to what constitutes “cooperation” with an investigation. New standards of cooperation include waiving the attorney-client and attorney work product privilege, as well as the disclosure of the complete results of an internal investigation. Still, there is a way to cooperate with an external investigation, yet retain some attorney-client privileges, and it concerns how a company structures the team performing the internal investigation.

Step Four: Forming the Investigative Team

An investigation of any significant scope should include an independent, outside investigative firm.

This could be an outside law or forensic accounting firm. Or another choice is a full-service

(continued on page 37)

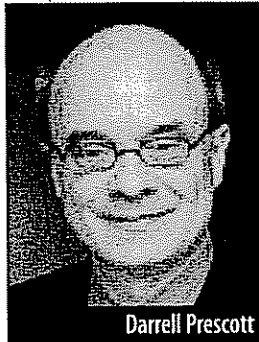
The Audit Committee's First Seven Steps

By Jeffrey E. Cohen, Darrell Prescott and James D. Bailey

The audit committee should make clear that it is fully committed to uncovering corporate wrongdoing.



Jeffrey E. Cohen



Darrell Prescott



James D. Bailey

Upon receiving notice of serious wrongdoing, an audit committee needs to proceed in an orderly manner to review the claims and determine what steps are appropriate.

A properly conducted internal investigation allows the company to uncover facts, evaluate its possible courses of action, communicate more effectively with the public and the regulatory agencies, and prepare any necessary defenses before the onset of an investigation by the Securities and Exchange Commission or the Department of Justice. Below, we set forth the seven

steps Audit Committees should consider taking upon learning of wrongdoing and commencing an internal investigation.

1. Triage

Consider whether the alleged wrongdoing reported to the audit committee constitutes a credible and material wrongdoing requiring action on the part of the audit committee. All claims need to be

reviewed carefully; not all claims, however, merit full investigations. Some, indeed, may be specious, or unreasonable, or immaterial on their face.

2. Retain Counsel

If the reported wrongdoing appears that it may be credible and material, the first step is to consider retaining independent outside counsel.

Some issues may be handled internally by the company or by the company's regular counsel. But most of the time, and certainly if the issues go to the audit committee pursuant to Section 307 of Sarbanes because in-house counsel failed to respond appropriately to the problem, the audit committee should retain counsel that is truly independent of the company. The retention of independent counsel adds credibility to an internal investigation and shows the company and its stockholders that the matter is being taken seriously. Moreover, even if regular company counsel in fact has no conflict of interest, the mere perception of a lack of objectivity can affect the credibility of the ultimate findings.

The attorney-client privilege is also more clearly defined between

outside counsel and the company. Outside counsel can retain other advisors, such as forensic accountants and computer experts, and maintain the work product and communications of those advisors within the privilege.

3. Establish the Scope of the Investigation

The audit committee should discuss with counsel the options available to it going forward, and the pros and cons of each, including whether a full-scale investigation is necessary.

If the audit committee decides to proceed with a full-scale internal investigation, it is critical that it establish the scope of the investigation in consultation with its counsel. Such a decision may come after an initial review of the company's records and interviews with key personnel by the outside counsel.

The audit committee should enter into a written engagement with counsel that sets out the nature and scope of the investigation. The audit committee may wish to adopt written resolutions authorizing the engagement of counsel and setting forth the scope and purpose of the investigation.

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"All claims need to be reviewed carefully; not all claims, however, merit full investigations."



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Corporate Internal Investigations: Some Basic Considerations

By Wilma A. Lewis and Stephen M. Byers

If the scope of an internal investigation is drawn too narrowly, related and possibly even more serious misconduct may be overlooked.



Wilma A. Lewis



Stephen M. Byers

Unless an internal investigation is properly conceived and executed, it may not only fail to achieve its goals, it may backfire. This article addresses a few of the common issues and decision points that can mean the difference between the best possible resolution of an unwelcome problem, or simply compounding the problem.

investigators could be forced to testify concerning their work in subsequent litigation, and all documents they create in the course of the investigation would likewise be fair game for discovery by potential adversaries.

This leaves three basic choices for the role of internal investigator: (1) in-house counsel; (2) outside counsel who has represented the corporation in other matters; or (3) "independent" outside counsel who has no prior connection to the corporation. (*Editor's Note: the implications of each of these choices are reviewed elsewhere in this issue.*)

Issue Two: Defining the Scope of the Investigation

Once the investigator has been identified, the scope of the internal investigation should be defined at the outset. If the scope is drawn too narrowly, related and possibly even more serious misconduct than originally identified may be overlooked. In addition, stakeholders and government authorities may not only criticize such failures, but also dismiss the core investigation as lacking in objectivity and seriousness. On the other hand, an investigation without clearly defined parameters can become sprawling, aimless and unnecessarily costly.

Whatever the scope of the investigation, it should ordinarily be memorialized in some fashion (for example, a letter or board resolution), with the explicit

understanding that the scope may have to be expanded or otherwise altered depending on what facts come to light.

Issue Three: Preserving Evidence

It has been a cliché since the days of Watergate that the cover-up is worse than the crime, but this axiom is truer today than ever before. One need look no further for proof than the recent prosecutions of Arthur Andersen, Martha Stewart and Frank Quattrone, all of whom were convicted not of any substantive crime but of obstruction of justice. The Andersen case is an especially apt cautionary tale for corporations under investigation. The venerable accounting firm was convicted not for its role in the Enron accounting scandal, but for destroying Enron-related documents in the shadow of a looming SEC investigation. In the wake of that conviction, Andersen disintegrated. In short, preserving relevant documents can be a matter of corporate life or death.

Given that the vast majority of internal investigations are conducted in parallel with, or in anticipation of, a government investigation, preservation of evidence becomes important not only for purposes of the integrity of the internal investigation itself, but also to avoid handing regulators and prosecutors a ready-made obstruction of justice case—which is typically much easier to prove than the original misconduct, if any.

Issue One: Identifying the Investigator

When allegations of improper conduct first arise—whether internally, through the press, or as the result of governmental investigation—it is essential that the facts be determined as soon as possible. Indeed, depending on the nature of the allegations, the board of directors may have a duty to hire outside experts and launch an independent investigation pursuant to laws such as the Sarbanes-Oxley Act. But where to begin?

It is normally essential that lawyers conduct or at least oversee internal investigations so that the fruits of the investigation are protected by applicable evidentiary privileges. Otherwise, non-lawyer

"An investigation without clearly defined parameters can become sprawling, aimless and unnecessarily costly."

The Andersen case also illustrates the importance of a sound document retention policy that is conscientiously followed rather than honored in the breach. In upholding Andersen's criminal conviction a federal court of appeals recently stated: "There is nothing improper about following a document retention policy when there is no threat of an official investigation, even though one purpose of such a policy may be to withhold documents from unknown, future litigation. A company's sudden instruction to institute or energize a lazy document retention policy when it sees the investigation around the corner, on the other hand, is more easily viewed as improper."

Issue Four: Dealing with Employees

Personnel issues inevitably arise in the course of internal investigations, not only with respect to officers or employees accused of misconduct, but also because the allegations are often first surfaced by an insider—that is, a whistleblower.

Whistleblowers must be treated very carefully. If they raise allegations internally and believe their concerns are not taken seriously, they may go directly to governmental authorities before the company has had an opportunity to investigate the facts. In addition, whistleblowers must be treated with kid gloves because any action that could be interpreted as retaliation can carry with it severe sanctions, including criminal penalties under the Sarbanes-Oxley Act. And, of course, disgruntled whistleblowers are routinely embraced by the

media, which can create a major public relations headache.

Those accused of wrongdoing must also be treated carefully, even when it appears that they have violated the law or company policy. The first reaction of senior management in such situations is often to terminate the individual immediately. But this may not always be the most prudent approach.

Particularly where a government investigation is underway, it may be better to suspend the individual or take other action short of termination to ensure that the company maintains some leverage until the investigation is complete. This is sometimes important to ensure effective cooperation with the government where the company has chosen that course. Also, hasty termination in an effort to curry favor with the government can backfire. In the Arthur Andersen case, for example, a culpable individual was terminated early on and characterized as a rogue employee responsible for illegal behavior. But this did not dissuade the government from prosecuting the firm. To the contrary, the government chose to feature the individual (who now had every incentive to turn on his former employer) as its star witness in the successful prosecution of Andersen.

Issue Five: Reporting on the Results of the Investigation

The results of the investigation must, of course, be reported to the corporate officers or directors

responsible for the matter so that they can fulfill their fiduciary obligations. An important decision is whether this report should be written or oral.

In today's corporate compliance environment, stakeholders and government agencies may take the position that anything short of a full written report is inadequate to address serious corporate misconduct. A written report also enhances management's ability to understand and act upon the investigator's findings, conclusions and recommendations, particularly where the facts are complex.

The primary drawback of a written report is that its confidentiality may be compromised. This risk is especially significant where mandatory or voluntary disclosure of the investigation to a third party is likely. Once that step has been taken, the evidentiary privileges protecting the investigation will likely be considered to have been waived. At that stage, the report becomes a ready source of potentially damaging admissions and a roadmap to evidence for potential adversaries. Thus, whether a written report should be created is a question that should be given careful consideration, and is a judgment that is usually best made as the investigation is wrapping up.

Issue Six: Disclosures to Third Parties

In many instances a corporation will have a duty, or at least a powerful incentive, to share the results, and sometimes the details,

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Inside or Outside Counsel? Two Views

When to Engage Independent Investigative Counsel

By Steven A. Reed

The choice between in-house counsel and outside lawyers depends upon the nature of the misconduct alleged.



Steven A. Reed

The best run and most successful companies and institutions respond effectively to allegations of misconduct within their organizations. An effective internal investigation,

conducted by the right people, could forestall criminal prosecution or an SEC enforcement action, and could be critical to maintaining shareholder confidence and good standing with rating agencies and in the public eye.

Directors increasingly are taking active roles in this area, and one of the most important decisions to be made is the selection of the person or firm who is to perform the investigation. Absent extraordinary circumstances, investigations should be run by counsel, who in turn can engage forensic accountants and other agents as necessary. Use of counsel gives the company flexibility to invoke attorney-client privilege and work product protection.

In-House or Outside Counsel?

The choice between in-house counsel and outside lawyers depends upon the nature of the misconduct alleged. For alleged breaches of a company's policy or code of conduct by low or mid-level employees, for example, the best choice may be to handle the investigation using internal resources.

But in other circumstances where the alleged misconduct has a higher profile or potentially broader consequences, use of outside counsel may be essential. For example, outside counsel should be used where the allegations implicate members of senior management or directors themselves (particularly where the company has received a shareholder demand letter as a precursor to a derivative action); where there is the possibility of a material impact on publicly-reported financial statements or the value of company stock; where the alleged misconduct could give rise to criminal prosecution or an SEC enforcement action; or where the allegations might otherwise damage the enterprise's image and reputation.

In such circumstances, the overriding goal in selecting counsel should be independence—both real and perceived—so that the company has confidence that the investigation will be conducted with objectivity and will have credibility with third parties. Often, this means engaging outside counsel without significant prior contacts with the company and without established relationships with persons they may be asked to investigate.

The Regulators' Views

The SEC's preference for independent counsel is clear. In the October 23, 2001 "Seaboard Release," the SEC listed a number of factors to be considered in deciding whether to institute an enforcement action where the target company has conducted its own review and taken

remedial action. The list includes whether "outside persons" were hired to perform the review, and whether outside counsel had been previously engaged by management. Likewise, in January 2003, the Conference Board Commission on Public Trust and Private Enterprise recommended as a best practice that—where an independent investigation is reasonably likely to implicate senior management—the board should retain special investigative counsel who is not "one of the corporation's regular outside counsel or a firm that receives a material amount of revenue from the company." The existence and effectiveness of an internal investigation also are important considerations in charging decisions by the Department of Justice and in the Federal Sentencing Guidelines, and may be determinative of whether a shareholder derivative action is permitted to proceed.

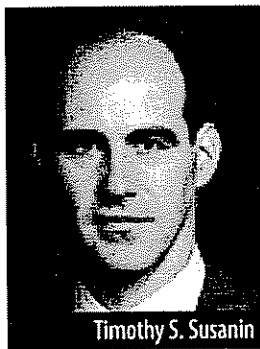
Companies that have engaged regular outside counsel to conduct an investigation have come under severe criticism. For example, one court questioned the propriety of Enron's regular outside counsel conducting an investigation on the company's behalf where Enron was the firm's biggest client and the firm allegedly had had "extensive involvement in the structuring and documenting" of the transactions at issue. While counsel clearly should not investigate matters in which they themselves are implicated, the concern that regular outside counsel's interest may be unduly

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The Internal Investigation: Whether to Use Inside Counsel or Outside Counsel

By Timothy S. Susánin

The outcome of an investigation will be questioned if it is not seen as fair and impartial.



Timothy S. Susánin

One of the first questions facing the audit committee or special committee of a corporation's board of directors in the wake of an allegation of misconduct by a corporate employee is whether the matter should be investigated by inside counsel from the corporation's office of general counsel or by outside counsel from a law firm retained specifically to conduct the investigation. Board committee members should consider a number of factors in deciding whether they can keep the investigation in-house or whether it is in the corporation's best interest to retain a law firm.

It is obvious why an audit committee's initial inclination would be to ask the office of the corporation's general counsel to conduct an investigation into an allegation of misconduct. Regardless of whether the claim involves low-level employee misconduct or accounting malfeasance, or any of the other types of allegations that are prevalent in the new corporate governance environment, no corporation is happy to see outside investigators knocking at the door.

The Advantage of Inside Counsel

Moreover, inside counsel are far better equipped to get to the bottom of the issue at hand more quickly—and thus more economically—than

are outside counsel. This is because inside counsel have a pre-existing knowledge of the corporation, its structure, its policies and procedures, its record-keeping practices, its culture, and perhaps even the personalities and politics involved in the underlying claims. Inside counsel are also usually already on-site and are typically supported by a staff of other attorneys, paralegals or secretaries. As a result, inside counsel are in a position to begin the investigation almost immediately.

Outside counsel, on the other hand, require start-up time to get their resources in place and move beyond the learning curve separating them from the corporation it will investigate. Even where outside counsel are retained and arrive on the scene quickly—it is not uncommon in today's environment of heightened sensitivity to potential misdeeds to have an investigator retained and on-site within a day—that lawyer typically spends at least a few days, and normally more, doing preliminary work.

If inside counsel, then, can get to the bottom of an allegation more quickly and more cost effectively, and do so with less upset to the corporation's productivity and its employees, why would an audit committee ever choose to have outside counsel conduct an investigation into alleged misconduct?

The Credibility of Outside Counsel

The main reason is credibility. Whether the investigation is meant

to satisfy a board of directors, investors, outside auditors, the company's employees, federal or state regulators, or even the court of public opinion, the outcome of the investigation will be questioned if it is not seen as fair and impartial. The integrity and abilities of inside counsel are not the issue; independence—or the appearance of it—is. And if those assessing the findings and conclusion of the investigation question whether inside counsel, who is, after all, another employee of the corporation, was independent enough to conduct a thorough and impartial inquiry, the investigation lacks credibility and neither the underlying allegation nor any resulting business-related problems are resolved.

Those operating in today's post-Sarbanes-Oxley Act world are all too familiar with examples of outside auditors and federal agencies rejecting investigations of senior management or fiscal mismanagement that were conducted by inside counsel and insisting that such matters be probed by outside counsel. In such situations, the company involved, in addition to risking a seemingly heightened suspicion on the part of the auditors, regulators, prosecutors or others assessing the investigation, also risks doubling the delay and costs resulting from having an outside counsel investigate that which has already been investigated by inside counsel. Where the allegations have repercussions beyond immediate legal exposure,

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“One of the most important decisions to be made is the selection of the person or firm who is to perform the investigation.”

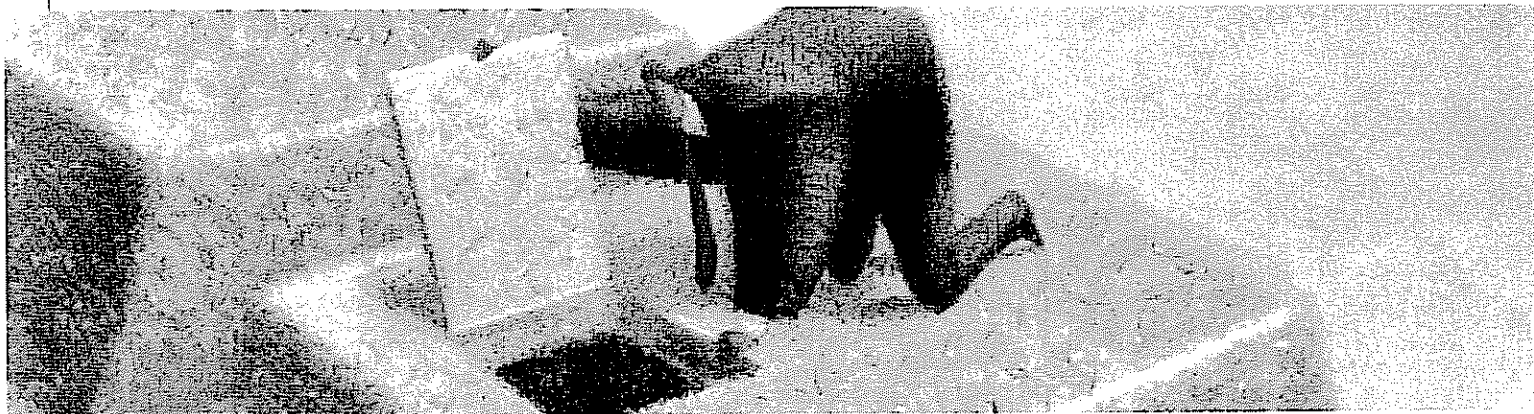
(Reed, from page 14)
aligned with, or influenced by, management is much broader.

Internal Advice

This is not to say that companies and boards must forego the advice of their traditional advisors. In-house counsel can play a significant and frequently necessary role working with special counsel in the investigative process. Similarly, once the investigator has presented his or her conclusions, both in-house counsel and regular outside counsel often will be looked to for advice on the company’s disclosure and other obligations in light of what was found.

In sum, independent special investigative counsel should be hired whenever allegations of significant misconduct have been made. An investigation by counsel who are not independent, or who may be perceived as having been influenced by management or acting out of self-interest, could do more harm than a decision not to investigate at all.

Steven A. Reed is a partner with Harkins Cunningham LLP, a law firm with offices in New York, Philadelphia and Washington D.C. Reed has extensive experience conducting internal corporate investigations and also represents businesses and individuals in complex commercial litigation and appellate matters. He can be contacted at sreed@harkinscunningham.com.



(Susanin, from page 15)

such as bad publicity for the corporation or suspension by the stock exchange pending resolution of the claim, the initial decision to forego investigation by outside counsel, which was undoubtedly made in an effort to limit cost and disruption to the corporation, had just the opposite effect.

The message is clear: where the investigator reports to the target of an investigation, has some other relationship with the target (or the whistleblower), has a pecuniary interest in seeing the corporation survive the allegation, or has some other connection that would give those assessing the investigation

conclusions pause, it is better to turn the investigation over to outside counsel. For all the costs and delay associated with outside counsel’s start-up period, the ideal outside counsel, unlike in-house counsel, will have no connection to the corporation, its management or its employees that will compromise the integrity of findings.

Timothy S. Susanin is a director in the Business & Commercial Litigation Department of Gibbons, Del Deo, Dolan, Griffinger & Vecchione in the firm’s Philadelphia, PA office. He is a former Assistant U.S. Attorney, Associate Independent Counsel (Whitewater), and Navy JAG. He regularly provides legal commentary on *CNN*, *Fox News Channel* and *MSNBC*, among other outlets. He can be reached at tsusanin@gibbonslaw.com

“The integrity and abilities of inside counsel are not the issue; independence—or the appearance of it—is.”

The Directors & Boards Survey: Corporate Internal Investigations

Methodology

This Directors & Boards survey was conducted in April 2005 via the web, with an email invitation to participate. The invitation was emailed to the recipients of Directors & Boards' monthly e-Briefing. Respondents were only able to complete one survey apiece—no duplicate responses were allowed. A total of 235 usable surveys were completed.

About the respondents

(Multiple responses allowed)

A director of a publicly held company	25.3%
A senior level executive (CEO, CFO, CxO) of a publicly held company	8.6%
A director of a privately held company	34.3%
A senior level executive (CEO, CFO, CxO) of a privately held company	19.3%
A director of a non-profit entity	30%
Academic	5.6%
Auditor, consultant, board advisor	20.2%
Attorney	19.3%
Other (please specify)	10.3%

Revenues

(For the primary company of the respondent)

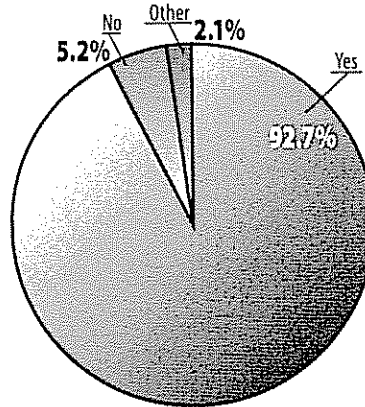
Average Revenues:	\$1.733 billion
Less than \$250 million	50.9%
\$250 million-\$500 million	12.6%
\$500 million to \$1 billion	13.5%
\$1 billion to \$10 billion	15.7%
More than \$10 billion	7.4%

Company headquarters

United States/Canada	92.2%
Europe	2.6%
Central/South America	0.4%
Asia	1.7%
Africa	2.6%
Australia	0.4%

Company Culture

In your opinion, are the annual financial and operating targets of your company realistic?

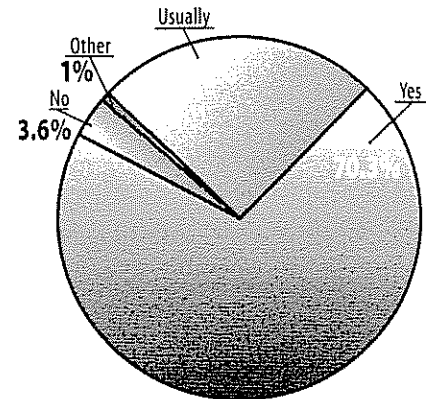


What usually happens if goals and targets are not met?

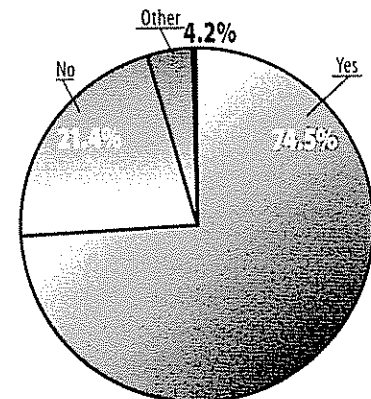
Collaborative discussion and reforecast of goals	74.5%
Termination/reassignment of operating managers	5.7%
Nothing happens if goals are not met	6.8%
Goals are always met	7.3%
Other	5.7%

Other responses included: "Discussion on reasons why goals were not met. If external factors beyond company's control, reforecast; if internal factors, examination of why and what should be done to correct deficiencies." "Depending on the situation, a combination of collaborative discussion and termination or reassignment." "Discussion and appropriate action based on the circumstances. Action could involve all the above." "Some repercussion to managers if managers are perceived to be part of the problem. But usually it is a collaborative discussion and reforecast of goals." "Collaborative discussion and reforecast, coupled with termination/reassignment of those who repeatedly (2-3x) miss targets. Major problem is initial goal setting."

Are policies, procedures and codes of ethics enforced across the board regardless of rank or position?



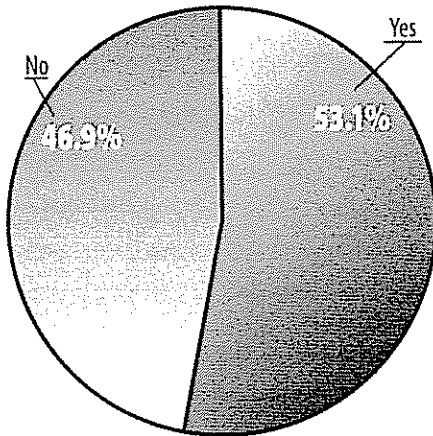
Do you feel that your company has adequate structures and procedures in place to indicate possible fraud or wrongdoing at an early stage?



Other responses included: "Recent changes in awareness, rules and oversight make things much better, but still not sure we have signaled adequately for early questions and warnings of possible trouble." "Believe if structure and procedures are not in place and shared with all, the possibility is great for wrong doing by profit making and non-profit companies." "There are never enough people in an organization to detect fraud at an early stage. You try to institute the right culture and what systems you can reasonably afford. It will never be perfect."

Experience with Internal Investigations

In your professional experience as a board member or advisor, have you ever been involved in a corporate internal investigation of a senior officer, employee or other board member for possible malfeasance or fraud?



If yes, how did the board become aware of the issue(s)?
(Multiple responses allowed)

Internal audit	42.3%
External audit	9.3%
Internal controls	32%
Report from a senior officer	29.9%
Tip from a lower-level employee	39.2%
Tip from a customer or vendor	14.4%
Anonymous tip	15.5%
Civil or criminal action by a government agency	11.3%
Shareholder demand or complaint	7.2%
Outside counsel	2.1%
Other	5.2%

Other responses included: "President and CEO received a call that triggered the investigation from individual that disclosed issues that were not part of the contract." "Through the news media." "Employee complaint through attorney." "Review by a director."

What issues or infractions were alleged?
(Multiple responses allowed)

Theft or misuse of cash or assets	42.3%
Failure to safeguard the company's interests	27.8%
Fraudulent financial or other statements	27.8%
Knowingly withholding material information from the board or regulatory/government agencies	17.5%
Kickbacks	17.5%
Other violations of the corporate code of ethics	40.2%
Other	14.4%

Other responses included: "Personal misconduct." "Money laundering." "Restatement of earnings, overly aggressive (possibly criminal) interpretation of revenue recognition policy." "Violations of the False Claims Act, the Foreign Corrupt Practices Act, the Truth in Negotiations Act, the Anti-Kickback Act, Securities laws (e.g., Section 10(b)(5))." "Insider trading." "Sexual misconduct." "Discriminatory termination." "Cover-up of fraudulent environmental conduct."

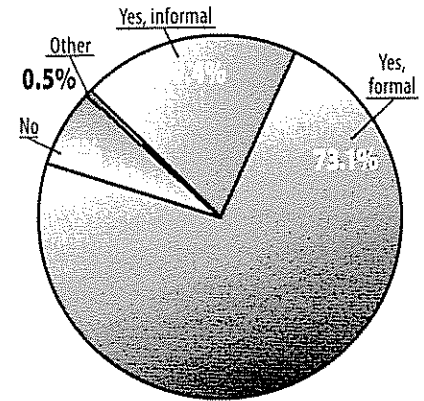
What was the result of the investigation(s)?
(Multiple responses allowed)

Termination of an employee or employees	71.1%
Suspension	6.2%
Criminal prosecution	22.7%
No punishment	6.2%
No error found	17.5%
Civil lawsuit	14.4%
Private settlement	23.7%
Restitution	14.4%
Other	8.2%

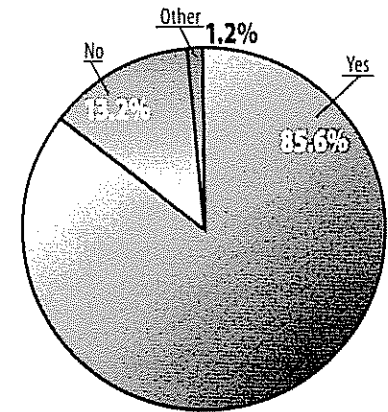
Other responses included: "The CEO was imprisoned." "Serious warnings under disciplinary policy, report to Audit Committee regarding conduct of those involved." "SEC investigation of company and former employees and board members, restatement of 4 years of financials." "Inadvertant error found; error corrected; no disciplinary action beyond coaching and counseling." "Judicial determination to see if appropriate price paid to non-arms-length vendor."

Code of Ethics

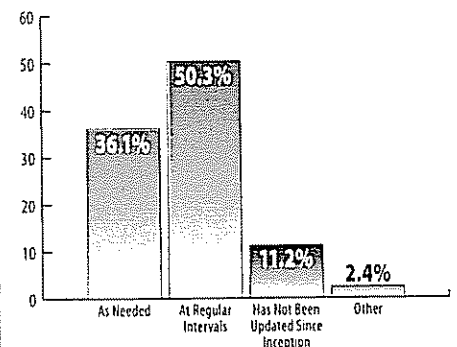
Does your company have a code of ethics and business practices that addresses key regulatory and operational issues?



In your opinion, does your code of ethics for senior officers adequately address the key issues your executive officers face?

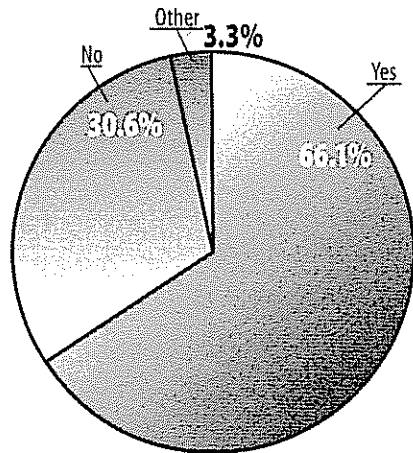


How often is your code of ethics reviewed and/or revised?



Compliance Programs

Does your company have a formal compliance program?



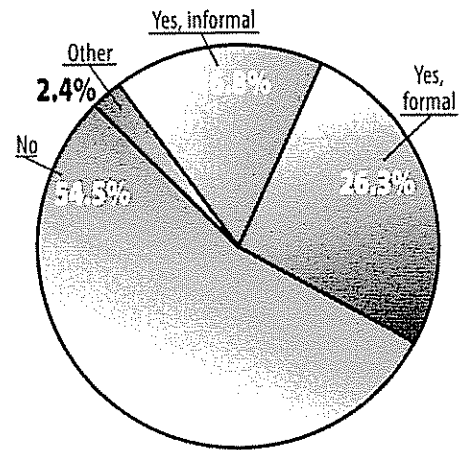
Which of the following are part of that compliance program?
(Multiple responses allowed)

Regular training for executives	71.1%
Regular training for employees	70.2%
A designated compliance officer	70.2%
Discipline of offenders	63.2%
Other	7%

Other responses included: "Compliance officer reports regularly to the audit committee." "Ad hoc staff meetings to discuss and review policies—several a year." "Quarterly summary of reported issues to Audit Committee of the board." "We are two years into development—it will include training for executives and employees soon and it will also include formal certifications and reporting."

Fraud Prevention Programs

Does your company offer a fraud-awareness and prevention training program?

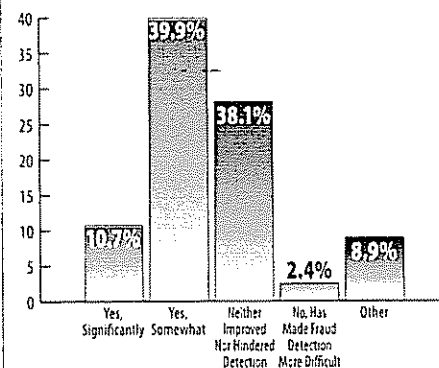


If you have a 'whistleblower' hotline, is this hotline for:

(Multiple responses allowed)

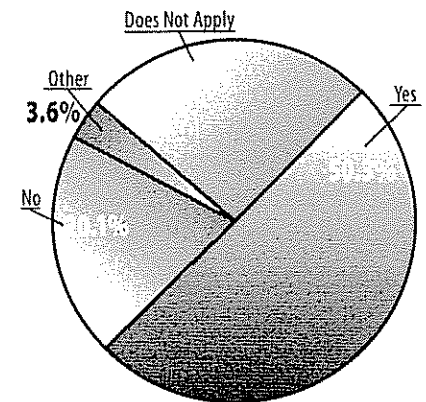
Employees	56.9%
Customers	24.4%
Vendors	21.9%
Shareholders	20%
Don't have a whistleblower hotline	40%
Other	2.5%

Do you feel that Sarbanes-Oxley whistleblower requirements have improved early detection of corporate fraud?



Other responses included: "Too early to tell. Importantly, many whistleblowers are disgruntled employees and their complaints are often without merit." "It has provided an opportunity for misuse by short sellers."

Has the Sarbanes-Oxley-mandated process for reviewing allegations relating to accounting fraud been fully implemented at your company?



Conducting an Investigation

If presented with compelling evidence of wrongdoing, would your company tend to...

Attempt an internal assessment prior to engaging outside assistance	35.7%
Engage outside assistance immediately	15.3%
Consult with inside counsel to determine a course of action	24.2%
Consult with outside counsel to determine a course of action	21%
Other	3.8%

Other responses included: "I believe any and all of these actions would"



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- » Circumvention of internal controls

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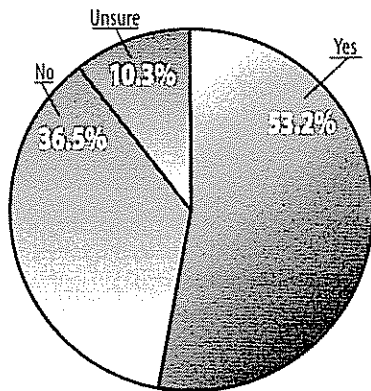
depend upon the involvement or lack of it by the organization's board of directors." "Utilize internal auditor for internal investigation prior to engaging outside assistance but notify external auditor of situation."

In conducting a corporate internal investigation, would your company tend to:

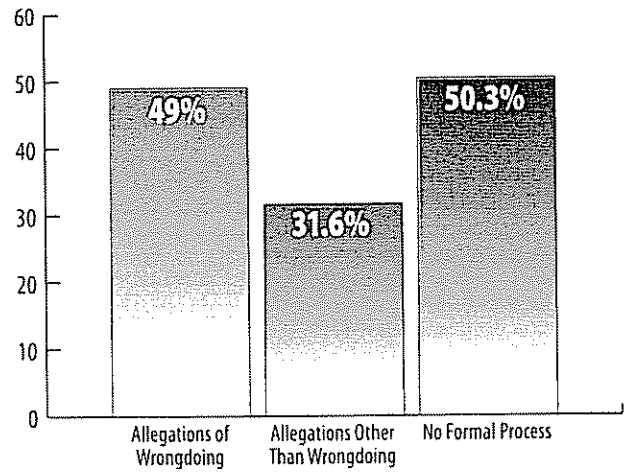
Use regular outside company counsel to conduct the investigation	21.9%
Retain an independent outside firm to conduct the investigation	35.5%
Conduct the investigation internally	36.8%
Other	5.8%

Other responses included: "Use various outside sources of help who have been advising the company on an informal basis and who are entirely competent to handle any wrongdoing." "Depends on the severity and the level of employees involved." "Conduct the investigation internally but inform external auditor (fraud/controls failure) and or external legal counsel." "Use third party internal audit/investigative firm."

Does the decision to use internal or external investigative resources in your view affect the credibility of the investigation's results?

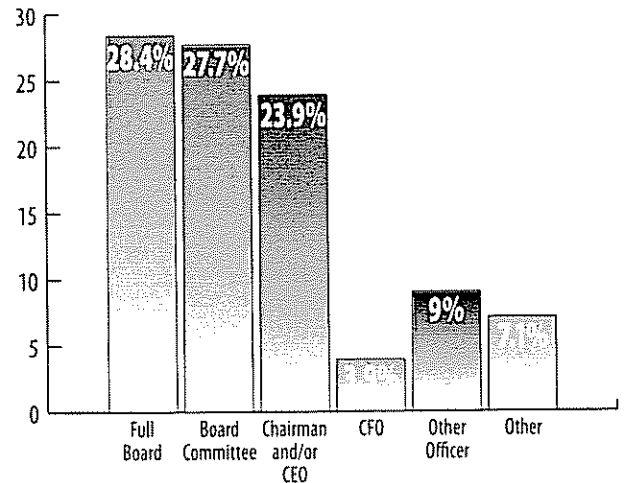


Is there a formal process at the board level for evaluating and responding to (check all that apply)



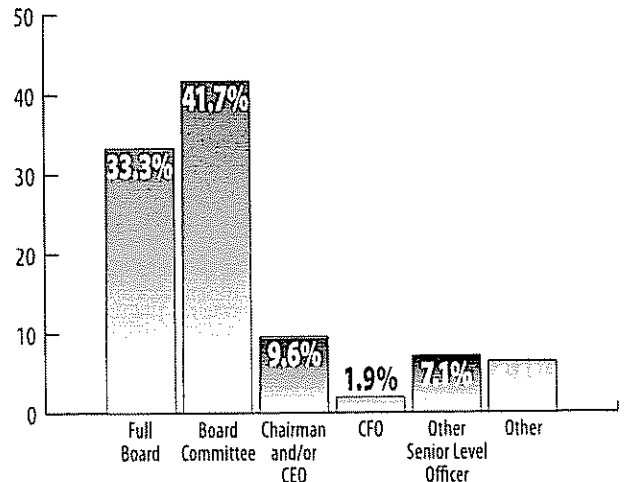
Where does the primary responsibility reside for launching and monitoring the progress of a corporate internal investigation?

Other responses included: "It is difficult to say as it depends on the extent of the infraction." "General Counsel."



Where do you think such primary responsibility should lie?

Other responses included: "Believe it should go first to the board Committee in the event of management involvement. It is crucial that such a process is written and distributed throughout the organization." "General Counsel" "Chief Group Risk Officer."





**Financial
Restatement**

**Employee
Misconduct**

Cybercrime

**Intellectual
Property Theft**

Sexual Harassment

Shareholder Suits

THE RISKS

THE SAFETY NET

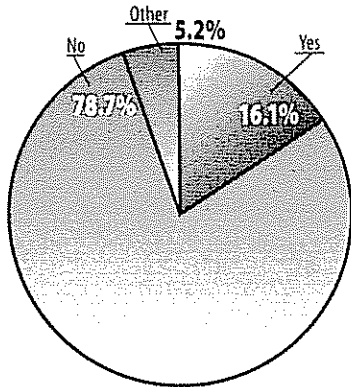
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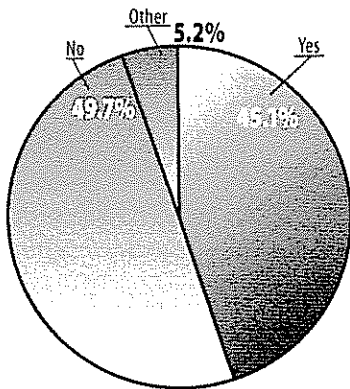
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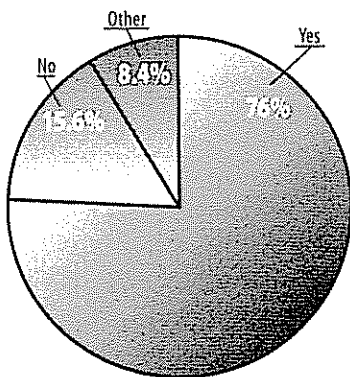
Have you developed a specific menu of duties of board members and officers in the event of a corporate internal investigation?



Does your company have a policy in place to protect evidence in the event that an investigation becomes necessary?



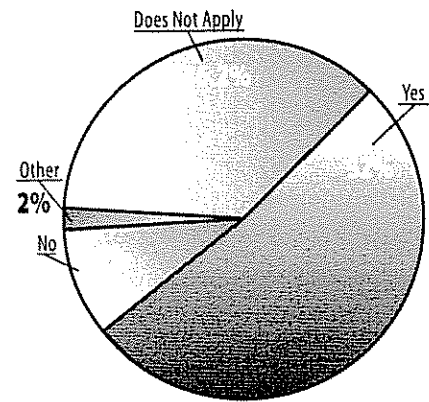
Is your company able to identify and locate former employees, directors, officers, vendors, etc., whose involvement in a corporate internal investigation might become relevant?



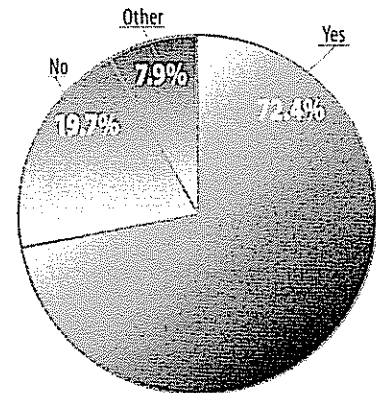
Other responses included: "To a significant degree but we have no absolute ability to locate former employees."

Director Protection and Liability

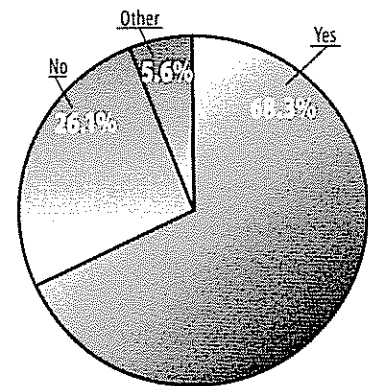
If you're an outside director, do you know what to do if you learn of wrongdoing by inside directors or other board members?



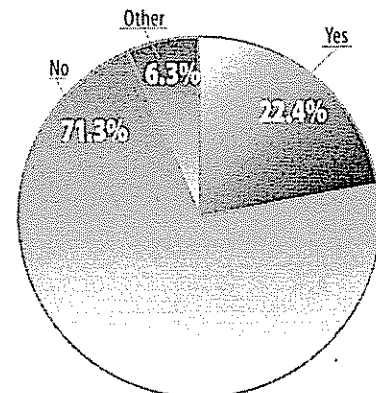
Do you have mechanisms in place to protect directors and officers from personal liability in cases of fraud?



As a director, are you concerned about incurring personal liability in cases of corporate fraud or malfeasance?



Have you considered resigning any directorship in the past 12 months because of liability concerns?



Survey respondents comment on whether or not corporate internal investigations are becoming more prevalent today.

"Yes. The primary driver of the increase is in response to the number of corporate scandals in recent years (and the number of executives pleading guilty) and legislation such as Sarbanes-Oxley plus the indictments by the New York Attorney General, Eliot Spitzer."

"Ever since the outside audit committee was required by the NYSE there have been an increasing number of internal investigations."

"Yes, because of heightened awareness and media attention. It's mostly a reaction to events (i.e., we don't want to read about it in the newspaper first) than a real desire to "become better", in my opinion."

"There is more focused effort to ensure that every employee understands the right way to do things—especially within acquired business units where the caliber of personnel training may not be as high."

"Regulations are more numerous, as are examples of the costs of not stepping up to internal investigations where needed. Corporations know more dramatically how failure to investigate can damage the firm, its prospects, and reputation; and even in situations where investigations honestly seem superfluous or inappropriate, there are new worries about what the consequences will be, with regulators or public, if you don't."

"Yes. The stakes are too high if the possibility of inappropriate behaviors or actions are not quickly addressed. SOX has stirred up considerable investigations through compliance requirements. The current zeitgeist often puts transparency above even performance or protecting competitive advantage."

"Not sure how prevalent corporate internal investigations are becoming. I would like to think that corporations and organizations recognize the benefits of visibility, ethical governance and the need for constant, responsible questioning at all levels. However, I am reminded that corporate and organizational scandal has cropped its ugly head throughout our history of social and commercial intercourse. Regulatory procedures and a vigilant press from time to time help ferret out wrongdoing, but unless we understand the difference between ethical organizational behavior and the advancement of limited, personal goals, investigations will always be with us."

"I think they're becoming more public, because of the high-profile cases that have been in the media. But I think most major companies have worked hard to identify and eliminate fraud for years. We're just under more pressure to do so now—we can't make a mistake, or make an oversight."

"I think boards and company officers are more involved and more alert, are digging deeper into everything that is happening in the company, so more problems are being found."

"There is no minimum of materiality so boards are left investigating the great and small."

"I think they are because officers and directors are far more concerned with their own personal liability and are much more willing to pull the trigger on internal investigations to eliminate any sense of impropriety."

"It's the recoil from the weight of the yoke of accountability for the oversight of corporate affairs placed on the shoulders of chief officers and directors. That said, however, since the days of Caremark, I have advocated with my clients a robust internal investigation mechanism. In my mind Sarbanes-Oxley largely codified (and expanded) what should have been best practices from the lessons of Caremark, such as (i) adopting a comprehensive Code of Conduct that encourages and in some cases mandates employee, customer and vendor involvement in the monitoring of company affairs, and specifies penalties for non-compliance that are uniformly carried out by the company; (ii) appointing one or more compliance officers for various "high risk" business activities; (iii) having a well-defined and management-independent reporting path up to the board (or a committee thereof) for whistleblowing complaints; (iv) instituting a management process that involves, on a regular basis, senior management individually and as a group in the preparation of periodic reports; and (v) having ongoing training for all employee levels."

"In my 18 years of board experience they are no more prevalent. The companies that I have been and am involved with have always had the highest standard of ethics and have long had processes in place to instill the culture and address transgressions. In the last 3-5 years these processes have become more formal."

"Yes, but people's understanding of governance is not improving."

"Whistleblowers who might have been ignored in the past are now meriting appropriate attention; boards have more formalized and robust monitoring procedures."

"Boards are over-reacting to insane new regulations. They are wasting time in minutia,

petty cash, and compliance rather than focusing on larger, strategic issues, that may involve risk but may yield high returns for shareholders. Additionally, ambulance chasers are now in the boardroom pursuing meritless lawsuits."

"Awareness of corporate internal investigations as a mechanism to address complaints and allegations of fraud has been heightened over the last few years due to Enron, WorldCom, etc. The wider use of whistleblower hotlines and the institution of protections for whistleblowers also means that more allegations are being made."

"I believe there is a heightened awareness of the need for fiduciary responsibility and financial recording accuracy. Due to external and public pressures individuals have become empowered to speak up due to the expectation that they will be held accountable. Their fear of personal loss must basically be transcended with a sense of public responsibility—or fear of otherwise receiving penalty for failure to act."

"I find that they are becoming more common. It is not clear to me that the reason for this outcome is a change in culture over the years, or that we have just become better at identifying unacceptable behaviors. We are also finding that an increasing number of our conduct violations are enabled because of access to the Internet."

"Yes, because of whistleblower provision. I am hearing about a number of bogus whistleblower items, and am aware of at least one in one of my companies."

"I don't think they are more prevalent. There have always been issues that require investigation if an organization has high ethical standards. We are not seeing an increase."

"I believe there is a stronger awareness of best practices and good governance which should ensure that corporate internal investigations are top of mind with all officers and directors. Perhaps problems are not becoming more prevalent, but rather are being uncovered because of these practices."

"Boards are too quick to turn everything over to outsiders."

"I think internal controls have been ignored over time by many organizations and upon implementation fraud is often found."

"Companies cannot afford to lightly dismiss allegations of wrongdoing. The only way to ensure the compliance process works is to have rapid, effective, independent investigations as an integral part of such process."

What Forensic Accountants Can Bring to Internal Investigations

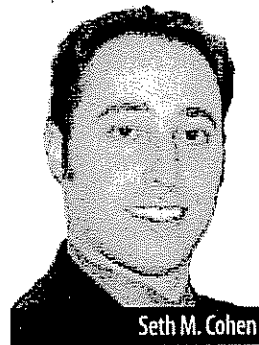
By Richard H. Girgenti and Seth M. Cohen

The forensic accountant can sift through accounting and financial records, interview key personnel, and utilize technology tools, while providing credibility and objectivity to the investigative process.



Richard H. Girgenti

“It looks like we have a problem with the accuracy of our sales results. It could affect our financial statements. How do we know if our numbers are right and whether management has been forthright about the company’s results?”



Seth M. Cohen

Increasingly, this is the kind of discussion occurring in boardrooms today. At the same time, boards and audit committees, in their oversight role, are challenged to fulfill their responsibilities to ensure that all appropriate responses are made when there is an accounting issue that may be the result of deliberate misconduct. More and more, they are turning to outside legal and accounting resources for help in ferreting out fraud and misconduct, particularly with regard to financial statement fraud.

One such resource is the forensic accountant, skilled in sifting through accounting and financial records, interviewing key personnel, and utilizing technology tools, while providing credibility and objectivity to the investigative or fact-finding process. With respect to the use of forensic accountants, board and audit

“Where the complexity of the case begins to touch on accounting and bookkeeping areas, forensic accountants become a necessary additional part of the process.”

committees are asking: when and who should be used; what is their role; to whom do they report; and what can and should be done with their findings?

When to Use a Forensic Accountant

Uncovering the details of a fraud that may involve management culpability or have an impact on company financial statements can be a daunting task for any investigator. Investigating allegations of this type often requires specific knowledge of accounting and financial reporting principles. This may include familiarity with generally accepted accounting principles (GAAP), accounting conventions, and bookkeeping and accounting systems.

An investigation may be triggered internally—by whistleblower allegation, detection via internal controls or by accident—or externally—via reporting by a vendor or third-party, the discovery of a government investigation or a media report. Typically, the board must make an initial assessment, usually assisted by in-house counsel, as to whether an internal investigation is necessary. If so, most organizations will hire outside

counsel, typically a law firm that has not had any prior significant reporting role to management, to conduct such an investigation. Where the complexity of the case begins to touch on accounting and bookkeeping areas, forensic accountants become a necessary additional part of the process—bringing to the table objectivity, experience with and understanding of the consequences of the allegations, familiarity with evidentiary rules and testimony and, perhaps most importantly, an array of skills and resources.

Where to Turn

Where the potential fraud may be consequential and/or involve management culpability, most often boards and audit committees will seek forensic accountants from a firm other than the one that audits the company’s financial statements. Outside forensic accountants will bring both the reality and appearance of objectivity and independence, which will be of critical importance to regulators, bank lenders, investors, suppliers, customers and shareholders. The specific requirements of the investigation further refine the focus of which forensic accountants

to hire. Clearly, scope (often focusing on many transactions or activities), complexity (potentially involving intricate accounting issues) and timing (often facing inexorably short deadlines) are all key considerations in hiring the right forensic accountants.

What Forensic Accountants Can Do

Most forensic accountancy groups offer a wide-range of skill sets and experiences that may be appropriate for an internal investigation. The growth of these practices has included the addition of former law enforcement officials, government and regulatory enforcement personnel and computer technology specialists.

Some, if not all, of these individuals may play a role in an investigation. Forensic accountants typically work concurrently on a number of aspects of inquiry: interviewing company personnel, and, in some cases, former employees, to either obtain information or confront those who may have some culpability; reviewing documentation that falls into suspect areas and questionable transactions; and transactional analysis, including tests of balances, entries or other data.

Reporting

Once the forensic accountants have completed their investigation, they must report their findings to counsel, and often to the audit or other committee of the board. These reports may be either oral or

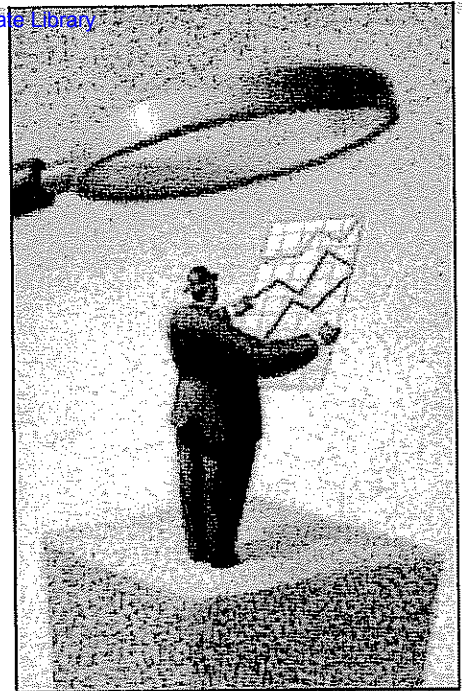
in writing, and may vary depending on the timing, complexity of the case, the number of individuals interviewed, the needs of the audit committee and outside auditors, and the possibility that regulators may be involved. Should there be regulatory involvement, it is important to understand upfront what form of reporting the regulators will require.

Follow-up

The work and findings of forensic accountants can be utilized in many ways. If financial statement fraud is corroborated, the board, upon advice of counsel, may consider a host of options, including disclosure. In addition, remedial action—including among other aspects, repairing weak or ineffective controls and discipline of personnel involved—may be required under consideration of legal and regulatory frameworks and standards.

The work of the forensic accountant is of critical importance in establishing specific accounting-related evidentiary proof of a financial reporting fraud and an essential ingredient in ensuring that a thorough and independent investigation is conducted that can be relied upon to help a company put the problem behind it.

Richard H. Girgenti is national partner in charge of KPMG LLP's Forensic practice. Seth M. Cohen is a manager in KPMG LLP's Forensic practice. Both are based in New York. KPMG LLP (www.us.kpmg.com) is the US member firm of KPMG International. KPMG International's member firms have nearly 100,000 professionals, including 6,800 partners, in 148 countries.



What is Financial Reporting Fraud?

Financial reporting fraud can be defined as the deliberate misrepresentation of a financial condition or the intentional misstatement or omission of amounts or disclosures in financial statements, either of which is intended to deceive the users of the financial statements. Examples include:

- **revenue recognition**—the recording of revenue from the sale of goods or services that did not occur or improperly recording revenue in an early or later period
- **reserve manipulation**—the use of bad faith estimates and one-time charges
- **inventory manipulation**—accounting for nonexistent inventory or overvaluation, and
- **expenses/liabilities manipulation**—failing to properly record expenses or liabilities.

“Forensic accountants typically work concurrently on a number of aspects of inquiry.”

Managing the Risk of Fraud and Maximizing Shareholder Value by Creating an Anti-Fraud Environment

By Glenn M. Pomerantz and Robin J. Zablow

There is a developing consensus among legal authorities and practitioners as to how companies can prevent and detect fraud effectively.



Glenn M. Pomerantz



Robin J. Zablow

Boards of directors are under increasing pressure to police more effectively the integrity of the organizations they oversee. The list of prominent executives that have been prosecuted for corporate wrongdoing over the past several years is by now depressingly familiar. Moreover, during the first half of 2005, several new, alleged corporate

frauds have surfaced, suggesting that the wave of corporate misconduct has not yet crested. Obviously fraud can have catastrophic results for companies and subject individual directors to personal liability and serious reputational harm.

It appears that some boards are uncertain about how best to address the risk of fraud within their organization. Fortunately, there is a developing consensus among legal authorities and practitioners as to how companies can prevent and detect fraud effectively. This approach is premised on the assumption that efforts solely to suppress criminal conduct are unlikely to succeed, and that it is essential to adopt a more comprehensive approach that

addresses employee attitudes and the "tone at the top."

The lynchpin of this approach lies in creating a pervasive "anti-fraud environment" within the company. Although while one size does not fit all companies, such an environment has certain key attributes, which are described below. Companies that excel at embodying these attributes can not only avert sizable losses but also significantly enhance shareholder value and investor confidence.

Setting an Appropriate Tone at the Top

Although it has been said many times before, it bears repeating that board members chart the ethical course of the organization, and are responsible for demonstrating—by their own example—an unwavering commitment to the highest standards of ethical conduct. This means, among other things, scrupulously abiding by the company's code of ethics, ensuring that senior management consists of persons of high moral character, and seeing to it that a climate of transparency prevails at all levels within the organization.

Practical Measures for Creating a Pervasive Anti-Fraud Environment

The ethical tone set by the board should be diffused throughout the organization so as to create the proper environment. The

measures for doing this include: (a) job applicant and employee screening; (b) appropriate policies, procedures and controls; (c) systems for employees to report misconduct and receive advice; (d) investigation and remediation; (e) communications and training in ethics and fraud detection; (f) a chief ethics/compliance officer; and (g) fraud risk assessments, monitoring and testing.

Applicant and Employee Screening

No anti-fraud program will succeed if the company's officers and employees are dishonest or unethical. The board should ensure that the company conducts suitable background investigations of individuals being considered for employment or promotion to positions of significant trust. Such investigations should, at a minimum, cover the individual's educational background, employment history, credit history, and criminal record. More extensive checks, such as "full field investigations," are appropriate for persons who will be serving in sensitive positions or will have access to valuable company assets or information. In this regard, it is particularly important that the board carefully vet candidates for senior officer positions for prior misconduct or signs of ambivalence towards ethics or compliance matters.

Policies, Procedures and Controls

Employees often need ethical guidance to carry out their workday responsibilities. The company's ethical values should be codified and easily accessible so as to guide

employees in making decisions as to an appropriate course of action. These policies and procedures typically include a code of ethics and business conduct, a conflict of interest policy, procedures for reporting alleged wrongdoing, and a non-retaliation policy. As the amended Organizational Sentencing Guidelines recognize, the board must take responsibility for ensuring that appropriate control activities are being implemented to mitigate significant fraud risks.

Systems for Reporting Misconduct and Providing Advice

The board should oversee an ethics hotline that enables employees, consultants and vendors to: (a) report concerns, anonymously if preferred, about unethical behavior or suspected fraud, without fear of retribution; and (b) obtain advice before making decisions that may have significant legal or ethical consequences. The hotline should be well-publicized and operated independently of management, preferably by a third party. The company should fully document internal investigations of whistleblower complaints and critically review each occurrence. Moreover, management and personnel should be urged to consult with compliance staff about legal and reputational risks before making significant decisions, and should be encouraged to report ethics and compliance problems candidly and on a timely basis, even if doing so reveals unpleasant situations.

Investigation/Remediation

Perhaps the most dramatic indicator of a company's commitment to ethics and integrity is how it responds to alleged wrongdoing, especially by senior management. The company should have a standardized process for responding to allegations of

"Board members chart the ethical course of the organization."

fraud, including: conducting fair and thorough investigations; assessing and enhancing any internal controls found to be deficient; communicating and conducting training to reinforce the company's policies and procedures; taking appropriate and consistent disciplinary action against wrongdoers; conveying the results of investigations to complainants, as appropriate; and making required disclosures in public reports. The board should ensure that management follows up on these issues appropriately and in a timely manner. With regard to investigations, the audit committee (or an independent committee of the board) should take responsibility for overseeing internal investigations that present a conflict of interest for senior management.

Chief Ethics and Compliance Officer

The company should emphasize its commitment to corporate integrity by assigning a senior officer overall responsibility for the design, implementation, enforcement, and monitoring of its ethics and compliance programs. Among other things, this officer should ensure that the operating units provide timely and accurate information about their ethics and compliance activities. The officer should report directly to the board of directors, be fully independent of management, and have adequate resources to carry out these important responsibilities.

Communications and Training in Ethics and Fraud Detection

Employees should receive training in the company's policies and procedures, in how to identify

ethical challenges and potential fraud, and in how to address such issues properly inside the company. The company's leadership should clearly communicate to employees that everyone must comply with the company's standards and that all violations will result in some type of sanction. This message should be strongly conveyed through a variety of means, including written memos, training videos, and in-person presentations.

Risk Assessments, Monitoring and Testing

Fraud risk assessments probe the company's susceptibility to fraud and misconduct, particularly resulting from management override of internal controls or collusion. Recognizing that the company's outside auditor will evaluate the effectiveness of the anti-fraud program and controls over financial reporting, the board should ensure that management conducts a comprehensive fraud risk assessment, that the assessment is properly documented, that controls are properly tested, and that significant deficiencies are promptly addressed. The assessment should be conducted no less than annually and fraud controls should be monitored by the chief compliance officer or others at the officer's direction.

The company's anti-fraud program should also be subjected to both ongoing and after-the-fact monitoring and performance evaluation. The monitoring should be conducted continuously and be appropriate for the organization's size and complexity. To assist in assessing the effectiveness of the company's anti-fraud programs,

(continued on page 36)

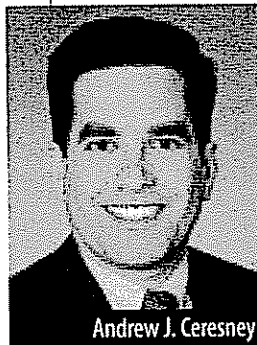
The Keys To Successfully Disclosing an Investigation

By Mary Jo White and Andrew J. Ceresney

There are a number of useful guidelines to follow in crafting initial and subsequent disclosures that will convey the right corporate message and position the company to weather any final disclosures of the (potentially negative) results of the investigation.



Mary Jo White



Andrew J. Ceresney

In the past, the public disclosure of an internal investigation at its inception was not common. But increasingly, corporations are announcing certain types of internal investigations—particularly ones related to governmental investigations that are already or will be public—at the outset of the internal investigation.

The disclosure of the commencement of internal investigations may be prompted by a more conservative approach to disclosure issues in the current regulatory environment. Whatever the legal and regulatory disclosure considerations, disclosing the commencement of an internal investigation serves another important function, which should be considered when thinking about the timing and content of the disclosure: it sends important messages to the investor community about the company at an otherwise tumultuous time.

Indeed, announcing the internal investigation, and later, the measures taken in response, can communicate a strong message:

that the company experienced a problem, that its management and board are committed to investigating the problem thoroughly, and once remedial actions have been announced, that the company has taken appropriate and clear personnel, policy, and accounting measures to address it. But there are certain important issues to consider in ensuring that this message is communicated clearly and effectively.

Disclosure Rules

Any discussion of public disclosures must take into account the laws, regulations, and exchange rules that govern a corporation's disclosure obligations. In brief, the law does not specifically require companies to disclose the existence of an internal investigation. Nor, in some cases, need the findings of the internal investigation be disclosed. However, a publicly-traded company may be obligated by law or rule to report certain investigation findings, or the measures taken to address them, including conclusions that previously issued financial statements should no longer be relied upon, personnel changes, or findings of a material weakness in internal controls. Significantly, where the investigation reveals that prior statements of the company were materially misleading when made, the company may have a duty to correct its previously-issued statements. Similarly, a duty to update may exist when a statement

becomes misleading because of subsequent events.

However, beyond the rules that govern such disclosures, and the paramount importance of making sure that any disclosure is accurate and complete, there are a number of useful guidelines to follow in crafting initial and subsequent disclosures that will assist in conveying the right corporate message and in positioning the company to weather any final disclosures of the (potentially negative) results of the investigation. While every situation is unique, and will require individual consideration, here are some general factors to consider in deciding when and how to communicate with investors about an internal investigation in the context of an ongoing government investigation:

1. Time the announcement of the internal investigation as closely as possible to the announcement of the government investigation.

Timing the announcement of an internal review at or close in time to the announcement of the government investigation will communicate the company's intent to get to the bottom of the facts, address the problem and cooperate with the authorities. Communicating the company's intent to cooperate with the authorities is critical given the premium placed upon that cooperation by the government in making charging decisions and in determining if sanctions should be imposed on the company.

2. Be clear about the scope of the issue under investigation.

It is very difficult early in the investigation to predict where the investigation will lead. But conveying the current scope with some specificity will help investors understand the likely extent of any potential problem and plan for the findings. In conveying the scope of the issue, a company must be careful to have a reasonable basis for any estimates of potential financial effects and to discuss risks and uncertainties that may cause the final outcome to differ from those estimates.

3. Be clear about the body that will supervise the investigation.

Good corporate governance, as well as common sense, dictates that anyone potentially implicated in wrong-doing not be involved in conducting the investigation. Moreover, involvement of independent directors sends the message that the board is on top of the issue and is handling it in a disinterested fashion. In addition, in certain situations, mention in the disclosure of the law firm handling the investigation could boost confidence in the likely thoroughness and independence of the investigation.

4. Avoid the temptation to announce a deadline.

Given investors' desire for predictability, board members will be tempted to announce an expected deadline for completion of the investigation. But such an announcement is fraught with danger. Factors completely beyond the control of the company or the firm conducting the investigation—such as governmental requests and concerns, data-gathering delays, new issues and auditor concerns—could delay completion of the investigation. The consequences of that delay could be magnified if the

“Disclosing the commencement of an internal investigation sends important messages to the investor community about the company at an otherwise tumultuous time.”

company has previously announced a deadline. It may be safer to generally state that the investigation will be conducted as expeditiously as possible.

5. Interim Measures.

If the board has taken any personnel actions, such as suspensions of employees, or implemented other policy or structural changes, reporting those in conjunction with the announcement or update of the investigation will communicate that the board is not waiting for the resolution of the investigation before addressing apparent problems. On the other hand, it is not usually desirable to have multiple interim announcements.

6. Consider the timing and scope of the disclosure of the investigation results.

Use caution in making preliminary evaluations of the absence of wrongdoing. Internal investigations are unpredictable; broad statements of findings before the completion of the investigation could expose the company to potential liability and undermine confidence in the investigation.

7. Pair the disclosure of the results of the investigation with specific remedial actions tailored to address the findings.

Prior to or at the conclusion of the investigation, it is essential to implement procedures and to take personnel actions that directly address problems discovered. The disclosure of the results of the

investigation can then be paired with specific remedial measures, sending the message that while the company identified a problem, it has completely addressed it through appropriate and tailored remedial actions.

No company wishes to be in a situation where an internal investigation is necessary. But making appropriate disclosures that convey the right tone both at the beginning and at the end of the investigation is an important signal to investors that the company is handling the situation properly and is poised to weather the storm with the minimum amount of disruption.

Mary Jo White is a partner with Debevoise & Plimpton LLP and is chair of the firm's 222-lawyer litigation group. Her practice concentrates on internal investigations and defense of companies and individuals accused by the government of involvement in white collar corporate crime or SEC and civil securities law violations, and on other major business litigation disputes and crises. White served as the U.S. Attorney for the Southern District of New York from June 1, 1993 until January 7, 2002. She was the first and only woman to serve as the U.S. Attorney for the Southern District of New York, widely recognized as the premier U.S. Attorney's office in the country.

Andrew J. Ceresney is a litigation partner with Debevoise & Plimpton LLP. His practice focuses on white collar criminal and SEC investigations, complex civil litigation and internal corporate investigations. Prior to joining Debevoise, he was a Deputy Chief Appellate Attorney in the U.S. Attorney's Office for the Southern District of New York, where during his tenure he was a member of the Securities and Commodities Fraud Task Force and the Major Crimes Unit.

Boardroom Briefing Interview: Harvey Kelly

People are on edge; nobody likes to be investigated. Yet, the issue at hand must be fully investigated.



Harvey Kelly

What is one of the most common red flags of accounting or financial fraud?

The most common tip-off that something is amiss with a company's books is a dramatic

improvement in profitability in the last month of a quarter. Time and time again in instances where fraud has occurred, there is a phenomenon in which a company fails to make its budget in the first

if they consider it absolutely necessary. Thus, they often cook the books only after the legitimate accounting results are compiled and determined to have fallen short. Because this assessment is often performed in connection with a company's quarterly financial reporting requirements, improper adjustments frequently are recorded in the last month of each quarter.

It may be tough for directors to pick up this sign because frequently their information consists only of adjusted quarterly

suspect bookkeeping. Sometimes it's a customer or a vendor who's somehow gotten a clue that something is amiss or calls the company's attention to a side deal it believes was authorized by a company representative. The whistleblower is a common trigger for an investigation.

In terms of process, the whistleblower does not always go through the normal channels that have been set up to track complaints, such as calling a hotline. Allegations may occur in the context of an employee leaving

"Even those willing to employ creative and/or improper accounting techniques generally prefer to do so only if they consider it absolutely necessary."

and second months, and then—lo and behold—they have a wonderful last month of the quarter and are able to achieve or exceed the expected results for the entire quarter.

If this phenomenon occurs consistently, quarter after quarter, it is a warning sign that management may be cooking the books. Management creates a telltale pattern that is inconsistent with the way a business normally behaves. Such intervention usually occurs during the closing of the books at the end of the quarter. Even those willing to employ creative and/or improper accounting techniques generally prefer to do so only

numbers. If that is the case, they aren't able to focus on what company performance looked like on a month-by-month basis. If directors want to have a higher level of understanding, they should consider requesting that more comprehensive financial information be presented for each month of the quarter.

Who is a typical "whistleblower" and how do their allegations become known?

There are a couple of different kinds of whistleblowers. Sometimes it's an employee who feels the threat of personal risk from being associated with

the company who, during the normal process of exit interview expresses concern or discomfort about the company's business or financial reporting practices. I often counsel clients not to automatically discount such comments merely because they were uttered by an individual who may be disgruntled. We often find that while a person may be disillusioned, their allegations, even if not 100% accurate, often have some basis in fact.

Who has the responsibility to launch an internal investigation?

Sarbanes-Oxley puts explicit responsibilities on the audit

committee of the board of directors. There are two primary responsibilities. One is to ensure that the company has in place appropriate policies and procedures to allow for the anonymous submission of complaints by employees with respect to accounting and/or auditing practices. The second is that the audit committee must ensure that there is an effective mechanism for following up on these complaints. The audit committee is not legally required to be the party to direct every accounting investigation; however, it has become customary practice to have investigations overseen actively by the audit committee or another appropriate committee of the board. With the audit committee in charge, as opposed to management, the investigation maximizes its independence and therefore its

the concern might be dismissed as being without merit, or, management would notify the board that an allegation had been made, investigated, and then report the findings. Post Sarbanes-Oxley, many audit committees are requiring timelier reporting of complaints or allegations so that they—not management—can make a determination as to what should be done and who should do it. Many committees are following this trend, especially when the allegations relate to accounting improprieties. The audit committee is taking on the responsibility from the get-go to oversee such investigations and hiring the outside professionals. Today, outside professionals are involved at the onset of the problem, which is much different than what we saw just a few years ago.

grow into dramatic fraud cases. Many of the high-profile cases started small and grew over time. Today, companies may be more effective at aggressively following up at the first sign of an accounting concern, and importantly, having the audit committee lead that effort from the beginning, without bias regarding the outcomes.

Regarding retaining outside counsel and forensic accounting, there are two critical aspects. First is objectivity. The attorneys and forensic accountants should be from firms that have not had recent dealings with the company. Their independence is a key factor in the credibility of their findings. The public, government agencies and the markets are demanding transparent dealings and relationships.

“While there have been fewer high-profile corporate-wide frauds we’ve seen a significant number of companies announcing that they have to restate their numbers for relatively discrete issues.”

credibility. The audit committee, in turn, almost always will engage outside, independent lawyers and forensic accountants to conduct the investigation to the degree that the audit committee deems necessary.

What’s going on behind the scenes at the corporation as management moves toward a decision to engage outside assistance?

In the not-so-distant past, before Sarbanes-Oxley, very often an issue would come to the attention of management, who would do some amount of investigation—using the internal audit department or the finance department. Following this preliminary investigation,

Given that Sarbanes-Oxley has created a whole new level of sensitivity to allegations of all types, have you seen a surge in the number of investigations launched?

Yes. Our sense is there has been a surge of audit committee-run investigations. While there have been fewer high-profile corporate-wide frauds we’ve seen a significant number of companies announcing that they have to restate their numbers for relatively discrete issues.

There may be more “early intervention” going on so companies are discovering and then fixing problems before they

Second, audit committees must ensure their chosen professionals have a proven capability to undertake the work at hand.

The professionals should be highly experienced in a broad range of investigations. The individuals must be respected for their own expertise (not their firm’s). For the forensic accountants, that includes extensive experience in comparable investigations, a proven track record of objectivity and professionalism in the conduct of such investigations, and deep experience in interacting with the outside auditors, the SEC and other regulators in such situations.

“There may be more ‘early intervention’ going on so companies are discovering and then fixing problems before they grow into dramatic fraud cases.”

Forensic technology skills are also a must in many investigations. Computerized accounting records, emails and other electronic records comprise key sources of investigation evidence. Thus, the professionals conducting the investigation should be able to provide state of the art forensic technology skills to efficiently analyze electronic evidence. In addition, large corporate investigations are a team effort; your forensic accountant and lawyer should have ready access to other professionals in their firms. It is worthwhile to check references with respect to your professionals’ abilities to manage their own team and work effectively with client management and other professionals. Returning to the subject of credibility for a moment, the reputation and talent of your outside professionals goes a long way to establish it.

What are the first three things that you do when you get on the scene to create the best conditions possible for a successful outcome to an investigation?

The first critical step is to preserve the relevant records and whatever evidence exists. Data preservation entails putting measures into place to prevent people from deleting information from computers, destroying files and documents, or otherwise tampering with evidence. Such specialists must be able to go into a company at a moment’s notice to collect computers, imaging hard drives, files and other records.

A second step is to determine and recommend an initial framework and scope for the investigation. Directors and management are faced with the question of how far to look. Allegations seldom are neatly packaged. The impetus behind an investigation can be as obscure as someone saying, “I am uncomfortable with the aggressiveness with which we account for some things” in an anonymous letter. This simple statement raises a host of challenging questions: What does that mean? What do we look into? And how far back should we look?

Defining the scope early has a number of benefits. From an execution perspective, it keeps the investigative team focused and pulling in the same direction. Perhaps more importantly, the process of defining the scope initiates the dialog and analysis that helps the board avoid being too narrowly focused or not digging deep enough. Experienced experts can protect both sides. The definition process may lead to a more comprehensive investigation or it can result in a finding that there is a very confined issue or even that there is no problem at all.

The third step is to assess as quickly as possible whether the potential problem is a real problem. While it may take a longer time to quantify the full extent of a problem, an early determination as to whether there is indeed substance to the concern is crucial. Part of that assessment involves making an

initial determination of who may be implicated if it is a real problem.

In your opinion, what is the one characteristic that is essential to performing an effective and efficient corporate investigation?

Diplomacy, without a doubt, is a critical attribute for a forensic accountant. People are on edge; nobody likes to be investigated. Yet, the issue at hand must be fully investigated. We have found over the years that while it is human nature to feel threatened early on even if one is innocent, if the investigation is handled professionally then those who don’t have something to hide usually help to speed the investigation to a conclusion.

But an improper tone in terms of conducting the investigation can result in putting a lot of obstacles in the way by engendering lack of cooperation, combativeness and other behaviors on the part of staff accountants or other company personnel. If an audit committee must commence an internal investigation using outside professionals, it would be well-advised to ensure that such professionals have a reputation of conducting such investigations with a high degree of professionalism.

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(Minow, from page 7)

control over financial reporting is effective, pursuant to the rules adopted by the SEC under Section 404, when those rules take effect.

Another bad example is Hooper Homes, where the disclosures reveal a dispute between the CFO and the CEO. The board seems to be siding with the CEO. Notice the exculpatory use of the word "intentional:"

[T]he inquiry commenced by the Audit Committee of its Board of Directors subsequent to the end of the second quarter of 2004 regarding certain reimbursements to the Company's CEO for expenses, as well as certain other expenditures made by the Company, including charitable contributions, made by or at the direction of the CEO, has been completed. The inquiry arose from assertions by the Company's CFO that such reimbursements, expenditures and other actions violated the Company's Code of Conduct and Ethics adopted March 1, 2004 and the fiduciary duty of the CEO. Upon receipt of the CFO's assertions, the Audit Committee promptly retained independent counsel, Gibbons, Del Deo, Dolan, Griffinger & Vecchione of Newark, N.J., to assist it in this inquiry and they, in turn, engaged an independent auditing firm, BDO Seidman, to assist them (the Investigation Team). The Audit Committee has completed its inquiry. Upon evaluation of all the facts and circumstances, the members of the Audit Committee unanimously concluded that they did not believe that the CEO engaged in any intentional wrongdoing or intentional breach of any fiduciary duty.

Despite this clean(ish) bill of health, shortly after this disclosure, the company had to acknowledge that its internal controls were not adequate:

These deficiencies were identified and either are remediated or scheduled to be remediated shortly.

- *inadequate segregation of duties, as the same individual is responsible for overlapping aspects of internal controls*
- *insufficient oversight of certain processes that may allow fraudulent transactions to be processed*

A better example is Lydall, where a CFO who was fired for cause and sued by the company for improper use of confidential data made allegations about improprieties after his departure that the board investigated:

The Special Committee of Lydall's Board of Directors has completed its previously-announced investigation of the facts and circumstances surrounding the allegations made by...its former Chief Financial Officer. The Special Committee has concluded that [the former CFO's] allegations—all of which relate to conduct that post-dates his tenure at the Company—are without merit. During its investigation, the Special Committee interviewed numerous current and former employees and sought to interview [the former CFO] regarding his allegations. Through his counsel, [the former CFO] repeatedly declined to be interviewed. The Special Committee received full cooperation from Lydall and all current and former employees whom it sought to interview.

This is a well-drafted disclosure, revealing what it must and inspiring confidence with its identification of the allegations as relating to events that occurred after the former CFO left the company (relating to his level of knowledge) and with its discussion of the unsuccessful efforts to interview him to get more information (relating to his ability to support the allegations).

What Investors Want to Know

As investors examine these disclosures, what matters most to them is not the uncovering of inadequacies, even material ones. It is evidence that the board is doing more than signing off on boilerplate given to them by the lawyers and accountants. Investors want to know that the directors have thought carefully about the testing of the internal controls and have participated thoughtfully and personally in any investigations of allegations of impropriety.

For example, when the CFO and chief accountant and controller leave Delphi as it reveals a \$261 million overstatement of revenues, we expect more from the board than a generic announcement that the audit committee "has substantially completed its internal accounting investigation."

"Education is expensive," reads one popular bumper sticker, "until you consider the cost of ignorance." Board members might want to read that over a couple of times as they think about their internal investigations. Investors will certainly think about it as they read what the board has to say about these investigations.

Nell Minow is the cofounder of The Corporate Library, the creator of the Board Analyst family of governance assessment products. In 2003, based on her work, Minow was dubbed "the queen of good corporate governance" by *Business Week*. Previously, Minow was a principal of LENS, a \$100 million investment firm. Before LENS, she served as president of Institutional Shareholder Services, Inc., a firm that advises institutional investors on issues of corporate governance, and as an attorney at the Environmental Protection Agency, the Office of Management and Budget, and the Department of Justice. She is the author of over 200 articles and the co-author of three leading books on corporate governance. Minow graduated from Sarah Lawrence College and the University of Chicago Law School.

(Lewis and Byers, from page 13)

of the internal investigation with third parties. This may include prosecutors, regulators, legislators, outside auditors, shareholders, institutional investors, lenders, customers, suppliers, employees and the media. But once the results of an internal investigation are disclosed, the evidentiary privileges that protected them are typically deemed to have been waived. This means, for example, that plaintiffs' attorneys seeking to bring derivative or class action lawsuits will have access to a treasure trove of dirty laundry.

Even general disclosures to third parties such as investors, lenders, customers and the media must be undertaken with care. One premise of an internal investigation by counsel is that the purpose is to provide confidential legal advice to the company. If counsel or the client make public statements about the investigation, courts

may later conclude that business necessities and public relations, rather than legal advice, was the true purpose and that the details of the investigation are not protected by evidentiary privileges.

In highly regulated industries, there will often be an affirmative legal duty to self-report wrongdoing. More broadly, where misconduct may materially affect a public company's financial statements, disclosures of some kind will typically be required in SEC filings. Such mandatory disclosures, however, can sometimes be accomplished in a manner that does not waive the privileges protecting underlying facts uncovered in the course of the internal investigation.

Another situation in which the company will have little choice but to disclose not just the results of an internal investigation but also its details is an inquiry from

outside auditors. In the wake of numerous recent cases in which audit firms have been held liable for failing to act as corporate "gatekeepers," outside auditors are now routinely demanding information beyond the bottom line results of an investigation, including the details of how the investigation was conducted and what facts were discovered.

Finally, even where no legal duty exists, companies will often choose to disclose the results and details of an internal investigation to regulatory or law enforcement officials in an effort to minimize the company's exposure. This is because such officials are increasingly pressuring corporations to "cooperate" with government investigations by waiving the attorney-client privilege and promptly turning over all information developed in the course of the company's own investigation. In this manner, internal investigators are essentially deputized.

"It is normally essential that lawyers conduct or at least oversee internal investigations so that the fruits of the investigation are protected by applicable evidentiary privileges."--

Ms. Lewis and Mr. Byers are attorneys and partners in the Washington, D.C. office of Crowell & Moring LLP. Ms. Lewis is the former United States Attorney for the District of Columbia and the former Inspector General of the U.S. Department of the Interior. Mr. Byers has extensive experience in conducting internal investigation for corporate clients, and representing corporations and individuals in government investigations.

(Pomerantz and Zablow, from page 29)

the board should ensure that independent experts (either internal or external) conduct regular evaluations analogous to those being undertaken in compliance with section 404 of the Sarbanes-Oxley Act.

Courts, regulators and investors are evaluating companies using 20/20 hindsight; to hedge against the risks

of liability and reputational harm, directors must therefore aspire to 20/20 foresight. An effective and integrated anti-fraud program is an ideal means of achieving that foresight. Additionally, there is also another, sometimes overlooked, reason for creating a robust anti-fraud environment—the growing body of evidence suggesting a distinct correlation between corporate integrity and enhanced

shareholder value. The wise director understands that the benefits of zealous fraud prevention clearly outweigh the costs.

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(Barbanel and Wood, from page 9)

investigative firm with a broad spectrum of expertise and useful resources, such as former prosecutors and investigators, forensic accountants, and electronic evidence tools.

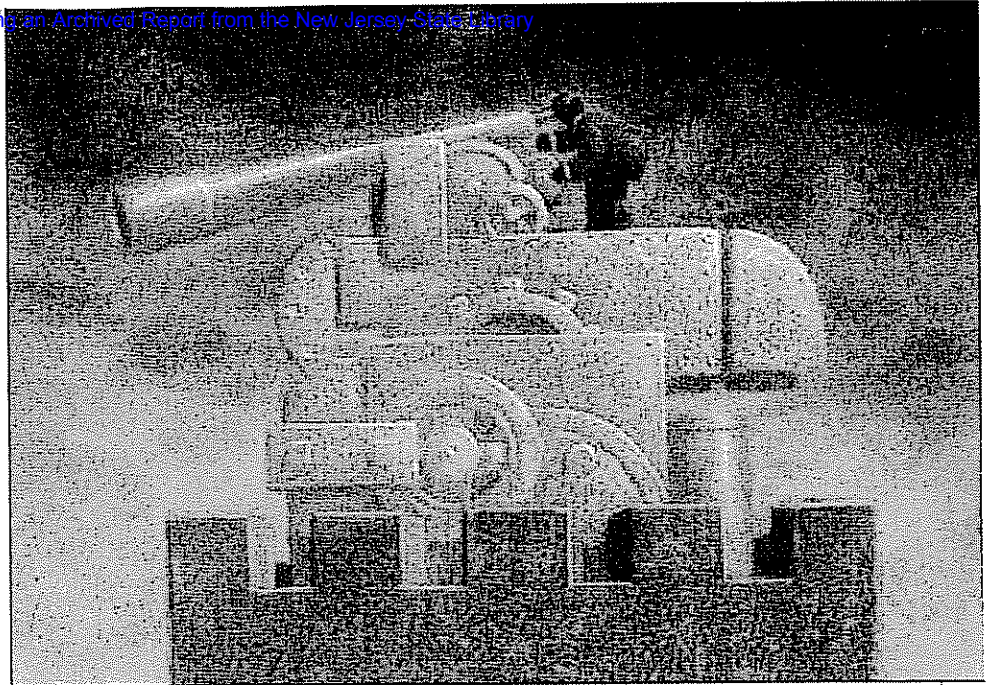
In today's environment, the hiring of an independent, outside firm is often considered by both internal and external audiences as an affirmative step in establishing the credibility of an "independent" internal inquiry. Both the company's own employees and the general public often place more credibility in the integrity of an investigation conducted by an outside firm.

The hiring of an outside adviser also advances the company's strategy of protecting some degree of attorney-client privilege during the internal investigation. How? Even when a company waives its attorney-client privilege, regulators are entitled to the facts, not the legal advice given by attorneys to company officers. Retaining an investigative firm or other law firm to handle the fact-finding allows the company to distinguish between the unprotected factual interviews and protected legal advisory discussions.

Step Five: Gathering the Data

As soon as a company realizes the existence of potential wrongdoing, it should alert employees to preserve relevant documents that may have been discarded under the normal document retention guidelines.

These documents include the reams of paper documents that any business generates, yes, but also "e-evidence" in all its forms: electronic documents, e-mail, databases, and spreadsheets. In fact, by the end of 2006, it's projected that 70 percent of all



"It's a good idea for every public company board to put in place a standard, highly-specific process to evaluate all manner of accusations."

workplace documents will exist only in digital form.³

A company can minimize the danger that crucial evidence is destroyed during an internal investigation by utilizing the best computer forensics tools available. Again, a firm experienced in electronic evidence gathering is the best choice when computer and network data will be critical to the investigation.

Step Six: Interviewing Employees and Witnesses

Interviewing employees during an internal investigation has become more complicated given that employees now understand that their comments could wind up in a report that will be read by government regulators or a plaintiff's attorney. Using a full-service, independent investigative firm to conduct the interviews means that highly qualified and experienced investigators will be

controlling the questioning and recording employees' answers.

Before starting each interview, several points should be made clear to the witness: the board of directors has approved the investigation, their answers may appear in a report on the investigation, and that only their private discussions with their own attorney are privileged.

Step Seven: Preparing the Report

When it comes to reporting the findings of the internal investigation, careful thought should go into the presentation of any written findings.

In the event that a company is facing government regulatory questions, the scope and content of the report will be determined by the level of cooperation that a company

(continued on page 38)

(Barbanel and Wood, from page 37)

envisions for itself. This likely will be determined from the outset of the investigation. If the regulators are not involved at the outset, the company has more latitude to define the issues and the risks to be assessed, which will inform the outline of the scope of the inquiry. There also will be time to discuss the findings and to make decisions regarding any possible remedial action. The company may choose to include a description of remedial steps along with the findings of the internal investigation. In either case—whether a regulator is reviewing the report today or sometime in the future—the credibility of any “independent” findings will be limited by the scope and the thoroughness of the fact-finding exercise.

In the best of all worlds, directors will work out exactly how they will proceed regarding waiving privileges, dealing with employees who are potential “targets” of investigators, hiring independent fact-finders, and updating document retention standards *before* the need for an independent investigation is triggered. When a serious issue arises, the quicker an investigation is launched and the more comprehensive it is, the better the chances that a company will emerge in good standing, enjoying a hard-won reputation for integrity.

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¹ CFO, Tim Reason, “The Limits of Mercy”, April 11, 2005, p. 6

² CFO, Tim Reason, “The Limits of Mercy”, April 11, 2005, p. 6

³ *Digital Publishing Solutions*, Kevin Craine, “Designing A Document Management Strategy”, January 2005

Cohen, Prescott and Bailey, from page 10)

4. Preserve Evidentiary Record

If an investigation is undertaken, the audit committee should work with counsel to establish guidelines to preserve the evidentiary record. This will include identifying where and how the company maintains its files, which documents are likely to be relevant during the investigation, and communicating to the pertinent employees the need to preserve such documentation.

The audit committee and the company should make clear that they will not countenance any attempt to conceal wrongdoing: all related documents, including e-mails, must be retained.

5. Establish a Budget

Whenever outside counsel is retained, and in connection with establishing the scope of the investigation, the audit committee should agree with counsel on a budget, including legal fees.

6. End Bad Practices

To the extent applicable, provisional steps should be implemented as soon as possible to stop any ongoing wrongdoing and to prevent recurrence of any wrongdoing. This may seem like an obvious step, but it should not be forgotten in the rush to put in place effective procedures for an internal investigation. Ending any ongoing

“The mere perception of a lack of objectivity can affect the credibility of the ultimate findings.”

bad practices will help to limit the company’s continued exposure to liability.

7. Set the Right Tone

The audit committee must make clear to management and the company that it is taking the wrongdoing and the investigation of such wrongdoing seriously. From the outset, the audit committee should make clear that it is fully committed to uncovering the corporate wrongdoing, determining the appropriate response, and adequately discharging its duty to the company and its shareholders.

If management and the board take the company’s regulatory compliance and internal controls seriously, this attitude will trickle down to the company’s employees, outside consultants and auditors.

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“Ending any ongoing bad practices will help to limit the company’s continued exposure to liability.”



EXTRAORDINARY TIMES CALL FOR GOVERNANCE

Corporate governance continues to undergo substantive changes, which are impacting and redefining board activities. While many companies are evaluating and changing their governance practices, lasting reform takes time and vigilance.

In response, Harvard Business School is offering a series of Executive Education programs throughout the year that focuses on helping directors of public companies understand their primary roles, their legal responsibilities, and the impact of their decisions. Developed to maximize board contributions, these intensive programs examine the critical, complex issues confronting boards today.



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EXHIBIT 23



THE PORT AUTHORITY OF NY & NJ

*Darrell Buchbinder, General Counsel
Christopher M. Hartwyk, First Deputy General Counsel*

May 3, 2011

VIA FEDERAL EXPRESS

The Honorable John Wisniewski, Esq.
Wisniewski & Associates, LLP
17 Main Street
Sayreville, New Jersey 08872
(732) 651-0040

Re: Block 4, Lots 1468 & 1469

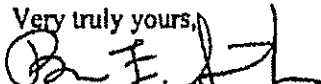
Dear Mr. Wisniewski:

Your inquiry to the Deputy Executive Director regarding Block 4, Lots 1468 & 1469 has been forwarded to the Law Department for response.

According to the City of Elizabeth (the "City") tax map, Block 4, Lots 1468 & 1469 are owned by the City and are subject to a leasehold interest held by J. Cashman. Pursuant to the lease, J. Cashman may have an option to purchase these properties. It is the understanding of the Port Authority of New York and New Jersey that J. Cashman is in default of their lease with the City.

Block 4, Lots 1468 & 1469 are not within the right-of-way of the newly planned Goethals Bridge Replacement Project. They are, however, properties that the Port Authority is interested in acquiring for construction staging and long-term port development use.

Please direct any other inquiries regarding the subject of this letter to my attention.

Very truly yours,

Brian Smith, Esq.

225 Park Avenue South
New York, NY 10003

EXHIBIT 24



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LexisNexis (TM) New Jersey Annotated Statutes

*** This section is current through New Jersey 216th Legislature ***
*** First Annual Session, L. 2014 c. 61 and J.R. 3 ***

TITLE 52. STATE GOVERNMENT, DEPARTMENTS AND OFFICERS
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CHAPTER 13D. CONFLICT OF INTEREST

GO TO THE NEW JERSEY ANNOTATED STATUTES ARCHIVE DIRECTORY

N.J. Stat. § 52:13D-12 (2014)

§ 52:13D-12. Legislative findings

The Legislature finds and declares:

(a) In our representative form of government, it is essential that the conduct of public officials and employees shall hold the respect and confidence of the people. Public officials must, therefore, avoid conduct which is in violation of their public trust or which creates a justifiable impression among the public that such trust is being violated.

(b) To ensure propriety and preserve public confidence, persons serving in government should have the benefit of specific standards to guide their conduct and of some disciplinary mechanism to ensure the uniform maintenance of those standards amongst them. Some standards of this type may be enacted as general statutory prohibitions or requirements; others, because of complexity and variety of circumstances, are best left to the governance of codes of ethics formulated to meet the specific needs and conditions of the several agencies of government.

(c) It is also recognized that under a free government it is both necessary and desirable that all citizens, public officials included, should have certain specific interests in the decisions of government, and that the activities and conduct of public officials should not, therefore, be unduly circumscribed.

HISTORY: L. 1971, c. 182, § 1, eff. Jan. 11, 1972.

NOTES:

Cross References:

Employment restrictions on commissioners, commission employees and division employees, see *5:12-59*.

Enforcement, see *5:12-62*.

New Jersey Coastal and Ocean Protection Council established, see *13:19-36*.

Membership of council, appointment, terms, meetings, minutes delivered to Governor, see *13:20-5*.

Authority, responsibilities of board trustees, see *18A:64E-18*.

Powers and duties of board effective July 1, 2013], see *18A:64G-6*.

Powers, duties of board of trustees July 1, 2013], see *18A:64M-9*.

Limitation of liability, conflict of interest, compensation, see *18A:71A-7*.

N.J. Stat. § 52:13D-12

Members subject to Conflicts of Interest Law, see *39:2A-18*.

Annual reports, see *52:13C-22.1*.

State Ethics Commission; membership; powers; duties; penalties, see *52:13D-21*.

Joint Legislative Committee on Ethical Standards; membership; powers; terms; duties; penalties, see *52:13D-22*.

Restriction of solicitation, receipt, etc. of certain things of value by certain State officers, employees, see *52:13D-24*.

State officer, employee may enter into certain contracts with State agency, see *52:13D-19.1*.

State officer, employee may enter into certain rental agreements with State agency, see *52:13D-19.2*.

Definition, see *52:13D-22.1*.

Conflicts law, code of ethics; public employment restricted, see *52:13H-11*.

Services and facilities provided to Governor-elect upon request, see *52:15A-3*.

Conflicts of interest, see *52:16A-64*.

Board of Trustees, see *52:16A-76*.

State Planning Commission, see *52:18A-197*.

Powers, quorum, action by commission, see *52:27C-69*.

Members; removal; vacancies; oaths; record; expenses; inapplicability of conflicts of interest law, see *52:27H-33*.

Administrative Code:

1. *N.J.A.C. 11:21-2.6* (2013), CHAPTER SMALL EMPLOYER HEALTH BENEFITS PROGRAM, Committees.

2. *N.J.A.C. 19:61* (2013), STATE ETHICS COMMISSION, 19, Chapter 61 -- Chapter Notes.

3. *N.J.A.C. 19:61-1.1* (2013), STATE ETHICS COMMISSION, Scope of rules.

4. *N.J.A.C. 19:61-1.10* (2013), STATE ETHICS COMMISSION, Definitions.

5. *N.J.A.C. 19:61-2.1* (2013), STATE ETHICS COMMISSION, Jurisdiction of the Commission.

6. *N.J.A.C. 19:61-3.1* (2013), STATE ETHICS COMMISSION, Allegations; procedure.

7. *N.J.A.C. 19:61-3.5* (2013), STATE ETHICS COMMISSION, Allegation before State agency.

8. *N.J.A.C. 19:61-3.6* (2013), STATE ETHICS COMMISSION, Determination by State agency.

9. *N.J.A.C. 19:61-4.1* (2013), STATE ETHICS COMMISSION, Requests for advisory opinions.

10. *N.J.A.C. 19:61-5.1* (2013), STATE ETHICS COMMISSION, Investigations and hearings.

11. N.J.A.C. EO 2010 No. 24 (2013), level= CHRIS CHRISTIE, 24(2010).

12. *N.J.A.C. 1:1*, Appx. (2013), CHAPTER UNIFORM ADMINISTRATIVE PROCEDURE RULES, APPENDIX.

13. *N.J.A.C. 4A:6-4.8* (2013), CHAPTER LEAVES, HOURS OF WORK AND EMPLOYEE DEVELOPMENT, Employee interchange program.

14. *N.J.A.C. 5:10-1.3* (2013), CHAPTER MAINTENANCE OF HOTELS AND MULTIPLE DWELLINGS, Administration and enforcement.

15. *N.J.A.C. 9A:3-1.2* (2013), CHAPTER INSTITUTIONAL CODES OF ETHICS, Compliance with applicable statutes, rules, and executive orders.

16. *N.J.A.C. 9A:3-1.4* (2013), CHAPTER INSTITUTIONAL CODES OF ETHICS, Contracts for the development of scientific or technological discoveries.

N.J. Stat. § 52:13D-12

17. *N.J.A.C. 10:3-3.7* (2013), CHAPTER CONTRACT ADMINISTRATION, Composition of review panel.
18. *N.J.A.C. 10:49-9.11* (2013), CHAPTER ADMINISTRATION MANUAL, Integrity of the Medicaid and NJ FamilyCare programs; gifts/gratuities prohibited.

LexisNexis (R) Notes:

OPINIONS OF ATTORNEY GENERAL

1. FORMAL OPINION No. 2 -- 1977, 1977 N.J. AG LEXIS 25.

CASE NOTES

1. To prosecute a public official for official misconduct based solely on a violation of the New Jersey Conflicts of Interest Law, *N.J. Stat. Ann. §§ 52:13D-12 to -28*, would violate the void-for-vagueness principle and deprive the defendant of procedural due process. *State v. Thompson, 402 N.J. Super. 177, 953 A.2d 491, 2008 N.J. Super. LEXIS 171 (App.Div. 2008)*.

2. Defendant state employees could not be charged with official misconduct under *N.J. Stat. Ann. § 2C:30-2* solely for violating the New Jersey Conflicts of Interest Law, *N.J. Stat. Ann. §§ 52:13D-12 to -28*, and their department's code of ethics, by accepting gratuities from employees of a vendor that sought a state contract. But when such violations were combined with official acts benefiting or intending to benefit the vendor, official misconduct could be charged. *State v. Thompson, 402 N.J. Super. 177, 953 A.2d 491, 2008 N.J. Super. LEXIS 171 (App.Div. 2008)*.

3. New Jersey Conflicts of Interest Law, *N.J. Stat. Ann. §§ 52:13D-12 to -28*, standing alone, does not set forth a basis for criminal liability under the official misconduct statute, *N.J. Stat. Ann. § 2C:30-2*. The terms of the Law are not self-executing, do not proscribe any conduct, and do not assign levels of culpability to particular conduct. *State v. Thompson, 402 N.J. Super. 177, 953 A.2d 491, 2008 N.J. Super. LEXIS 171 (App.Div. 2008)*.

4. To prosecute a public official for official misconduct based solely on a violation of the New Jersey Conflicts of Interest Law, *N.J. Stat. Ann. §§ 52:13D-12 to -28*, would violate the void-for-vagueness principle and deprive the defendant of procedural due process. *State v. Thompson, 402 N.J. Super. 177, 953 A.2d 491, 2008 N.J. Super. LEXIS 171 (App.Div. 2008)*.

5. Trial court erred by affirming a planning board's approval of a developer's preliminary site plan as a conflict of interest required a member of the planning board to disqualify herself from applications in which the board's engineer reviewed the application and provided recommendations to the board since the board member had a personal relationship with, and owned a home jointly with, the principal of the engineering firm that employed the board engineer. *Randolph v. City of Brigantine Planning Bd., 405 N.J. Super. 215, 963 A.2d 1224, 2009 N.J. Super. LEXIS 25 (App.Div. 2009)*.

6. Defendant state employees could not be charged with official misconduct under *N.J. Stat. Ann. § 2C:30-2* solely for violating the New Jersey Conflicts of Interest Law, *N.J. Stat. Ann. §§ 52:13D-12 to -28*, and their department's code of ethics, by accepting gratuities from employees of a vendor that sought a state contract. But when such violations were combined with official acts benefiting or intending to benefit the vendor, official misconduct could be charged. *State v. Thompson, 402 N.J. Super. 177, 953 A.2d 491, 2008 N.J. Super. LEXIS 171 (App.Div. 2008)*.

7. New Jersey Conflicts of Interest Law, *N.J. Stat. Ann. §§ 52:13D-12 to -28*, standing alone, does not set forth a basis for criminal liability under the official misconduct statute, *N.J. Stat. Ann. § 2C:30-2*. The terms of the Law are not self-executing, do not proscribe any conduct, and do not assign levels of culpability to particular conduct. *State v. Thompson, 402 N.J. Super. 177, 953 A.2d 491, 2008 N.J. Super. LEXIS 171 (App.Div. 2008)*.

8. Trial court erred by affirming a planning board's approval of a developer's preliminary site plan as a conflict of interest required a member of the planning board to disqualify herself from applications in which the board's engineer reviewed the application and provided recommendations to the board since the board member had a personal relationship with, and owned a home jointly with, the principal of the engineering firm that employed the board engineer.

N.J. Stat. § 52:13D-12

Randolph v. City of Brigantine Planning Bd., 405 N.J. Super. 215, 963 A.2d 1224, 2009 N.J. Super. LEXIS 25 (App.Div. 2009).

LAW REVIEWS & JOURNALS

1. 29 *Rutgers L. J.* 675, FOREWORD: CELEBRATING FIFTY YEARS OF JUDICIAL REFORM UNDER THE 1947 NEW JERSEY CONSTITUTIONFN +.
2. 65 *Rutgers L. Rev.* 817, NEW JERSEY DEVELOPMENT: The Rutgers Cases and the State of the Law of State Law School Clinical Programs.
3. 7 *Seton Hall Const. L.J.* 351, ARTICLE: THE REDEFINING OF PROFESSIONAL ETHICS IN NEW JERSEY UNDER CHIEF JUSTICE ROBERT WILENTZ: A LEGACY OF REFORM.



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GO TO THE NEW JERSEY ANNOTATED STATUTES ARCHIVE DIRECTORY

N.J. Stat. § 52:13D-13 (2014)

§ 52:13D-13. Definitions

As used in this act, and unless a different meaning clearly appears from the context, the following terms shall have the following meanings:

a. "State agency" means any of the principal departments in the Executive Branch of the State Government, and any division, board, bureau, office, commission or other instrumentality within or created by such department, the Legislature of the State and any office, board, bureau or commission within or created by the Legislative Branch, and, to the extent consistent with law, any interstate agency to which New Jersey is a party and any independent State authority, commission, instrumentality or agency. A county or municipality shall not be deemed an agency or instrumentality of the State.

b. "State officer or employee" means any person, other than a special State officer or employee (1) holding an office or employment in a State agency, excluding an interstate agency, other than a member of the Legislature or (2) appointed as a New Jersey member to an interstate agency.

c. "Member of the Legislature" means any person elected to serve in the General Assembly or the Senate.

d. "Head of a State agency" means (1) in the case of the Executive Branch of government, except with respect to interstate agencies, the department head or, if the agency is not assigned to a department, the Governor, and (2) in the case of the Legislative Branch, the chief presiding officer of each House of the Legislature.

e. "Special State officer or employee" means (1) any person holding an office or employment in a State agency, excluding an interstate agency, for which office or employment no compensation is authorized or provided by law, or no compensation other than a sum in reimbursement of expenses, whether payable per diem or per annum, is authorized or provided by law; (2) any person, not a member of the Legislature, holding a part-time elective or appointive office or employment in a State agency, excluding an interstate agency, or (3) any person appointed as a New Jersey member to an interstate agency the duties of which membership are not full-time.

f. "Person" means any natural person, association or corporation.

g. "Interest" means (1) the ownership or control of more than 10% of the profits or assets of a firm, association, or partnership, or more than 10% of the stock in a corporation for profit other than a professional service corporation organized under the "Professional Service Corporation Act," P.L. 1969, c. 232 (C. 14A:17-1 et seq.); or (2) the ownership or control of more than 1% of the profits of a firm, association, or partnership, or more than 1% of the stock in any corporation, which is the holder of, or an applicant for, a casino license or in any holding or intermediary company with respect thereto, as defined by the "Casino Control Act," P.L. 1977, c. 110 (C. 5:12-1 et seq.). The provisions of this act

N.J. Stat. § 52:13D-13

governing the conduct of individuals are applicable to shareholders, associates or professional employees of a professional service corporation regardless of the extent or amount of their shareholder interest in such a corporation.

h. "Cause, proceeding, application or other matter" means a specific cause, proceeding or matter and does not mean or include determinations of general applicability or the preparation or review of legislation which is no longer pending before the Legislature or the Governor.

i. "Member of the immediate family" of any person means the person's spouse, child, parent or sibling residing in the same household.

HISTORY: L. 1971, c. 182, § 2; amended 1971, c. 359, § 1; 1981, c. 142, § 2; 1987, c. 432, § 2.

NOTES:

Cross References:

Restriction on offer of gifts, etc. to certain State officers or employees., see *52:13C-21b*.

Restriction on acceptance of gifts, etc. from lobbyist, governmental affairs agent by legislation, staff, see *52:13D-24.1*.

Administrative Code:

1. *N.J.A.C. 12:3-1.6* (2013), CHAPTER CONTRACTS, Conflict of interest prohibited.
2. *N.J.A.C. 17:19-4.1* (2013), CHAPTER CLASSIFICATION AND PREQUALIFICATION OF FIRMS, Causes for debarment of a firm(s) or an individual(s).
3. *N.J.A.C. 19:61-1.10* (2013), STATE ETHICS COMMISSION, Definitions.
4. *N.J.A.C. 19:61-7.2* (2013), STATE ETHICS COMMISSION, Scope.
5. *N.J.A.C. 6A:23A-6.2* (2013), CHAPTER FISCAL ACCOUNTABILITY, EFFICIENCY AND BUDGETING PROCEDURES, Nepotism policy.
6. *N.J.A.C. 6A:23A-22.10* (2013), CHAPTER FISCAL ACCOUNTABILITY, EFFICIENCY AND BUDGETING PROCEDURES, Nepotism policy.
7. *N.J.A.C. 9A:3-1.1* (2013), CHAPTER INSTITUTIONAL CODES OF ETHICS, Purpose.



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GO TO THE NEW JERSEY ANNOTATED STATUTES ARCHIVE DIRECTORY

N.J. Stat. § 52:13D-14 (2014)

§ 52:13D-14. State officer or employee or member of legislature; acceptance of thing of value to influence public duties

No State officer or employee, special State officer or employee, or member of the Legislature shall accept from any person, whether directly or indirectly and whether by himself or through his spouse or any member of his family or through any partner or associate, any gift, favor, service, employment or offer of employment or any other thing of value which he knows or has reason to believe is offered to him with intent to influence him in the performance of his public duties and responsibilities. This section shall not apply to the acceptance of contributions to the campaign of an announced candidate for elective public office.

HISTORY: L. 1971, c. 182, § 3, eff. Jan. 11, 1972.

LexisNexis (R) Notes:

CASE NOTES

1. In reference to a prosecution for honest services fraud, nothing in New Jersey state law rendered *18 U.S.C.S. § 1346* either unconstitutionally vague or inconsistent with due regard for federalism concerns with respect to the allegations of a quid pro quo bribery arrangement between a state senator and a university dean. The allegations were consistent with the New Jersey Bribery Act, *N.J. Stat. Ann. § 2C:27-2*, and New Jersey conflict of interest laws, *N.J. Stat. Ann. §§ 52:13D-14, 52:13D-24. United States v. Bryant, 556 F. Supp. 2d 378, 2008 U.S. Dist. LEXIS 51395 (D.N.J. 2008)*.

2. In reference to a prosecution for honest services fraud, nothing in New Jersey state law rendered *18 U.S.C.S. § 1346* either unconstitutionally vague or inconsistent with due regard for federalism concerns with respect to the allegations of a quid pro quo bribery arrangement between a state senator and a university dean. The allegations were consistent with the New Jersey Bribery Act, *N.J. Stat. Ann. § 2C:27-2*, and New Jersey conflict of interest laws, *N.J. Stat. Ann. §§ 52:13D-14, 52:13D-24. United States v. Bryant, 556 F. Supp. 2d 378, 2008 U.S. Dist. LEXIS 51395 (D.N.J. 2008)*.

3. Commissioner of the Board of Public Utilities (BPU) did not violate *N.J. Stat. Ann. § 52:13D-23(e)(7)*, where a representative of a regulated utility made donations to local athletic clubs for the purpose of securing the availability of their basketball courts for use by all of the commissioners of various jurisdictions for recreational activity during annual conventions; allowing the utility representative to assist in arranging for the use of the basketball courts did not create a

N.J. Stat. § 52:13D-14

justifiable impression or suspicion of a breach of public trust and the commissioner had no knowledge of the payments or donations for the use of the basketball courts; therefore, if, in fact, a gift was intended to be made, the putative donee lacked the knowledge required under *N.J. Stat. Ann. § 52:13D-14. Executive Comm'n on Ethical Stds. v. Salmon*, 295 N.J. Super. 86, 684 A.2d 930, 1996 N.J. Super. LEXIS 419 (App.Div. 1996).

4. Conduct, to be considered willful under *N.J. Stat. Ann. § 52:13D-21(i)* of the Conflicts of Interest Law, must be intentional and deliberate, with knowledge of its wrongfulness, and not merely negligent, heedless, or unintentional; the willful conduct must involve more than a few isolated acts. *Executive Comm'n on Ethical Stds. v. Salmon*, 295 N.J. Super. 86, 684 A.2d 930, 1996 N.J. Super. LEXIS 419 (App.Div. 1996).

5. Failure of a commissioner of the Board of Public Utilities (BPU) to follow-up on the billing and payment for dinners that he attended that were hosted and paid for by a regulated electric utility constituted ethics violations pursuant to *N.J. Stat. Ann. § 52:13D-14* despite the facts that the commissioner instructed the host to submit a bill to the BPU, that the BPU's travel coordinator was advised by the commissioner that when the request for reimbursement arrived, she could take care of it, and that this instruction to bill the BPU was in accordance with a longstanding and accepted BPU practice. *Executive Comm'n on Ethical Stds. v. Salmon*, 295 N.J. Super. 86, 684 A.2d 930, 1996 N.J. Super. LEXIS 419 (App.Div. 1996).

6. Commissioner of the Board of Public Utilities (BPU) did not violate *N.J. Stat. Ann. § 52:13D-23(e)(7)*, where a representative of a regulated utility made donations to local athletic clubs for the purpose of securing the availability of their basketball courts for use by all of the commissioners of various jurisdictions for recreational activity during annual conventions; allowing the utility representative to assist in arranging for the use of the basketball courts did not create a justifiable impression or suspicion of a breach of public trust and the commissioner had no knowledge of the payments or donations for the use of the basketball courts; therefore, if, in fact, a gift was intended to be made, the putative donee lacked the knowledge required under *N.J. Stat. Ann. § 52:13D-14. Executive Comm'n on Ethical Stds. v. Salmon*, 295 N.J. Super. 86, 684 A.2d 930, 1996 N.J. Super. LEXIS 419 (App.Div. 1996).

7. Conduct, to be considered willful under *N.J. Stat. Ann. § 52:13D-21(i)* of the Conflicts of Interest Law, must be intentional and deliberate, with knowledge of its wrongfulness, and not merely negligent, heedless, or unintentional; the willful conduct must involve more than a few isolated acts. *Executive Comm'n on Ethical Stds. v. Salmon*, 295 N.J. Super. 86, 684 A.2d 930, 1996 N.J. Super. LEXIS 419 (App.Div. 1996).

LAW REVIEWS & JOURNALS

1. 57 *Rutgers L. Rev.* 1175, Article: Restoring the Public Trust: An Agenda For Ethics Reform of State Government and a Proposed Model for New Jersey.



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GO TO THE NEW JERSEY ANNOTATED STATUTES ARCHIVE DIRECTORY

N.J. Stat. § 52:13D-15 (2014)

§ 52:13D-15. Representation, appearance or negotiation, directly or indirectly, for acquisition or sale of property by state

No member of the Legislature or State officer or employee shall represent, appear for, or negotiate on behalf of, or agree to represent, appear for, or negotiate on behalf of, whether by himself or by or through any partnership, firm or corporation in which he has an interest or by any partner, officer or employee of any such partnership, firm or corporation any person or party other than the State in any negotiations for the acquisition or sale by the State or a State agency of any interest in real or tangible or intangible personal property, or in any proceedings relative to such acquisition or sale before a condemnation commission or court; provided, however, nothing contained in this section shall be deemed to prohibit any person from representing himself in negotiations or proceedings concerning his own interest in real property.

HISTORY: L. 1971, c. 182, § 4, eff. Jan. 11, 1972.



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GO TO THE NEW JERSEY ANNOTATED STATUTES ARCHIVE DIRECTORY

N.J. Stat. § 52:13D-16 (2014)

§ 52:13D-16. Certain representations, prohibited; exceptions

a. No special State officer or employee, nor any partnership, firm or corporation in which he has an interest, nor any partner, officer or employee of any such partnership, firm or corporation, shall represent, appear for, or negotiate on behalf of, or agree to represent, appear for or negotiate on behalf of, any person or party other than the State in connection with any cause, proceeding, application or other matter pending before the particular office, bureau, board, council, commission, authority, agency, fund or system in which such special State officer or employee holds office or employment.

b. No State officer or employee or member of the Legislature, nor any partnership, firm or corporation in which he has an interest, nor any partner, officer or employee of any such partnership, firm or corporation, shall represent, appear for, or negotiate on behalf of, or agree to represent, appear for, or negotiate on behalf of, any person or party other than the State in connection with any cause, proceeding, application or other matter pending before any State agency. Nothing contained herein shall be deemed to prohibit any such partnership, firm or corporation from appearing on its own behalf. This subsection shall not be deemed to prohibit a member of the Legislature or an employee on the member's behalf from: (1) making an inquiry for information on behalf of a constituent, which may include ascertaining the status of a matter, identifying the statutes or regulations involved in a matter or inquiring how to expedite a matter; (2) assisting the constituent in bringing the merits of the constituent's position to the attention of a State agency; or (3) making a recommendation on a matter or indicating support for a constituent's position to a State agency if no fee, reward, employment, offer of employment, or other thing of value is promised to, given to or accepted by the member of the Legislature or an employee therefor, whether directly or indirectly, and the member or employee does not endeavor to use his official position to improperly influence any determination. As used in this subsection "constituent" shall mean any State resident or other person seeking legislative assistance. Nothing contained herein shall authorize contact with State agencies by members of the Legislature or their employees which is otherwise prohibited by the criminal law, this act or the Code of Ethics and nothing contained herein shall authorize contact with an administrative law judge or agency head during the hearing of a contested case.

c. Nothing contained in this section shall be deemed to prohibit any legislator, or any State officer or employee or special State officer or employee from representing, appearing for or negotiating on behalf of, or agreeing to represent, appear for, or negotiate on behalf of, any person or party other than the State in connection with any proceeding:

(1) Pending before any court of record of this State,

(2) In regard to a claim for compensation arising under chapter 15 of Title 34 of the Revised Statutes (Workers' Compensation),

N.J. Stat. § 52:13D-16

- (3) In connection with the determination or review of transfer inheritance or estate taxes,
- (4) In connection with the filing of corporate or other documents in the office of the Secretary of State,
- (5) Before the Division on Civil Rights or any successor thereof,
- (6) Before the New Jersey State Board of Mediation or any successor thereof,
- (7) Before the New Jersey Public Employment Relations Commission or any successor thereof,
- (8) Before the Unsatisfied Claim and Judgment Fund Board or any successor thereof solely for the purpose of filing a notice of intention pursuant to P.L.1952, c.174, s.5 (C.39:6-65), or
- (9) Before any State agency on behalf of a county, municipality or school district, or any authority, agency or commission of any thereof except where the State is an adverse party in the proceeding and provided he is not holding any office or employment in the State agency in which any such proceeding is pending.

HISTORY: L. 1971, c. 182, § 5; amended 1971, c. 359, § 2; 1975, c. 228; 1980, c. 79, § 1; 1981, c. 142, § 3; 1987, c. 432, § 3; 1996, c. 116.

NOTES:

Administrative Code:

1. *N.J.A.C. 1:1-5.5* (2013), CHAPTER UNIFORM ADMINISTRATIVE PROCEDURE RULES, Conduct of non-lawyer representatives; limitations on practice.

LexisNexis (R) Notes:

CASE NOTES

1. Employees of state law school were covered by *N.J. Stat. Ann. § 52:13D-16(b)*, and could not have represented nonprofit organization in a matter before a state agency without contravening the Conflict of Interest Law, *N.J. Stat. Ann. § 52:13D-12* et seq., as they were state employees; the very fact that law school provided public higher education made it a full-fledged state agency that performed a governmental function. *In re Executive Com. on Ethical Standards etc.*, 222 *N.J. Super.* 482, 537 *A.2d* 713, 1988 *N.J. Super.* LEXIS 26 (*App.Div.* 1988), reversed by 116 *N.J.* 216, 561 *A.2d* 542, 1989 *N.J.* LEXIS 102 (1989).

2. Lawyer-legislator was prohibited from representing fire inspectors before an administrative law judge because the representation would have constituted an appearance before a state agency for purposes of *N.J. Stat. Ann. § 52:13D-16(b)*. *Wood v. Department of Community Affairs, Bureau of Regulatory Affairs*, 243 *N.J. Super.* 187, 578 *A.2d* 1257, 1990 *N.J. Super.* LEXIS 336 (*App.Div.* 1990).

3. Rutgers law professor conducting a clinical teaching program was not a "state employee" for purposes of the New Jersey Conflicts of Interest Law, *N.J. Stat. Ann. §§ 52:13D-12* to *52:13D-27*, and was improperly held to have violated *N.J. Stat. Ann. § 52:13D-16(b)* through the clinic's representation of a non-profit organization in proceedings before a state agency. *In re Determination of Executive Com. on Ethical Standards*, 116 *N.J.* 216, 561 *A.2d* 542, 1989 *N.J.* LEXIS 102 (1989).

4. Clear intent of the proscription in *N.J. Stat. Ann. § 52:13D-16(b)* was to prevent appearances by legislators before agencies over which they have plenary budgetary and statutory control, thus avoiding the likelihood that they may have exercised undue influence over agency decisions or may appeared to have done so; the state clearly had a substantial legitimate interest in maintaining the integrity of agency hearings and in guarding such procedures from even the appearance of improper influence. *Joint Legislative Committee on Ethical Standards v. Perkins*, 179 *N.J. Super.* 352, 432 *A.2d* 116, 1981 *N.J. Super.* LEXIS 600 (*App.Div.* 1981).

5. Rutgers law professor conducting a clinical teaching program was not a "state employee" for purposes of the New Jersey Conflicts of Interest Law, *N.J. Stat. Ann. §§ 52:13D-12* to *52:13D-27*, and was improperly held to have

N.J. Stat. § 52:13D-16

violated *N.J. Stat. Ann. § 52:13D-16(b)* through the clinic's representation of a non-profit organization in proceedings before a state agency. *In re Determination of Executive Com. on Ethical Standards*, 116 N.J. 216, 561 A.2d 542, 1989 N.J. LEXIS 102 (1989).

6. Employees of state law school were covered by *N.J. Stat. Ann. § 52:13D-16(b)*, and could not have represented nonprofit organization in a matter before a state agency without contravening the Conflict of Interest Law, *N.J. Stat. Ann. § 52:13D-12* et seq., as they were state employees; the very fact that law school provided public higher education made it a full-fledged state agency that performed a governmental function. *In re Executive Com. on Ethical Standards etc.*, 222 N.J. Super. 482, 537 A.2d 713, 1988 N.J. Super. LEXIS 26 (App.Div. 1988), reversed by 116 N.J. 216, 561 A.2d 542, 1989 N.J. LEXIS 102 (1989).

LAW REVIEWS & JOURNALS

1. 65 *Rutgers L. Rev.* 817, NEW JERSEY DEVELOPMENT: The Rutgers Cases and the State of the Law of State Law School Clinical Programs.

2. 30 *Seton Hall L. Rev.* 715, A TRIBUTE TO JUSTICE ALAN B. HANDLER: Justice Alan B. Handler: The Jurist as Scholar, Teacher, Craftsman, and Statesman.



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*** This section is current through New Jersey 216th Legislature ***
*** First Annual Session, L. 2014 c. 61 and J.R. 3 ***

TITLE 52. STATE GOVERNMENT, DEPARTMENTS AND OFFICERS
SUBTITLE 2. STATE LEGISLATURE
CHAPTER 13D. CONFLICT OF INTEREST

GO TO THE NEW JERSEY ANNOTATED STATUTES ARCHIVE DIRECTORY

N.J. Stat. § 52:13D-17 (2014)

§ 52:13D-17. Post-employment restrictions

No State officer or employee or special State officer or employee, subsequent to the termination of his office or employment in any State agency, shall represent, appear for, negotiate on behalf of, or provide information not generally available to members of the public or services to, or agree to represent, appear for, negotiate on behalf of, or provide information not generally available to members of the public or services to, whether by himself or through any partnership, firm or corporation in which he has an interest or through any partner, officer or employee thereof, any person or party other than the State in connection with any cause, proceeding, application or other matter with respect to which such State officer or employee or special State officer or employee shall have made any investigation, rendered any ruling, given any opinion, or been otherwise substantially and directly involved at any time during the course of his office or employment.

Any person who willfully violates the provisions of this section is a disorderly person, and shall be subject to a fine not to exceed \$ 1,000 or imprisonment not to exceed six months, or both.

In addition, for violations occurring after the effective date of P.L.2005, c.382, any former State officer or employee or former special State officer or employee of a State agency in the Executive Branch found by the State Ethics Commission to have violated any of the provisions of this section shall be assessed a civil penalty of not less than \$ 500 nor more than \$ 10,000, which penalty may be collected in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (*C.2A:58-10 et seq.*).

HISTORY: L. 1971, c. 182, § 6; amended 1971, c. 359, § 3; 1987, c. 432, § 4; 2005, c. 382, § 3, eff. Mar. 15, 2006.

NOTES:

Effective Dates:

Section 18 of L. 2005, c. 382 provides: "This act shall take effect on the 60th day following enactment, except that the change in membership of the Executive Commission on Ethical Standards as set forth in subsection (b) of section 10 of P.L.1971, c.182 (*C.52:13D-21*) shall take effect January 17, 2006." Chapter 382, L. 2005, was approved on January 14, 2006.



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GO TO THE NEW JERSEY ANNOTATED STATUTES ARCHIVE DIRECTORY

N.J. Stat. § 52:13D-17.1 (2014)

§ 52:13D-17.1. Repealed by L. 1981, c. 142, § 7, eff. May 14, 1981



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TITLE 52. STATE GOVERNMENT, DEPARTMENTS AND OFFICERS
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GO TO THE NEW JERSEY ANNOTATED STATUTES ARCHIVE DIRECTORY

N.J. Stat. § 52:13D-17.2 (2014)

§ 52:13D-17.2. "person" defined; conflict of interest; violations, penalty

a. As used in this section "person" means:

(1) any State officer or employee subject to financial disclosure by law or executive order and any other State officer or employee with responsibility for matters affecting casino activity; any special State officer or employee with responsibility for matters affecting casino activity; the Governor; any member of the Legislature or any full-time member of the Judiciary; any full-time professional employee of the Office of the Governor, or the Legislature; members of the Casino Reinvestment Development Authority; the head of a principal department; the assistant or deputy heads of a principal department, including all assistant and deputy commissioners; the head of any division of a principal department; or

(2) any member of the governing body, or the municipal judge or the municipal attorney of a municipality wherein a casino is located; any member of or attorney for the planning board or zoning board of adjustment of a municipality wherein a casino is located, or any professional planner, or consultant regularly employed or retained by such planning board or zoning board of adjustment.

b. (1) No State officer or employee, nor any person; nor any member of the immediate family of any State officer or employee, or person, nor any partnership, firm or corporation with which any such State officer or employee or person is associated or in which he has an interest, nor any partner, officer, director or employee while he is associated with such partnership, firm, or corporation, shall hold, directly or indirectly, an interest in, or hold employment with, or represent, appear for, or negotiate on behalf of, any holder of, or applicant for, a casino license, or any holding or intermediary company with respect thereto, in connection with any cause, application, or matter, except as provided in section 3 of P.L.2009, c.26 (*C.52:13D-17.3*), and except that (1) a State officer or employee other than a State officer or employee included in the definition of person, and (2) a member of the immediate family of a State officer or employee, or of a person, may hold employment with the holder of, or applicant for, a casino license if, in the judgment of the State Ethics Commission, the Joint Legislative Committee on Ethical Standards, or the Supreme Court, as appropriate, such employment will not interfere with the responsibilities of the State officer or employee, or person, and will not create a conflict of interest, or reasonable risk of the public perception of a conflict of interest, on the part of the State officer or employee, or person. No special State officer or employee without responsibility for matters affecting casino activity, excluding those serving in the Departments of Education, Health and Senior Services, and Human Services and the Commission on Higher Education, shall hold, directly or indirectly, an interest in, or represent, appear for, or negotiate on behalf of, any holder of, or applicant for, a casino license, or any holding or intermediary company with respect thereto, in connection with any cause, application, or matter. However, a special State officer or employee without responsibility for matters affecting casino activity may hold employment directly with any holder of or applicant for a

N.J. Stat. § 52:13D-17.2

casino license or any holding or intermediary company thereof and if so employed may hold, directly or indirectly, an interest in, or represent, appear for, or negotiate on behalf of, his employer, except as otherwise prohibited by law.

(2) No State officer or employee, nor any person, nor any member of the immediate family of any State officer or employee, or person, nor any partnership, firm or corporation with which any such State officer or employee or person is associated or in which he has an interest, nor any partner, officer, director or employee while he is associated with such partnership, firm, or corporation, shall hold, directly or indirectly, an interest in, or hold employment with, or represent, appear for, or negotiate on behalf of, or derive any remuneration, payment, benefit or any other thing of value for any services, including but not limited to consulting or similar services, from any holder of, or applicant for, a license, permit, or other approval to conduct Internet gaming, or any holding or intermediary company with respect thereto, or any Internet gaming affiliate of any holder of, or applicant for, a casino license, or any holding or intermediary company with respect thereto, or any business, association, enterprise or other entity that is organized, in whole or in part, for the purpose of promoting, advocating for, or advancing the interests of the Internet gaming industry generally or any Internet gaming-related business or businesses in connection with any cause, application, or matter, except as provided in section 3 of P.L.2009, c.26 (*C.52:13D-17.3*), and except that (1) a State officer or employee other than a State officer or employee included in the definition of person, and (2) a member of the immediate family of a State officer or employee, or of a person, may hold employment with the holder of, or applicant for, a license, permit, or other approval to conduct Internet gaming, or any holding or intermediary company with respect thereto, or any Internet gaming affiliate of any holder of, or applicant for, a casino license, or any holding or intermediary company with respect thereto if, in the judgment of the State Ethics Commission, the Joint Legislative Committee on Ethical Standards, or the Supreme Court, as appropriate, such employment will not interfere with the responsibilities of the State officer or employee, or person, and will not create a conflict of interest, or reasonable risk of the public perception of a conflict of interest, on the part of the State officer or employee, or person.

c. No person or any member of his immediate family, nor any partnership, firm or corporation with which such person is associated or in which he has an interest, nor any partner, officer, director or employee while he is associated with such partnership, firm or corporation, shall, within two years next subsequent to the termination of the office or employment of such person, hold, directly or indirectly, an interest in, or hold employment with, or represent, appear for or negotiate on behalf of, any holder of, or applicant for, a casino license in connection with any cause, application or matter, or any holding or intermediary company with respect to such holder of, or applicant for, a casino license in connection with any phase of casino development, permitting, licensure or any other matter whatsoever related to casino activity, except as provided in section 3 of P.L.2009, c.26 (*C.52:13D-17.3*), and except that:

(1) a member of the immediate family of a person may hold employment with the holder of, or applicant for, a casino license if, in the judgment of the State Ethics Commission, the Joint Legislative Committee on Ethical Standards, or the Supreme Court, as appropriate, such employment will not interfere with the responsibilities of the person and will not create a conflict of interest, or reasonable risk of the public perception of a conflict of interest, on the part of the person;

(2) an employee who is terminated as a result of a reduction in the workforce at the agency where employed, other than an employee who held a policy-making management position at any time during the five years prior to termination of employment, may, at any time prior to the end of the two-year period, accept employment with the holder of, or applicant for, a casino license if, in the judgment of the State Ethics Commission, the Joint Legislative Committee on Ethical Standards, or the Supreme Court, as appropriate, such employment will not create a conflict of interest, or reasonable risk of the public perception of a conflict of interest, on the part of the employee. In no case shall the restrictions of this subsection apply to a secretarial or clerical employee. Nothing herein contained shall alter or amend the post-employment restrictions applicable to members and employees of the Casino Control Commission and employees and agents of the Division of Gaming Enforcement pursuant to subsection e. (2) of section 59 and to section 60 of P.L.1977, c.110 (*C.5:12-59* and *C.5:12-60*); and

(3) any partnership, firm or corporation engaged in the practice of law or in providing any other professional services with which any person included in paragraph (1) of subsection a. of this section, or a member of the immediate family of that person, is associated, and any partner, officer, director or employee thereof, other than that person, or immediate family member, may represent, appear for or negotiate on behalf of any holder of, or applicant for, a casino license in connection with any cause, application or matter or any holding company or intermediary company with respect to such holder of, or applicant for, a casino license in connection with any phase of casino development, permitting, licensure or any other matter whatsoever related to casino activity, and that person or immediate family member shall not be barred from association with such partnership, firm or corporation, if for a period of two years next subse-

N.J. Stat. § 52:13D-17.2

quent to the termination of the person's office or employment, the person or immediate family member (a) is screened from personal participation in any such representation, appearance or negotiation; and (b) is associated with the partnership, firm or corporation in a position which does not entail any equity interest in the partnership, firm or corporation. The exception provided in this paragraph shall not apply to a former Governor, Lieutenant Governor, Attorney General, member of the Legislature, person included in paragraph (2) of subsection a. of this section, or to the members of their immediate families.

d. This section shall not apply to the spouse of a State officer or employee, which State officer or employee is without responsibility for matters affecting casino activity, who becomes the spouse subsequent to the State officer's or employee's appointment or employment as a State officer or employee and who is not individually or directly employed by a holder of, or applicant for, a casino license, or any holding or intermediary company.

e. The Joint Legislative Committee on Ethical Standards and the State Ethics Commission, as appropriate, shall forthwith determine and publish, and periodically update, a list of those positions in State government with responsibility for matters affecting casino activity.

f. No person shall solicit or accept, directly or indirectly, any complimentary service or discount from any casino applicant or licensee which he knows or has reason to know is other than a service or discount that is offered to members of the general public in like circumstance.

g. No person shall influence, or attempt to influence, by use of his official authority, the decision of the commission or the investigation of the division in any application for licensure or in any proceeding to enforce the provisions of this act or the regulations of the commission. Any such attempt shall be promptly reported to the Attorney General; provided, however, that nothing in this section shall be deemed to proscribe a request for information by any person concerning the status of any application for licensure or any proceeding to enforce the provisions of this act or the regulations of the commission.

h. Any person who willfully violates the provisions of this section is a disorderly person and shall be subject to a fine not to exceed \$ 1,000, or imprisonment not to exceed six months, or both.

In addition, for violations of subsection c. of this section occurring after the effective date [March 15, 2006] of P.L.2005, c.382, a civil penalty of not less than \$ 500 nor more than \$ 10,000 shall be imposed upon a former State officer or employee or former special State officer or employee of a State agency in the Executive Branch upon a finding of a violation by the State Ethics Commission, which penalty may be collected in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (*C.2A:58-10 et seq.*).

HISTORY: L. 1981, c. 142, § 4; amended 1983, c. 185; 1984, c. 218, § 36; 1991, c. 182, § 60; 1993, c. 292, § 38; 1994, c. 152; 1995, c. 18, § 43; 2001, c. 75, eff. May 4, 2001; 2005, c. 382, § 4, eff. Mar. 15, 2006; 2009, c. 26, § 1, eff. Mar. 21, 2009; 2009, c. 193, § 1, eff. Jan. 12, 2010; 2013, c. 27, § 35, eff. Feb. 26, 2013, operative on date selected by Division.

NOTES:

Amendment Note:

2009 amendment, by Chapter 26, inserted "except as provided in section 3 of P.L.2009, c.26 (*C.52:13D-17.3*), and" in the first sentence of b. and the opening paragraph of c.

2009 amendment, by Chapter 193, in c.(3), added the last sentence, and in the first sentence, inserted "or in providing any other professional services", substituted "any person included in paragraph (1) of subsection a. of this section, or a member of the immediate family of that person" for "a former member of the Judiciary", substituted "that person, or immediate family member" and "that person or immediate family member" for "the former member", and rewrote the language beginning with "if for a period of two years", which formerly read: "if the former member: (1) is screened, for a period of two years next subsequent to the termination of the former member's employment, from personal participation in any such representation, appearance or negotiation; and (2) the former member is associated with the partnership, firm or corporation in a position considered 'of counsel,' which does not entail any equity interest in the partnership, firm or corporation"; and in a., designated former provisions as a.(1) and a.(2), added "or" at the end of a.(1), and made a related change.

2013 amendment, by Chapter 27, added the b.(1) designation; and added b.(2).

N.J. Stat. § 52:13D-17.2

OLS Corrections:

Pursuant to *R.S. 1:3-1*, the Office of Legislative Services, through its Legislative Counsel and with the concurrence of the Attorney General, substituted "subsection e.(2)" for "subsection b.(2)" in the last sentence of c.(2) in L. 2009, c. 26, § 1.

Publisher's Note: The bracketed material was added by the Publisher to provide a reference.

Editor's Note:

Expiration of authorization to conduct games through the Internet, 10 years following operative date, see *5:12-95.33*.

L. 2013, c. 27, as enacted, contains recommendations made by the Governor on conditional veto of the legislation (Assembly Bill No. 2578) on Feb. 7, 2013.

Effective Dates:

Section 18 of L. 2005, c. 382 provides: "This act shall take effect on the 60th day following enactment, except that the change in membership of the Executive Commission on Ethical Standards as set forth in subsection (b) of section 10 of P.L.1971, c.182 (*C.52:13D-21*) shall take effect January 17, 2006." Chapter 382, L. 2005, was approved on January 14, 2006.

Section 37 of L. 2013, c. 27 provides: "This act shall take effect immediately but remain inoperative until the date selected by the Division of Gaming Enforcement pursuant to section 41 of P.L.2013, c.27 (*C.5:12-95.17* et al.) [see section *5:12-95.33*]." Chapter 27, L. 2013, was approved on Feb. 26, 2013.

Cross References:

Employment restrictions on commissioners, commission employees and division employees, see *5:12-59*.

Interests prohibited, see *5:12-158*.

Persons prohibited from accepting employment; violation; crime of fourth degree, see *5:12-117.1*.

Employment with casino permitted for certain members of municipal governing body; guidance offered, see *52:13D-17.3*.

Administrative Code:

1. *N.J.A.C. 19:61-5.5* (2013), STATE ETHICS COMMISSION, Positions in State government with responsibility for matters affecting casino activity.

LexisNexis (R) Notes:

CASE NOTES

1. Special state officials were entitled to an award of attorney fees as the prevailing parties in a civil rights challenge to the state law prohibiting business activities and financial interests of unpaid, part-time special state officers and employees in connection with casino licensees and applicants. *Singer v. State*, 95 N.J. 487, 472 A.2d 138, 1984 N.J. LEXIS 2409 (1984), writ of certiorari denied by 469 U.S. 832, 105 S. Ct. 121, 83 L. Ed. 2d 64, 1984 U.S. LEXIS 3255, 53 U.S.L.W. 3237 (1984).

2. *N.J. Stat. Ann. § 52:13D-17.2* prohibited virtually all state officers, employees and immediate family members from securing employment in the casino industry, and only certain local government offices were not included in the statute's broad coverage. *In re Petition of Soto*, 236 N.J. Super. 303, 565 A.2d 1088, 1989 N.J. Super. LEXIS 381 (App.Div. 1989), writ of certiorari denied by 496 U.S. 937, 110 S. Ct. 3216, 110 L. Ed. 2d 664, 1990 U.S. LEXIS 3246, 58 U.S.L.W. 3800 (1990).

3. High level government officials and casino licensees or applicants covers the following individuals articulated in *N.J. Stat. Ann. § 52:13D-17.2*: employees subject to disclosure by law or executive order; special state officers and em-

N.J. Stat. § 52:13D-17.2

ployees; the governor; any member of the legislature or judiciary; any member of the governing body, or the municipal attorney of a municipality wherein a casino is located; any member of or attorney for the planning board or zoning board of adjustment of a municipality wherein a casino is located, or any professional planner regularly employed by the planning board or zoning board of adjustment. *Knight v. Margate*, 86 N.J. 374, 431 A.2d 833, 1981 N.J. LEXIS 1640 (1981).

4. *N.J. Stat. Ann. § 52:13D-17.2* prohibited virtually all state officers, employees and immediate family members from securing employment in the casino industry, and only certain local government offices were not included in the statute's broad coverage. *In re Petition of Soto*, 236 N.J. Super. 303, 565 A.2d 1088, 1989 N.J. Super. LEXIS 381 (App.Div. 1989), writ of certiorari denied by 496 U.S. 937, 110 S. Ct. 3216, 110 L. Ed. 2d 664, 1990 U.S. LEXIS 3246, 58 U.S.L.W. 3800 (1990).

5. Under *N.J. Const. art. 1, para. 1*, the right to employment opportunity was subject to reasonable measures to promote the general welfare; § 52:13D-17.2(b) was supported by a rational basis manifested by the state's interest in preserving the integrity of the judiciary and confidence in the casino industry. *Greenberg v. Kimmelman*, 99 N.J. 552, 494 A.2d 294, 1985 N.J. LEXIS 2350 (1985).

6. High level government officials and casino licensees or applicants covers the following individuals articulated in *N.J. Stat. Ann. § 52:13D-17.2*: employees subject to disclosure by law or executive order; special state officers and employees; the governor; any member of the legislature or judiciary; any member of the governing body, or the municipal attorney of a municipality wherein a casino is located; any member of or attorney for the planning board or zoning board of adjustment of a municipality wherein a casino is located, or any professional planner regularly employed by the planning board or zoning board of adjustment. *Knight v. Margate*, 86 N.J. 374, 431 A.2d 833, 1981 N.J. LEXIS 1640 (1981).



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GO TO THE NEW JERSEY ANNOTATED STATUTES ARCHIVE DIRECTORY

N.J. Stat. § 52:13D-17.3 (2014)

§ 52:13D-17.3. Employment with casino permitted for certain members of municipal governing body; guidance offered

Notwithstanding the provisions of section 4 of P.L.1981, c.142 (*C.52:13D-17.2*), a member of the governing body of a municipality wherein a casino is located, other than the mayor, and a member of the immediate family thereof, may hold employment with the holder of, or applicant for, a casino license, or any holding or intermediary company with respect thereto, while serving in that elective office and thereafter, if that member of the governing body, or member of the immediate family thereof, held that specific employment when that member of the governing body took office. Notwithstanding any provision of the "Local Government Ethics Law," P.L.1991, c.29 (*C.40A:9-22.1 et seq.*) to the contrary, such a member or member-elect of the governing body shall request the Local Finance Board in the Division of Local Government Services in the Department of Community Affairs to provide guidance in the form of a written advisory opinion, pursuant to the "Local Government Ethics Law," regarding any potential conflict of interest that may arise as a result of the employment described herein while serving on the governing body. Any advisory opinion issued under the "Local Government Ethics Law" for this purpose shall be a government record, as defined in section 1 of P.L.1995, c.23 (*C.47:1A-1.1*), that is accessible to the public and shall not be confidential. The Local Finance Board may adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (*C.52:14B-1 et seq.*), any rules and regulations necessary to implement the provisions of this section.

HISTORY: L. 2009, c. 26, § 3, eff. Mar. 21, 2009; amended 2011, c. 150, § 1, eff. Jan. 5, 2012.

NOTES:

Amendment Note:

2011 amendment, by Chapter 150, added the present second through fourth sentences, and deleted the former second and third sentences, which read: "Such a member of the governing body shall consult with the Local Finance Board in the Division of Local Government Services in the Department of Community Affairs regarding any potential conflict of interest that may arise as a result of the employment while serving on the governing body. The board shall provide guidance to the member with respect to the 'Local Government Ethics Law,' P.L.1991, c.29 (*C.40A:9-22.1 et seq.*)."

OLS Corrections:

Pursuant to *R.S. 1:3-1*, the Office of Legislative Services, through its Legislative Counsel and with the concurrence of the Attorney General, substituted "conflict of interest" for "conflict of interests" in the second sentence of L. 2009, c. 26, § 3.

Cross References:

N.J. Stat. § 52:13D-17.3

"Person" defined; conflict of interest; violations, penalty until date selected by Division], see 52:13D-17.2.

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GO TO THE NEW JERSEY ANNOTATED STATUTES ARCHIVE DIRECTORY

N.J. Stat. § 52:13D-18 (2014)

§ 52:13D-18. Vote, other action by legislator or immediate family member with personal interest; prohibition

a. No member of the Legislature shall participate by voting or any other action, on the floor of the General Assembly or the Senate, or in committee or elsewhere, in the enactment or defeat of legislation in which he has a personal interest.

b. A member of the Legislature shall be deemed to have a personal interest in any legislation within the meaning of this section if, by reason of his participation in the enactment or defeat of any legislation, he has reason to believe that he, or a member of his immediate family, will derive a direct monetary gain or suffer a direct monetary loss. No member of the Legislature shall be deemed to have a personal interest in any legislation within the meaning of this section if, by reason of his participation in the enactment or defeat of any legislation, no benefit or detriment could reasonably be expected to accrue to him, or a member of his immediate family, as a member of a business, profession, occupation or group, to any greater extent than any such benefit or detriment could reasonably be expected to accrue to any other member of such business, profession, occupation or group.

HISTORY: L. 1971, c. 182, § 7; amended 2004, c. 23, eff. June 16, 2004.



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N.J. Stat. § 52:13D-19 (2014)

§ 52:13D-19. Contracts of State agencies

a. No member of the Legislature or State officer or employee shall knowingly himself, or by his partners or through any corporation which he controls or in which he owns or controls more than 1% of the stock, or by any other person for his use or benefit or on his account, undertake or execute, in whole or in part, any contract, agreement, sale or purchase of the value of \$ 25.00 or more, made, entered into, awarded or granted by any State agency, except as provided in subsection b. of this section. No special State officer or employee having any duties or responsibilities in connection with the purchase or acquisition of property or services by the State agency where he is employed or an officer shall knowingly himself, by his partners or through any corporation which he controls or in which he owns or controls more than 1% of the stock, or by any other person for his use or benefit or on his account, undertake or execute, in whole or in part, any contract, agreement, sale or purchase of the value of \$ 25.00 or more, made, entered into, awarded or granted by that State agency, except as provided in subsection b. of this section. The restriction contained in this subsection shall apply to the contracts of interstate agencies to the extent consistent with law only if the contract, agreement, sale or purchase is undertaken or executed by a New Jersey member to that agency or by his partners or a corporation in which he owns or controls more than 1% of the stock.

b. The provisions of subsection a. of this section shall not apply to (a) purchases, contracts, agreements or sales which (1) are made or let after public notice and competitive bidding or which (2), pursuant to section 5 of chapter 48 of the laws of 1944 (*C. 52:34-10*) or such other similar provisions contained in the public bidding laws or regulations applicable to other State agencies, may be made, negotiated or awarded without public advertising for bids, or (b) any contract of insurance entered into by the Director of the Division of Purchase and Property pursuant to section 10 of article 6 of chapter 112 of the laws of 1944 (*C. 52:27B-62*), if such purchases, contracts or agreements, including change orders and amendments thereto, shall receive prior approval of the Joint Legislative Committee on Ethical Standards if a member of the Legislature or State officer or employee or special State officer or employee in the Legislative Branch has an interest therein, or the State Ethics Commission if a State officer or employee or special State officer or employee in the Executive Branch has an interest therein.

HISTORY: L. 1971, c. 182, § 8; amended 1987, c. 432, § 5; 2005, c. 382, § 9, eff. Mar. 15, 2006.

NOTES:

Editor's Note:

The reference to section 5 of chapter 48 of the laws of 1944 in b. should be to section 5 of chapter 48 of the laws of 1954.

N.J. Stat. § 52:13D-19

Effective Dates:

Section 18 of L. 2005, c. 382 provides: "This act shall take effect on the 60th day following enactment, except that the change in membership of the Executive Commission on Ethical Standards as set forth in subsection (b) of section 10 of P.L.1971, c.182 (C.52:13D-21) shall take effect January 17, 2006." Chapter 382, L. 2005, was approved on January 14, 2006.

LexisNexis (R) Notes:

CASE NOTES

1. New Jersey Executive Commission on Ethical Standards decision that an attorney was prohibited from serving as pool attorney for office of public defender was affirmed because it was a state agency and where the attorney was also an employee of the Department of Human Services such a contract was prohibited by the Conflicts of Interest Law, *N.J. Stat. Ann. § 52:13D-12 et seq. Turner v. Department of Human Servs.*, 337 N.J. Super. 474, 767 A.2d 530, 2001 N.J. Super. LEXIS 78 (App.Div. 2001).

2. New Jersey Executive Commission on Ethical Standards decision that an attorney was prohibited from serving as pool attorney for office of public defender was affirmed because it was a state agency and where the attorney was also an employee of the Department of Human Services such a contract was prohibited by the Conflicts of Interest Law, *N.J. Stat. Ann. § 52:13D-12 et seq. Turner v. Department of Human Servs.*, 337 N.J. Super. 474, 767 A.2d 530, 2001 N.J. Super. LEXIS 78 (App.Div. 2001).



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TITLE 52. STATE GOVERNMENT, DEPARTMENTS AND OFFICERS
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CHAPTER 13D. CONFLICT OF INTEREST

GO TO THE NEW JERSEY ANNOTATED STATUTES ARCHIVE DIRECTORY

N.J. Stat. § 52:13D-19.1 (2014)

§ 52:13D-19.1. State officer, employee may enter into certain contracts with State agency

Notwithstanding the provisions of P.L.1971, c.182 (*C.52:13D-12 et seq.*), a State officer or employee or a special State officer or employee or his partners or any corporation or firm in which he owns or controls more than 1% of the stock, assets or profits may enter into a contract or agreement with a State agency where the contract or agreement is for the development of scientific or technological discoveries or innovations in which the State agency has a property right, if the State agency has a procedure in its code of ethics for authorizing these contracts or agreements which minimizes actual conflicts of interest and the code of ethics was approved in accordance with section 12 of P.L.1971, c.182 (*C.52:13D-23*) and the contract or agreement complies with that code procedure.

HISTORY: L. 1991, c. 254, § 1.

NOTES:

Administrative Code:

1. *N.J.A.C. 9A:3-1.4* (2013), CHAPTER INSTITUTIONAL CODES OF ETHICS, Contracts for the development of scientific or technological discoveries.



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N.J. Stat. § 52:13D-19.2 (2014)

§ 52:13D-19.2. State officer, employee may enter into certain rental agreements with State agency

Notwithstanding the provisions of P.L.1971, c.182 (*C.52:13D-12 et seq.*), a State officer or employee or a special State officer or employee or his partners or any corporation or firm in which he owns or controls more than 1% of the stock, assets or profits may enter into a rental agreement with a State agency which operates a facility which rents space or provides services to assist small businesses which employ 50 people or less, pursuant to the same terms and conditions as those offered to members of the public generally.

HISTORY: L. 1991, c. 254, § 2.



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N.J. Stat. § 52:13D-19.3 (2014)

§ 52:13D-19.3. Other provisions not altered or affected

Nothing in this act shall alter or affect any other applicable provisions regulating public contracts.

HISTORY: L. 1991, c. 254, § 3.



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N.J. Stat. § 52:13D-20 (2014)

§ 52:13D-20. Representation of state agency in transaction involving pecuniary interest for legislator or state officer employee

No member of the Legislature or State officer or employee or special State officer or employee shall act as officer or agent for a State agency for the transaction of any business with himself or with a corporation, company, association or firm in the pecuniary profits of which he has an interest (except that ownership or control of 10% or less of the stock of a corporation shall not be deemed an interest within the meaning of this section).

HISTORY: L. 1971, c. 182, § 9, eff. Jan. 11, 1972.



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TITLE 52. STATE GOVERNMENT, DEPARTMENTS AND OFFICERS
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GO TO THE NEW JERSEY ANNOTATED STATUTES ARCHIVE DIRECTORY

N.J. Stat. § 52:13D-21 (2014)

§ 52:13D-21. State Ethics Commission; membership; powers; duties; penalties

(a) The Executive Commission on Ethical Standards created pursuant to P.L.1967, c.229, is continued and established in the Department of Law and Public Safety and shall constitute the first commission under P.L.1971, c.182 (*C.52:13D-12 et al.*).

Upon the effective date of P.L.2005, c.382, the Executive Commission on Ethical Standards shall be renamed, and thereafter referred to, as the State Ethics Commission. For the purposes of complying with the provisions of *Article V, Section IV, paragraph 1 of the New Jersey Constitution*, the State Ethics Commission is allocated in, but not of, the Department of Law and Public Safety, but notwithstanding that allocation, the commission shall be independent of any supervision and control by the department or by any board or officer thereof.

(b) The commission shall be composed of seven members as follows: three members appointed by the Governor from among State officers and employees serving in the Executive Branch; and four public members appointed by the Governor, not more than two of whom shall be of the same political party.

Each member appointed from the Executive Branch shall serve at the pleasure of the Governor during the term of office of the Governor appointing the member and until the member's successor is appointed and qualified. The public members shall serve for terms of four years and until the appointment and qualification of their successors, but of the public members first appointed pursuant to P.L.2003, c.160, one shall serve for a term of two years and one shall serve for a term of four years, and of the two public members first appointed pursuant to P.L.2005, c.382, one shall serve for a term of one year and one shall serve for a term of three years. The Governor shall designate one public member to serve as chairman and one member to serve as vice-chairman of the commission.

The members of the State Ethics Commission who were appointed by the Governor from among the State officers and employees serving in the Executive Branch serving on January 17, 2006 are terminated as of that day. A member terminated pursuant to this paragraph shall be eligible for reappointment.

Vacancies in the membership of the commission shall be filled in the same manner as the original appointments but, in the case of public members, for the unexpired term only. None of the public members shall be State officers or employees or special State officers or employees, except by reason of their service on the commission. A public member may be reappointed for subsequent terms on the commission.

(c) Each member of the commission shall serve without compensation but shall be entitled to be reimbursed for all actual and necessary expenses incurred in the performance of the member's duties.

N.J. Stat. § 52:13D-21

(d) The Attorney General shall act as legal adviser and counsel to the commission. The Attorney General shall upon request advise the commission in the rendering of advisory opinions by the commission, in the approval and review of codes of ethics adopted by State agencies in the Executive Branch and in the recommendation of revisions in codes of ethics or legislation relating to the conduct of State officers and employees in the Executive Branch.

(e) (1) The commission may, within the limits of funds appropriated or otherwise made available to it for the purpose, employ such other professional, technical, clerical or other assistants, excepting legal counsel, and incur such expenses as may be necessary for the performance of its duties.

(2) The commission shall employ a training officer who shall be in the unclassified service of the civil service of this State. The training officer shall devote full-time to the creation, maintenance and coordination of a training program on ethical standards. The program shall be established for the purpose specified in section 2 of P.L.2005, c.382 (*C. 52:13D-21.1*). The program shall be provided by the training officer or assistants or deputies of such officer, or by such other persons as may be designated by the commission. The commission shall approve the form and content of the training program created by the training officer and shall determine when and at what intervals State officers and employees and special State officers and employees in a State agency in the Executive Branch shall be required to complete such a program. The training program may include content which in particular addresses the situations of certain identified groups of officers or employees such as those who are involved in contracting processes.

(3) The commission shall employ a compliance officer who shall be in the unclassified service of the civil service of this State. The compliance officer shall devote full-time to the creation, maintenance, monitoring and coordination of procedures to ensure that all State officers and employees and special State officers and employees in State agencies in the Executive Branch comply fully with all reporting and training requirements and that all materials, forms, codes, orders and notices are distributed to and acknowledged by appropriate individuals, as may be required. In addition, the compliance officer shall conduct, on such regular basis as determined by the commission, systematic audits of State agencies in the Executive Branch for compliance with the laws, regulations, codes, orders, procedures, advisory opinions and rulings concerning the ethical standards for State employees and officers and special State officers and employees.

(f) The commission, in order to perform its duties pursuant to the provisions of P.L.1971, c.182 (*C.52:13D-12 et al.*), shall have the power to conduct investigations, hold hearings, compel the attendance of witnesses and the production before it of such books and papers as it may deem necessary, proper and relevant to the matter under investigation. The members of the commission and the persons appointed by the commission for that purpose are hereby empowered to administer oaths and examine witnesses under oath.

(g) The commission is authorized to render advisory opinions as to whether a given set of facts and circumstances would, in its opinion, constitute a violation of the provisions of P.L.1971, c.182 (*C.52:13D-12 et al.*) or of a code of ethics promulgated pursuant to the provisions of P.L.1971, c.182 (*C.52:13D-12 et al.*).

(h) The commission shall have jurisdiction to initiate, receive, hear and review complaints regarding violations, by any current or former State officer or employee or current-or former special State officer or employee, in the Executive Branch, of the provisions of P.L.1971, c.182 (*C.52:13D-12 et al.*) or of a code of ethics promulgated pursuant to the provisions of P.L.1971, c.182 (*C.52:13D-12 et al.*). Any complaint regarding a violation of a code of ethics may be referred by the commission for disposition in accordance with subsection (d) of section 12 of P.L.1971, c.182 (*C.52:13D-23*).

An investigation regarding a violation committed during service by a former State officer or employee or special State officer or employee shall be initiated by the commission not later than two years following the termination of service.

The commission shall have the authority to dismiss a complaint that it determines to be frivolous.

(i) Any current or former State officer or employee or current or former special State officer or employee found guilty by the commission of violating any provision of P.L.1971, c.182 (*C.52:13D-12 et al.*) or of a code of ethics promulgated pursuant to the provisions of P.L.1971, c.182 (*C.52:13D-12 et al.*) shall be fined not less than \$ 500 nor more than \$ 10,000, which penalty may be collected in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (*C.2A:58-10 et seq.*), and may be suspended from office or employment by order of the commission for a period of not in excess of one year. If the commission finds that the conduct of the officer or employee constitutes a willful and continuous disregard of the provisions of P.L.1971, c.182 (*C.52:13D-12 et al.*) or of a code of ethics promulgated pursuant to the provisions of P.L.1971, c.182 (*C.52:13D-12 et al.*), it may order that person

N.J. Stat. § 52:13D-21

removed from office or employment and may further bar the person from holding any public office or employment in this State in any capacity whatsoever for a period of not exceeding five years from the date on which the person was found guilty by the commission.

In addition, for violations occurring after the effective date of P.L.2005, c.382, the commission may order restitution, demotion, censure or reprimand, or for a failure to file an appropriate financial disclosure statement or form, shall impose a civil penalty of \$ 50 for each day of the violation, which penalty may be collected in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (*C.2A:58-10* et seq.).

(j) The remedies provided herein are in addition to all other criminal and civil remedies provided under the law.

(k) The commission shall promulgate, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (*C.52:14B-1* et seq.), such rules and regulations as may be necessary to effectuate the purposes of P.L.1971, c.182 (*C.52:13D-12* et al.).

(l) (1) The commission shall communicate periodically with the State Auditor, the State Inspector General, the State Commission of Investigation and the Office of Government Integrity, or its successor, in the Department of Law and Public Safety.

(2) The Executive Director of the commission shall meet with the head of each principal department of the Executive Branch of State Government, each board member if a board is considered the head of a principal department, and the Secretary of Agriculture, the Commissioner of Education, and the Secretary and Chief Executive Officer of the New Jersey Commerce and Economic Growth Commission, within 30 days after the head, member, secretary or commissioner takes office, and shall meet annually with these individuals as a group, to inform them of the laws, regulations, codes, orders, procedures, advisory opinions and rulings concerning applicable ethical standards.

(m) The commission shall create and maintain a toll-free telephone number to receive comments, complaints and questions concerning matters under the jurisdiction of the commission. Information or questions received by the commission by this means shall be confidential and not accessible to the public pursuant to P.L.1963, c.73 (*C.47:1A-1* et seq.).

(n) Financial disclosure statements required to be submitted to the commission by law, regulation or executive order shall be made available to the public, promptly after receipt, on the Internet site of the commission, commencing with submissions for 2005.

(o) The commission shall prepare and ensure the distribution to each State officer and employee and special State officer and employee in a State agency in the Executive Branch of a plain language ethics guide which provides a clear and concise summary of the laws, regulations, codes, orders, procedures, advisory opinions and rulings concerning ethical standards applicable to such officers and employees. The guide shall be prepared to promote ethical day-to-day decision making, to give general advice regarding conduct and situations, to provide easy reference to sources, and to explain the role, activities and jurisdiction of the State Ethics Commission. Each State officer and employee and special State officer and employee shall certify that he or she has received the guide, reviewed it and understands its provisions.

(p) The commission shall have jurisdiction to enforce the provisions of an Executive Order that specifically provides for enforcement by the commission.

HISTORY: L. 1971, c. 182, § 10; amended 1999, c. 440, § 102, eff. April 17, 2000; 2003, c. 160, eff. Aug. 20, 2003; 2004, c. 24, § 1, eff. June 16, 2004; 2004, c. 25, § 1, eff. June 16, 2004; 2005, c. 382, § 1, eff. Jan. 17, 2006 and Mar. 15, 2006.

NOTES:

Editor's Note:

Section 2 of L. 2003, c. 160 provides: "During the period commencing with the effective date of P.L.2003, c.160 and ending on the date on which all of the public members of the Executive Commission on Ethical Standards first appointed shall have qualified, in determining whether a quorum exists for the purposes of convening a meeting of the commission and of conducting official business thereat, only those public members who shall have qualified as of the date on which the meeting is held shall be considered as included in the membership of the commission."

Effective Dates:

N.J. Stat. § 52:13D-21

Section 109 of L. 1999, c. 440 provides: "This act shall take effect 90 days after enactment." Chapter 440, L. 1999, was approved on January 18, 2000.

Section 3 of L. 2004, c. 25 provides: "This act shall take effect immediately, but any increased penalties shall apply only to violations occurring on or after the effective date of this act." Chapter 25, L. 2004, was approved on June 16, 2004.

Section 18 of L. 2005, c. 382 provides: "This act shall take effect on the 60th day following enactment, except that the change in membership of the Executive Commission on Ethical Standards as set forth in subsection (b) of section 10 of P.L.1971, c.182 (C.52:13D-21) shall take effect January 17, 2006." Chapter 382, L. 2005, was approved on January 14, 2006.

Cross References:

Restrictions on pre-employment by commissioners, commission employees and division employees and agents, see 5:12-58.

Certain State officers, employees, completion of training program on ethical standards required; annual briefing, see 52:13D-21.1.

Administrative Code:

1. *N.J.A.C. 13:69-4.9* (2013), CHAPTER GENERAL PROVISIONS, Penalties.
2. *N.J.A.C. 19:61-2.5* (2013), STATE ETHICS COMMISSION, Access to documents.
3. *N.J.A.C. 19:61-3.1* (2013), STATE ETHICS COMMISSION, Allegations; procedure.
4. *N.J.A.C. 19:61-5.2* (2013), STATE ETHICS COMMISSION, Publication.
5. N.J.A.C. EO 2010 No. 24 (2013), level= CHRIS CHRISTIE, 24(2010).
6. *N.J.A.C. 7:1D* (2013), CHAPTER GENERAL PRACTICE AND PROCEDURE, 7, Chapter 1D -- Chapter Notes.

LexisNexis (R) Notes:

CASE NOTES

1. Code of ethics that prohibited New Jersey state troopers who were also licensed attorneys from engaging in the outside practice of law did not unlawfully infringe upon the New Jersey Supreme Court's plenary authority under *N.J. Const. art. VI, § 2, para. 3* to regulate the practice of law. The supreme court's authority over admission of attorneys did not preclude state agencies from promulgating rules concerning their employees who happened to be licensed attorneys. *State Troopers Non-Commissioned Officers Ass'n v. State*, 643 F. Supp. 2d 615, 2009 U.S. Dist. LEXIS 58492, 29 I.E.R. Cas. (BNA) 703 (D.N.J. 2009).

2. Code of ethics that prohibited New Jersey state troopers who were also licensed attorneys from engaging in the outside practice of law did not violate the Fourteenth Amendment Equal Protection Clause, as the prohibition was rationally related to the legitimate governmental objective of avoiding the potential for conflicts between the troopers' ethical obligations as attorneys and their obligation to uphold and enforce state laws. A due process claim also failed, as the troopers did not have a protected property or liberty interest in secondary employment as private attorneys. *State Troopers Non-Commissioned Officers Ass'n v. State*, 643 F. Supp. 2d 615, 2009 U.S. Dist. LEXIS 58492, 29 I.E.R. Cas. (BNA) 703 (D.N.J. 2009).

3. Code of ethics that prohibited New Jersey state troopers who were also licensed attorneys from engaging in the outside practice of law did not violate the Fourteenth Amendment Equal Protection Clause, as the prohibition was rationally related to the legitimate governmental objective of avoiding the potential for conflicts between the troopers' ethical obligations as attorneys and their obligation to uphold and enforce state laws. A due process claim also failed, as the troopers did not have a protected property or liberty interest in secondary employment as private attorneys. *State*

N.J. Stat. § 52:13D-21

Troopers Non-Commissioned Officers Ass'n v. State, 643 F. Supp. 2d 615, 2009 U.S. Dist. LEXIS 58492, 29 I.E.R. Cas. (BNA) 703 (D.N.J. 2009).

4. Conduct, to be considered willful under *N.J. Stat. Ann. § 52:13D-21(i)* of the Conflicts of Interest Law, must be intentional and deliberate, with knowledge of its wrongfulness, and not merely negligent, heedless, or unintentional; the willful conduct must involve more than a few isolated acts. *Executive Comm'n on Ethical Stds. v. Salmon*, 295 N.J. Super. 86, 684 A.2d 930, 1996 N.J. Super. LEXIS 419 (App.Div. 1996).

5. Conduct, to be considered willful under *N.J. Stat. Ann. § 52:13D-21(i)*, must be intentional and deliberate, with knowledge of its wrongfulness, and not merely negligent, heedless, or unintentional. *Executive Comm'n on Ethical Stds. v. Salmon*, 295 N.J. Super. 86, 684 A.2d 930, 1996 N.J. Super. LEXIS 419 (App.Div. 1996).

6. Phrase "willful and continuous" in *N.J. Stat. Ann. § 52:13D-21(i)* means that the offending conduct involves not only a pervasive and chronic disregard of the ethics laws but that the conduct must be: intentional with knowledge of its wrongfulness, deliberate, conceived, and not merely negligent, heedless, or unintentional. *Executive Comm'n on Ethical Stds. v. Salmon*, 295 N.J. Super. 86, 684 A.2d 930, 1996 N.J. Super. LEXIS 419 (App.Div. 1996).

7. Although a commissioner of the Board of Public Utilities (BPU) had committed six violations of the Conflicts of Interest Law, *N.J. Stat. Ann. § 52:13D-12* et seq., his conduct did not exhibit a willful disregard of the ethics standards and therefore, his violations should only have been penalized at the lesser level specified in *N.J. Stat. Ann. § 52:13D-21(i)*. *Executive Comm'n on Ethical Stds. v. Salmon*, 295 N.J. Super. 86, 684 A.2d 930, 1996 N.J. Super. LEXIS 419 (App.Div. 1996).

8. Mere knowledge of the applicable ethics standards will not suffice to sustain a "willful and continuous disregard" finding under *N.J. Stat. Ann. § 52:13D-21(i)* of the Conflicts of Interest Law; the conduct must be intentional with knowledge of its wrongfulness, deliberate, conceived, not merely negligent, and pervasive and chronic in order to conform to the legislative use of the words "willful and continuous disregard"; short of an offender's conduct rising to that level, the plain legislative intent was that the lesser level of sanctions authorized in *N.J. Stat. Ann. § 52:13D-21(i)* would suffice. *Executive Comm'n on Ethical Stds. v. Salmon*, 295 N.J. Super. 86, 684 A.2d 930, 1996 N.J. Super. LEXIS 419 (App.Div. 1996).

9. Although the failure of a commissioner of the Board of Public Utilities (BPU) to follow-up on the billing and payment for dinners that he attended that were hosted and paid for by a regulated electric utility constituted ethics violations and although the commissioner had a working knowledge of and familiarity with the Conflicts of Interest Law and the BPU Code of Ethics, the record did not support any inference that his failure to follow-up was intentional, and his conduct did not exhibit a willful disregard of the ethics standards; therefore, his violations could be penalized only at the lesser level specified in *N.J. Stat. Ann. § 52:13D-21(i)* of the Conflicts of Interest Law. *Executive Comm'n on Ethical Stds. v. Salmon*, 295 N.J. Super. 86, 684 A.2d 930, 1996 N.J. Super. LEXIS 419 (App.Div. 1996).

10. Conduct, to be considered willful under *N.J. Stat. Ann. § 52:13D-21(i)* of the Conflicts of Interest Law, must be intentional and deliberate, with knowledge of its wrongfulness, and not merely negligent, heedless, or unintentional; the willful conduct must involve more than a few isolated acts. *Executive Comm'n on Ethical Stds. v. Salmon*, 295 N.J. Super. 86, 684 A.2d 930, 1996 N.J. Super. LEXIS 419 (App.Div. 1996).

11. Overlapping provisions of the Right to Know Law, *N.J. Stat. Ann. § 47:1A-1* et seq. and the Conflicts of Interest Law, *N.J. Stat. Ann. § 52:13D-21*, mandated that executive branch records, including financial disclosure statements, be made available for public inspection and an order from the governor to do so did not violate *N.J. Const. art. V, § 1, para. 1*. *Kenny v. Byrne*, 144 N.J. Super. 243, 365 A.2d 211, 1976 N.J. Super. LEXIS 669 (App.Div. 1976), affirmed by 75 N.J. 458, 383 A.2d 428, 1978 N.J. LEXIS 149 (1978).

12. Code of ethics that prohibited New Jersey state troopers who were also licensed attorneys from engaging in the outside practice of law did not unlawfully infringe upon the New Jersey Supreme Court's plenary authority under *N.J. Const. art. VI, § 2, para. 3* to regulate the practice of law. The supreme court's authority over admission of attorneys did not preclude state agencies from promulgating rules concerning their employees who happened to be licensed attorneys. *State Troopers Non-Commissioned Officers Ass'n v. State*, 643 F. Supp. 2d 615, 2009 U.S. Dist. LEXIS 58492, 29 I.E.R. Cas. (BNA) 703 (D.N.J. 2009).



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N.J. Stat. § 52:13D-21.1 (2014)

§ 52:13D-21.1. Certain State officers, employees, completion of training program on ethical standards required; annual briefing

A State officer or employee or a special State officer or employee in a State agency in the Executive Branch shall complete a training program on ethical standards provided by the State Ethics Commission at such times and intervals as the commission shall require pursuant to subsection (e) of section 10 of P.L.1971, c.182 (*C.52:13D-21*). At a minimum, an officer or employee shall complete annually, and acknowledge his or her completion of, a briefing on the ethics standards applicable to such employee or officer pursuant to the laws, regulations, codes, orders, procedures, advisory opinions or rulings of this State. The format and content of the program and briefing shall be determined by the training officer of the State Ethics Commission and approved by the commission as provided in subsection (e) of section 10 of P.L.1971, c.182 (*C.52:13D-21*).

HISTORY: L. 2005, c. 382, § 2, eff. Mar. 15, 2006.

NOTES:

Effective Dates:

Section 18 of L. 2005, c. 382 provides: "This act shall take effect on the 60th day following enactment, except that the change in membership of the Executive Commission on Ethical Standards as set forth in subsection (b) of section 10 of P.L.1971, c.182 (*C.52:13D-21*) shall take effect January 17, 2006." Chapter 382, L. 2005, was approved on January 14, 2006.

Cross References:

State Ethics Commission; membership; powers; duties; penalties, see *52:13D-21*.

Services and facilities provided to Governor-elect upon request, see *52:15A-3*.



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N.J. Stat. § 52:13D-21.2 (2014)

§ 52:13D-21.2. Restrictions on certain State employment for certain relatives of State employees, officers; definition

a. (1) A relative of the Governor shall not be employed in an office or position in the unclassified service of the civil service of the State in the Executive Branch of State Government.

(2) A relative of the commissioner or head of a principal department in the Executive Branch of State Government shall not be employed in an office or position in the unclassified service of the civil service of the State in the principal department over which the commissioner or head of the principal department exercises authority, supervision, or control.

(3) A relative of an assistant or deputy commissioner or head of a principal department in the Executive Branch of State Government who is employed in an office or position in the unclassified service of the civil service of the State may be employed in the principal department in which the assistant or deputy commissioner or head serves, but shall not be assigned to a position over which the assistant or deputy commissioner or head exercises authority, supervision, or control.

(4) A relative of a head or assistant head of a division of a principal department in the Executive Branch of State government who is employed in an office or position in the unclassified service of the civil service of the State may be employed in the principal department in which the head or assistant head of a division serves, but shall not be assigned to a position over which the head or assistant head exercises authority, supervision, or control.

b. (1) A relative of an appointed member of a governing or advisory body of an independent authority, board, commission, agency or instrumentality of the State shall not be employed in an office or position in that independent authority, board, commission, agency or instrumentality.

(2) A relative of an appointed New Jersey member of a governing body of a bi-state or multi-state agency shall not be employed in an office or position in that bi-state or multi-state agency, to the extent permitted by law.

c. A State officer or employee or a special State officer or employee of a State agency in the Executive Branch shall not supervise, or exercise authority with regard to personnel actions over, a relative of the officer or employee.

d. As used in this section, "relative" means an individual's spouse or the individual's or spouse's parent, child, brother, sister, aunt, uncle, niece, nephew, grandparent, grandchild, son-in-law, daughter-in-law, stepparent, stepchild, stepbrother, stepsister, half brother or half sister, whether the relative is related to the individual or the individual's spouse by blood, marriage or adoption.

HISTORY: L. 2005, c. 382, § 13, eff. Mar. 15, 2006.

N.J. Stat. § 52:13D-21.2

NOTES:

Effective Dates:

Section 18 of L. 2005, c. 382 provides: "This act shall take effect on the 60th day following enactment, except that the change in membership of the Executive Commission on Ethical Standards as set forth in subsection (b) of section 10 of P.L.1971, c.182 (*C.52:13D-21*) shall take effect January 17, 2006." Chapter 382, L. 2005, was approved on January 14, 2006.

Administrative Code:

1. *N.J.A.C. 6A:23A-6.2* (2013), CHAPTER FISCAL ACCOUNTABILITY, EFFICIENCY AND BUDGETING PROCEDURES, Nepotism policy.

2. *N.J.A.C. 6A:23A-22.10* (2013), CHAPTER FISCAL ACCOUNTABILITY, EFFICIENCY AND BUDGETING PROCEDURES, Nepotism policy.



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TITLE 52. STATE GOVERNMENT, DEPARTMENTS AND OFFICERS
SUBTITLE 2. STATE LEGISLATURE
CHAPTER 13D. CONFLICT OF INTEREST

GO TO THE NEW JERSEY ANNOTATED STATUTES ARCHIVE DIRECTORY

N.J. Stat. § 52:13D-22 (2014)

§ 52:13D-22. Joint Legislative Committee on Ethical Standards; membership; powers; terms; duties; penalties

(a) There is established a Joint Legislative Committee on Ethical Standards in the Legislative Branch of State Government.

(b) Commencing on the 30th day after the effective date of P.L.2008, c.16, the joint committee shall be composed of eight members of the public as follows: two appointed by the President of the Senate, two appointed by the Speaker of the General Assembly, two appointed by the Minority Leader of the Senate, and two appointed by the Minority Leader of the General Assembly. No member of the Senate or of the General Assembly shall be eligible to serve as a member of the joint committee. No more than two members of the joint committee may be former members of the Senate or of the General Assembly. The members shall be full-time residents of the State and available throughout the year to attend, in person, the meetings of the joint committee.

No member shall be a lobbyist or governmental affairs agent as defined by the "Legislative and Governmental Process Activities Disclosure Act," P.L.1971, c.183 (C.52:13C-18 et seq.), a full-time State employee or an officer or director of any entity which is required to file a statement with the Election Law Enforcement Commission, and no former lobbyist or governmental affairs agent shall be eligible to serve as a member for one year following the cessation of all activity by that person as a governmental affairs agent or lobbyist. Notwithstanding the above restrictions, among the members appointed pursuant to this section, one may be a full-time faculty member of a State public institution of higher education having a doctoral degree and expertise in the areas of ethics, philosophy and government with extensive experience in State legislative organization and procedures. No person who served as a member of the joint committee at any time prior to the 30th day after the effective date of P.L.2008, c.16 shall be eligible to serve as a member of the joint committee as constituted under this subsection. The members shall serve for terms of two years.

The terms of the members shall run from the second Tuesday in January of an even-numbered year to the second Tuesday in January of the next even-numbered year, regardless of the original date of appointment.

Vacancies in the membership of the joint committee shall be filled in the same manner as the original appointments, but for the unexpired term only. The members of the joint committee shall serve without compensation, but shall be entitled to be reimbursed for all actual and necessary expenses incurred in the performance of their duties.

(c) Commencing on the 30th day after the effective date of P.L.2008, c.16, the chairman of the joint committee shall be selected jointly by the President of the Senate and the Speaker of the General Assembly, when the President and Speaker are members of the same political party, from among the members of the joint committee. The first chairman to be selected jointly shall be a full-time faculty member of a State public institution of higher education having a doctoral degree and expertise in the areas of ethics, philosophy and government with extensive experience in State legislative

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organization and procedures. The vice chairman shall be selected jointly by the Minority Leader of the Senate and the Minority Leader of the General Assembly, when the Minority Leaders are members of the same political party, from among the members of the joint committee. When the President of the Senate and the Speaker of the General Assembly are not members of the same political party, the President and Speaker shall alternate in selecting the chairman of the joint committee with the President of the Senate selecting the chairman first, and then, at the next organization of the joint committee if the President and the Speaker are not members of the same political party, the Speaker of the General Assembly selecting the chairman. When the Minority Leader of the Senate and the Minority Leader of the General Assembly are not members of the same political party, the Minority Leaders shall alternate in selecting the vice chairman of the joint committee with the Minority Leader of the Senate selecting the vice chairman first, and then, at the next organization of the joint committee if the Minority Leaders are not members of the same political party, the Minority Leader of the General Assembly selecting the vice chairman. The alternating method of selection shall continue regardless of intervening periods when joint selections are made.

The chairman and the vice chairman shall not be members of the same political party.

(d) The Legislative Counsel in the Office of Legislative Services shall act as legal adviser to the joint committee. The Executive Director of the Office of Legislative Services shall appoint another attorney in the Office of Legislative Services to serve as Ethics Counsel to the individual members of the Legislature and officers and employees in the Legislative Branch. The Ethics Counsel shall provide informal ethics advice to individual members of the Legislature and officers and employees in the Legislative Branch upon request, when the request is one fully answered by the New Jersey Conflicts of Interest Law or the Legislative Code of Ethics or is on a subject previously determined by the Joint Committee. Informal ethics advice from the Ethics Counsel to a member of the Legislature or an officer or employee in the Legislative Branch shall be confidential and subject to the attorney-client privilege. The Ethics Counsel may also assist members of the Legislature and officers or employees in the Legislative Branch in requesting formal advisory opinions from the joint committee on novel subject matters. The Legislative Counsel shall, upon request, assist and advise the joint committee in the rendering of formal advisory opinions by the joint committee, in the approval and review of codes of ethics adopted by State agencies in the Legislative Branch, and in the recommendation of revisions in codes of ethics or legislation relating to the conduct of members of the Legislature or State officers and employees in the Legislative Branch.

(e) The joint committee may, within the limits of funds appropriated or otherwise available to it for the purpose, employ other professional, technical, clerical or other assistants, excepting legal counsel, and incur expenses as may be necessary to the performance of its duties.

(f) The joint committee shall have all the powers granted pursuant to chapter 13 of Title 52 of the Revised Statutes [R.S.52:13-1 et seq.].

(g) The joint committee is authorized to render formal advisory opinions as to whether a given set of facts and circumstances would, in its opinion, constitute a violation of the provisions of this act [C.52:13D-12 et seq.], of a code of ethics promulgated pursuant to the provisions of this act or of any rule of either or both Houses which gives the joint committee jurisdiction and the authority to investigate a matter.

(h) (1) The joint committee shall have jurisdiction to initiate, receive, hear and review complaints regarding violations of the provisions of this act or of a code of ethics promulgated pursuant to the provisions of this act. It shall further have such jurisdiction as to enforcement of the rules of either or both Houses of the Legislature governing the conduct of the members or employees thereof as those rules may confer upon the joint committee. A complaint regarding a violation of a code of ethics promulgated pursuant to the provisions of this act may be referred by the joint committee for disposition in accordance with subsection 12(d) [C.52:13D-23(d)] of this act.

(2) The joint committee shall not accept a complaint against a member of the Legislature submitted within 90 days of a primary or general election in which the member is a candidate. An attempt to file a complaint during this period shall toll any statute of limitations. This paragraph shall not bar the joint committee from initiating a complaint during this period.

A complaint that is filed within seven days following a primary or general election shall be considered by the joint committee in an expedited manner that results in a final determination by the end of the annual session of the Legislature.

(3) The joint committee, when reviewing a complaint, shall have the authority to require a member of the Legislature who is the subject of a complaint to submit detailed financial disclosures containing information that is in addition

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to the information required to be disclosed by a law, rule or code of ethics. Such additional information shall remain confidential, unless the joint committee, by a vote of at least three-fourths of the total membership, directs that the information be made public.

(4) The joint committee shall inform a complainant of the time, date, and location of any meeting at which the joint committee will discuss or make a determination on any aspect of the complaint.

(i) Any State officer or employee or special State officer or employee in the Legislative Branch found guilty by the joint committee of violating any provisions of this act, of a code of ethics promulgated pursuant to the provisions of this act or of any rule of either or both Houses which gives the joint committee jurisdiction and the authority to investigate a matter shall be fined not less than \$ 500.00 nor more than \$ 10,000, which penalty may be collected in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.), and may be reprimanded and ordered to pay restitution where appropriate and may be suspended from office or employment by order of the joint committee for a period not in excess of one year. If the joint committee finds that the conduct of the officer or employee constitutes a willful and continuous disregard of the provisions of this act, of a code of ethics promulgated pursuant to the provisions of this act or of any rule of either or both Houses which gives the joint committee jurisdiction and the authority to investigate a matter, it may order that person removed from office or employment and may further bar the person from holding any public office or employment in this State in any capacity whatsoever for a period not exceeding five years from the date on which the person was found guilty by the joint committee.

(j) A member of the Legislature who shall be found guilty by the joint committee of violating the provisions of this act, of a code of ethics promulgated pursuant to the provisions of this act or of any rule of either or both Houses which gives the joint committee jurisdiction and the authority to investigate a matter shall be fined not less than \$ 500.00 nor more than \$ 10,000, which penalty may be collected in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.), and shall be subject to such further action as may be determined by the House of which the person is a member. In such cases the joint committee shall report its findings to the appropriate House and shall recommend to the House such further action as the joint committee deems appropriate, but it shall be the sole responsibility of the House to determine what further action, if any, shall be taken against such member.

HISTORY: L. 1971, c. 182, § 11; amended 1991, c. 241, § 1; 1991, c. 505, § 1; 2004, c. 24, § 2, eff. June 16, 2004; 2004, c. 25, § 2, eff. June 16, 2004; 2004, c. 27, § 25, eff. June 16, 2004; 2007, c. 203, § 1, eff. Jan. 8, 2008; 2008, c. 16, § 1, eff. Apr. 21, 2008; 2008, c. 99, § 1, eff. Oct. 31, 2008.

NOTES:

Amendment Note:

2007 amendment, by Chapter 203, deleted former (b)(1), and the (2) and (3) designations from the remaining provisions of (b); and in (d), inserted the second through fifth sentences pertaining to the Ethics Counsel, and inserted "formal" preceding "advisory opinions" in the sixth sentence.

Former (b)(1) read: "The joint committee shall be composed of 12 members as follows: four members of the Senate appointed by the President thereof, no more than two of whom shall be of the same political party; four members of the General Assembly, appointed by the Speaker thereof, no more than two of whom shall be of the same political party; and four public members, one appointed by the President of the Senate, one appointed by the Speaker of the General Assembly, one appointed by the Minority Leader of the Senate and one appointed by the Minority Leader of the General Assembly."

2008 amendment, by Chapter 16, rewrote (a), which formerly read: "The Joint Legislative Committee on Ethical Standards created pursuant to the provisions of P.L.1967, c.229, as continued and established pursuant to P.L.1971, c.182, is continued and established in the Legislative Branch of State Government with the addition of the public members as set forth in this section"; in (b), inserted the second paragraph and the (1) and (2) designations, added the last sentence of the first paragraph (now (b)(1)), substituted "member" for "public member" or a variation thereof throughout the last three paragraphs, and in the third paragraph, deleted the former second sentence, which read: "The legislative members shall serve until the end of the two-year legislative term during which the members are appointed", inserted the present second sentence, and deleted "and until the appointment and qualification of their successors" from the end of the last sentence; in (c), added the second through fifth sentences of the first paragraph, and added the second paragraph; and added (h)(2) through (h)(4) and designated the former provisions of (h) as (h)(1).

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2008 amendment, by Chapter 99, in (b), deleted former (b)(1), deleted the (2) designation from the former second (now first) paragraph of (b), and in the present second paragraph, inserted the second sentence pertaining to a full-time faculty member of a State public institution of higher education, and deleted "paragraph (2) of " preceding "this subsection " in the present third sentence; and in (c), deleted the former first sentence, which read: "The joint committee shall organize as soon as may be practicable after the appointment of its members, by the selection of a chairman and vice chairman from among its membership and the appointment of a secretary, who need not be a member of the joint committee", made the former second sentence the present first and third sentences, inserted the present second sentence pertaining to a full-time faculty member of a State public institution of higher education, and made related changes.

Former (b)(1) read: "Commencing with the second Tuesday in January of the next even numbered year following the effective date of P.L.2004, c.24, the joint committee shall be composed of sixteen members as follows: four members of the Senate, appointed by the President thereof, no more than two of whom shall be of the same political party; four members of the General Assembly, appointed by the Speaker thereof, no more than two of whom shall be of the same political party; and eight public members, two appointed by the President of the Senate, two appointed by the Speaker of the General Assembly, two appointed by the Minority Leader of the Senate and two appointed by the Minority Leader of the General Assembly. The terms of the members serving pursuant to this paragraph shall be terminated on the 30th day after the effective date of P.L.2008, c.16."

OLS Corrections:

Pursuant to *R.S. 1:3-1*, the Office of Legislative Services, through its Legislative Counsel and with the concurrence of the Attorney General, deleted "of" following "for a period" in the second sentence of subsection (i) in L. 2008, c. 16, § 1.

Publisher's Note: The bracketed material was added by the Publisher to provide a reference.

Editor's Note:

The reference in subsection (d) to the "New Jersey Conflicts of Interest Law" is to *52:13D-12* et seq.

Codes of ethics, see *52:13D-23*.

Members of the Legislature required to consult each year with Ethics Counsel, see *52:13D-28*.

Effective Dates:

Section 3 of L. 2004, c. 25 provides: "This act shall take effect immediately, but any increased penalties shall apply only to violations occurring on or after the effective date of this act." Chapter 25, L. 2004, was approved on June 16, 2004.

Section 3 of L. 2007, c. 203 provides: "This act shall take effect on the second Tuesday in January next following enactment." Chapter 203, L. 2007, was approved on Nov. 2, 2007.

LexisNexis (R) Notes:

LAW REVIEWS & JOURNALS

1. *57 Rutgers L. Rev. 1175*, Article: Restoring the Public Trust: An Agenda For Ethics Reform of State Government and a Proposed Model for New Jersey.



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N.J. Stat. § 52:13D-22.1 (2014)

§ 52:13D-22.1. Definition

As used in this act, "document" means any statement, report, form, or accounting which is required to be filed with the Joint Legislative Committee on Ethical Standards within a prescribed period or on or before a prescribed date pursuant to law or the legislative code of ethics promulgated pursuant to the "New Jersey Conflicts of Interest Law," P.L.1971, c.182 (*C.52:13D-12 et seq.*). The term "within a prescribed period or on or before a prescribed date" includes any extension of time granted by the committee for filing a document.

HISTORY: L. 1991, c. 333, § 1.



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N.J. Stat. § 52:13D-22.2 (2014)

§ 52:13D-22.2. Timely postmark on mailed documents

Any document which is mailed shall be deemed to be timely filed if the postmark stamped on the cover, envelope or wrapper in which the document was mailed bears a date on or before the date of the last day prescribed for filing the document.

HISTORY: L. 1991, c. 333, § 2.



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N.J. Stat. § 52:13D-22.3 (2014)

§ 52:13D-22.3. Weekend, holiday rule

When the date or the last day prescribed for filing a document falls on a Saturday, Sunday or legal holiday, the next succeeding business day shall be regarded as the date of the last day prescribed for filing the document.

HISTORY: L. 1991, c. 333, § 3.



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N.J. Stat. § 52:13D-23 (2014)

§ 52:13D-23. Codes of ethics

(a) (1) The head of each State agency, or the principal officer in charge of a division, board, bureau, commission or other instrumentality within a department of State Government designated by the head of such department for the purposes hereinafter set forth, shall within six months from the date of enactment, promulgate a code of ethics to govern and guide the conduct of the members of the Legislature, the State officers and employees or the special State officers and employees in the agency to which said code is applicable. Such code shall conform to the general standards hereinafter set forth in this section, but it shall be formulated with respect to the particular needs and problems of the agency to which said code is to apply and, when applicable, shall be a supplement to the uniform ethics code promulgated pursuant to paragraph (2) of this subsection. Notwithstanding any other provisions of this section, the New Jersey members to any interstate agency to which New Jersey is a party and the officers and employees of any State agency which fails to promulgate a code of ethics shall be deemed to be subject to a code of ethics the provisions of which shall be paragraphs (1) through (6) of subsection (e) of this section.

(2) Within 180 days following the effective date of this act, P.L.2005, c.382, the State Ethics Commission shall promulgate a uniform ethics code to govern and guide the conduct of State officers and employees and special State officers and employees in State agencies in the Executive Branch. Such code shall conform to the general standards hereinafter set forth in this section, shall be the primary code of ethics for State agencies once it is adopted and a code promulgated pursuant to paragraph (1) of this subsection shall be a supplement to the primary code. The head of each State agency, or the principal officer in charge of a division, board, bureau, commission or other instrumentality within a department of State Government designated by the head of such department shall revise each code of ethics promulgated prior to the uniform code to recognize the uniform code as the primary code.

(b) A code of ethics formulated pursuant to subsection (a) of this section to govern and guide the conduct of the State officers and employees or the special State officers and employees in any State agency in the Executive Branch, or any portion of such a code, shall not be effective unless it has first been approved by the State Ethics Commission. When a proposed code is submitted to the said commission it shall be accompanied by an opinion of the Attorney General as to its compliance with the provisions of this act and any other applicable provision of law. Nothing contained herein shall prevent officers of State agencies in the Executive Branch from consulting with the Attorney General or with the State Ethics Commission at any time in connection with the preparation or revision of such codes of ethics.

(c) A code of ethics formulated pursuant to this section to govern and guide the conduct of the members of the Legislature, State officers and employees or special State officers and employees in any State agency in the Legislative Branch, or any portion of such code, shall not be effective unless it has first been approved by the Legislature by concurrent resolution. When a proposed code is submitted to the Legislature for approval it shall be accompanied by an

N.J. Stat. § 52:13D-23

opinion of the chief counsel as to its compliance with the provisions of this act and any other applicable provisions of law. Nothing contained herein shall prevent officers of State agencies in the Legislative Branch from consulting with the Chief Legislative Counsel or the Joint Legislative Committee on Ethical Standards at any time in connection with the preparation or revision of such codes of ethics.

(d) Violations of a code of ethics promulgated pursuant to this section shall be cause for removal, suspension, demotion or other disciplinary action by the State officer or agency having the power of removal or discipline. When a person who is in the classified civil service is charged with a violation of such a code of ethics, the procedure leading to such removal or discipline shall be governed by any applicable provisions of the Civil Service Act, *N.J.S. 11A:1-1* et seq., and the Rules of the Civil Service Commission. No action for removal or discipline shall be taken under this subsection except upon the referral or with the approval of the State Ethics Commission or the Joint Legislative Committee on Ethical Standards, whichever is authorized to exercise jurisdiction with respect to the complaint upon which such action for removal or discipline is to be taken.

(e) A code of ethics for officers and employees of a State agency shall conform to the following general standards:

(1) No State officer or employee or special State officer or employee should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest.

(2) No State officer or employee or special State officer or employee should engage in any particular business, profession, trade or occupation which is subject to licensing or regulation by a specific agency of State Government without promptly filing notice of such activity with the State Ethics Commission, if he is an officer or employee in the Executive Branch, or with the Joint Legislative Committee on Ethical Standards, if he is an officer or employee in the Legislative Branch.

(3) No State officer or employee or special State officer or employee should use or attempt to use his official position to secure unwarranted privileges or advantages for himself or others.

(4) No State officer or employee or special State officer or employee should act in his official capacity in any matter wherein he has a direct or indirect personal financial interest that might reasonably be expected to impair his objectivity or independence of judgment.

(5) No State officer or employee or special State officer or employee should undertake any employment or service, whether compensated or not, which might reasonably be expected to impair his objectivity and independence of judgment in the exercise of his official duties.

(6) No State officer or employee or special State officer or employee should accept any gift, favor, service or other thing of value under circumstances from which it might be reasonably inferred that such gift, service or other thing of value was given or offered for the purpose of influencing him in the discharge of his official duties.

(7) No State officer or employee or special State officer or employee should knowingly act in any way that might reasonably be expected to create an impression or suspicion among the public having knowledge of his acts that he may be engaged in conduct violative of his trust as a State officer or employee or special State officer or employee.

(8) Rules of conduct adopted pursuant to these principles should recognize that under our democratic form of government public officials and employees should be drawn from all of our society, that citizens who serve in government cannot and should not be expected to be without any personal interest in the decisions and policies of government; that citizens who are government officials and employees have a right to private interests of a personal, financial and economic nature; that standards of conduct should separate those conflicts of interest which are unavoidable in a free society from those conflicts of interest which are substantial and material, or which bring government into disrepute.

(f) The code of ethics for members of the Legislature shall conform to subsection (e) hereof as nearly as may be possible.

HISTORY: L. 1971, c. 182, § 12; amended 1987, c. 432, § 6 ; 2005, c. 382, § 10, eff. Mar. 15, 2006; 2008, c. 29, § 104, eff. June 30, 2008.

NOTES:

Amendment Note:

N.J. Stat. § 52:13D-23

2008 amendment, by Chapter 29, substituted "Civil Service Commission" for "Department of Personnel" in the second sentence of (d).

Effective Dates:

Section 18 of L. 2005, c. 382 provides: "This act shall take effect on the 60th day following enactment, except that the change in membership of the Executive Commission on Ethical Standards as set forth in subsection (b) of section 10 of P.L.1971, c.182 (C.52:13D-21) shall take effect January 17, 2006." Chapter 382, L. 2005, was approved on January 14, 2006.

Section 120 of L. 2008, c. 29 provides: "This act shall take effect immediately and any actions necessary to implement this act may be taken any time thereafter. General implementation shall be completed no later than 12 months following enactment." Chapter 29, L. 2008, was approved on June 30, 2008.

Cross References:

State Ethics Commission; membership; powers; duties; penalties, see 52:13D-21.

Joint Legislative Committee on Ethical Standards; membership; powers; terms; duties; penalties, see 52:13D-22.

State officer, employee may enter into certain contracts with State agency, see 52:13D-19.1.

Administrative Code:

1. *N.J.A.C. 13:69-4.9* (2013), CHAPTER GENERAL PROVISIONS, Penalties.
2. *N.J.A.C. 19:61-3.6* (2013), STATE ETHICS COMMISSION, Determination by State agency.
3. *N.J.A.C. 5:1-6.1* (2013), CHAPTER STANDARDS OF CONDUCT, Compliance with Department of Community Affairs Code of Ethics.
4. *N.J.A.C. 7:26-16.14* (2013), CHAPTER SOLID WASTE, Confidential information.

LexisNexis (R) Notes:

CASE NOTES

1. That the sister of the Commissioner of the New Jersey Board of Public Utilities (BPU) was a BPU employee (the Chief of the New Jersey Bureau of Rates and Tariffs) required the Commissioner's recusal in considering BPU matters on which her sister worked, as the sister had a significant role in matters assigned to her Bureau, which created a disqualifying conflict of interest under *N.J. Stat. Ann. § 52:13D-23(e)(7)* and *N.J. Admin. Code § 19:61-7.4*. *In re Bator*, 395 N.J. Super. 120, 928 A.2d 132, 2007 N.J. Super. LEXIS 262 (App.Div. 2007).

2. Board of Public Utilities (BPU) was the only proper promulgator of a BPU Code of Ethics; executive commission's subpoena against regulatory officer was properly declined. *New Jersey Executive Com. on Ethical Standards v. Byrne*, 238 N.J. Super. 84, 569 A.2d 264, 1990 N.J. Super. LEXIS 20 (App.Div. 1990).

3. Commissioner of the Board of Public Utilities (BPU) did not violate *N.J. Stat. Ann. § 52:13D-23(e)(7)*, where a representative of a regulated utility made donations to local athletic clubs for the purpose of securing the availability of their basketball courts for use by all of the commissioners of various jurisdictions for recreational activity during annual conventions; allowing the utility representative to assist in arranging for the use of the basketball courts did not create a justifiable impression or suspicion of a breach of public trust and the commissioner had no knowledge of the payments or donations for the use of the basketball courts; therefore, if, in fact, a gift was intended to be made, the putative donee lacked the knowledge required under *N.J. Stat. Ann. § 52:13D-14*. *Executive Comm'n on Ethical Stds. v. Salmon*, 295 N.J. Super. 86, 684 A.2d 930, 1996 N.J. Super. LEXIS 419 (App.Div. 1996).

4. That the sister of the Commissioner of the New Jersey Board of Public Utilities (BPU) was a BPU employee (the Chief of the New Jersey Bureau of Rates and Tariffs) required the Commissioner's recusal in considering BPU matters on which her sister worked, as the sister had a significant role in matters assigned to her Bureau, which created a disqualifying conflict of interest under *N.J. Stat. Ann. § 52:13D-23(e)(7)* and *N.J. Admin. Code § 19:61-7.4*. *In re Bator*, 395 N.J. Super. 120, 928 A.2d 132, 2007 N.J. Super. LEXIS 262 (App.Div. 2007).

N.J. Stat. § 52:13D-23

5. Commissioner for the New Jersey Board of Public Utilities (BPU) did not violate *N.J. Stat. Ann. § 52:13D-23(e)(7)*, where the commissioner used athletic club facilities that received donations from utilities regulated by the BPU where the commissioner was unaware of the donations. *Executive Comm'n on Ethical Stds. v. Salmon*, 295 N.J. Super. 86, 684 A.2d 930, 1996 N.J. Super. LEXIS 419 (App.Div. 1996).

6. Failure of a commissioner of the Board of Public Utilities (BPU) to follow-up on the billing and payment for dinners that he attended that were hosted and paid for by a regulated electric utility constituted ethics violations pursuant to *N.J. Stat. Ann. § 52:13D-23(e)6*, despite the facts that the commissioner instructed the host to submit a bill to the BPU, that the BPU's travel coordinator was advised by the commissioner that when the request for reimbursement arrived, she could take care of it, and that this instruction to bill the BPU was in accordance with a longstanding and accepted BPU practice. *Executive Comm'n on Ethical Stds. v. Salmon*, 295 N.J. Super. 86, 684 A.2d 930, 1996 N.J. Super. LEXIS 419 (App.Div. 1996).

7. Commissioner of the Board of Public Utilities (BPU) did not violate *N.J. Stat. Ann. § 52:13D-23(e)(7)*, where a representative of a regulated utility made donations to local athletic clubs for the purpose of securing the availability of their basketball courts for use by all of the commissioners of various jurisdictions for recreational activity during annual conventions; allowing the utility representative to assist in arranging for the use of the basketball courts did not create a justifiable impression or suspicion of a breach of public trust and the commissioner had no knowledge of the payments or donations for the use of the basketball courts; therefore, if, in fact, a gift was intended to be made, the putative donee lacked the knowledge required under *N.J. Stat. Ann. § 52:13D-14*. *Executive Comm'n on Ethical Stds. v. Salmon*, 295 N.J. Super. 86, 684 A.2d 930, 1996 N.J. Super. LEXIS 419 (App.Div. 1996).

8. *N.J. Stat. Ann. § 52:13D-23(a)* delegated the determination of ethical and proper behavior by state employees to the head of each state agency, and any requirement that there be negotiations over the terms and conditions of the prohibition against certain outside employment would substantially interfere with managerial prerogatives and substantial governmental policies. *State, Office of Employees Relations v. Communications Workers*, 267 N.J. Super. 582, 632 A.2d 530, 1993 N.J. Super. LEXIS 801, 145 L.R.R.M. (BNA) 2506 (App.Div. 1993).

LAW REVIEWS & JOURNALS

1. 57 *Rutgers L. Rev.* 1175, Article: Restoring the Public Trust: An Agenda For Ethics Reform of State Government and a Proposed Model for New Jersey.



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TITLE 52. STATE GOVERNMENT, DEPARTMENTS AND OFFICERS
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GO TO THE NEW JERSEY ANNOTATED STATUTES ARCHIVE DIRECTORY

N.J. Stat. § 52:13D-24 (2014)

§ 52:13D-24. Restriction of solicitation, receipt, etc. of certain things of value by certain State officers, employees

a. No State officer or employee, special State officer or employee, or member of the Legislature shall solicit, receive or agree to receive, whether directly or indirectly, any compensation, reward, employment, gift, honorarium, out-of-State travel or subsistence expense or other thing of value from any source other than the State of New Jersey, for any service, advice, assistance, appearance, speech or other matter related to the officer, employee, or member's official duties, except as authorized in this section.

b. A State officer or employee, special State officer or employee, or member of the Legislature may, in connection with any service, advice, assistance, appearance, speech or other matter related to the officer, employee, or member's official duties, solicit, receive or agree to receive, whether directly or indirectly, from sources other than the State, the following:

(1) reasonable fees for published books on matters within the officer, employee, or member's official duties;

(2) reimbursement or payment of actual and reasonable expenditures for travel or subsistence and allowable entertainment expenses associated with attending an event in New Jersey if expenditures for travel or subsistence and entertainment expenses are not paid for by the State of New Jersey;

(3) reimbursement or payment of actual and reasonable expenditures for travel or subsistence outside New Jersey, not to exceed \$ 500.00 per trip, if expenditures for travel or subsistence and entertainment expenses are not paid for by the State of New Jersey. The \$ 500 per trip limitation shall not apply if the reimbursement or payment is made by (a) a nonprofit organization of which the officer, employee, or member is, at the time of reimbursement or payment, an active member as a result of the payment of a fee or charge for membership to the organization by the State or the Legislature in the case of a member of the Legislature; (b) a nonprofit organization that does not contract with the State to provide goods, materials, equipment, or services; or (c) any agency of the federal government, any agency of another state or of two or more states, or any political subdivision of another state.

Members of the Legislature shall obtain the approval of the presiding officer of the member's House before accepting any reimbursement or payment of expenditures for travel or subsistence outside New Jersey.

As used in this subsection, "reasonable expenditures for travel or subsistence" means commercial travel rates directly to and from an event and food and lodging expenses which are moderate and neither elaborate nor excessive; and "allowable entertainment expenses" means the costs for a guest speaker, incidental music and other ancillary entertainment at any meal at an event, provided they are moderate and not elaborate or excessive, but does not include the costs

N.J. Stat. § 52:13D-24

of personal recreation, such as being a spectator at or engaging in a sporting or athletic activity which may occur as part of that event.

c. This section shall not apply to the solicitation or acceptance of contributions to the campaign of an announced candidate for elective public office, except that campaign contributions may not be accepted if they are known to be given in lieu of a payment prohibited pursuant to this section.

d. (1) Notwithstanding any other provision of law, a designated State officer as defined in paragraph (2) of this subsection shall not solicit, receive or agree to receive, whether directly or indirectly, any compensation, salary, honorarium, fee, or other form of income from any source, other than the compensation paid or reimbursed to him or her by the State for the performance of official duties, for any service, advice, assistance, appearance, speech or other matter, except for investment income from stocks, mutual funds, bonds, bank accounts, notes, a beneficial interest in a trust, financial compensation received as a result of prior employment or contractual relationships, and income from the disposition or rental of real property, or any other similar financial instrument and except for reimbursement for travel as authorized in paragraphs (2) and (3) of subsection b. of this section. To receive such income, a designated State officer shall first seek review and approval by the State Ethics Commission to ensure that the receipt of such income does not violate the "New Jersey Conflicts of Interest Law," P.L.1971, c.182 (*C.52:13D-12 et seq.*) or any applicable code of ethics, and does not undermine the full and diligent performance of the designated State officer's duties.

(2) For the purposes of this subsection, "designated State officer" shall include: the Governor, the Adjutant General, the Secretary of Agriculture, the Attorney General, the Commissioner of Banking and Insurance, the director of the Division of Business Assistance, Marketing, and International Trade, the Commissioner of Community Affairs, the Commissioner of Corrections, the Commissioner of Education, the Commissioner of Environmental Protection, the Commissioner of Health and Senior Services, the Commissioner of Human Services, the Commissioner of Children and Families, the Commissioner of Labor and Workforce Development, the President of the State Board of Public Utilities, the Secretary of State, the Superintendent of State Police, the Commissioner of Transportation, the State Treasurer, the head of any other department in the Executive Branch, and the following members of the staff of the Office of the Governor: Chief of Staff, Chief of Management and Operations, Chief of Policy and Communications, Chief Counsel to the Governor, Director of Communications, Policy Counselor to the Governor, and any deputy or principal administrative assistant to any of the aforementioned members of the staff of the Office of the Governor listed in this subsection.

e. A violation of this section shall not constitute a crime or offense under the laws of this State.

HISTORY: L. 1971, c. 182, § 13; amended 2003, c. 255, § 1, eff. Apr. 13, 2004; 2005, c. 382, § 11, eff. Mar. 15, 2006; 2006, c. 47, § 188, eff. July 1, 2006; 2008, c. 29, § 105, eff. June 30, 2008.

NOTES:

Amendment Note:

2006 amendment, by Chapter 47, inserted "the Commissioner of Children and Families" in d.(2).

2008 amendment, by Chapter 29, in d.(2), deleted "the Commissioner of Personnel" following "the Commissioner of Labor and Workforce Development."

OLS Corrections:

Pursuant to *R.S. 1:3-1*, the Office of Legislative Services, through its Legislative Counsel and with the concurrence of the Attorney General, substituted "the director of the Division of Business Assistance, Marketing, and International Trade" for "the Secretary and Chief Executive Officer of the Commerce and Economic Growth Commission" in subsection d. and corrected additional technical errors in L. 2008, c. 29, § 105.

Effective Dates:

Section 8 of L. 2003, c. 255 provides: "This act shall take effect on the 90th day next following enactment except that sections 5, 6 and 7 shall take effect immediately." Chapter 255, L. 2003, was approved on January 14, 2004.

Section 18 of L. 2005, c. 382 provides: "This act shall take effect on the 60th day following enactment, except that the change in membership of the Executive Commission on Ethical Standards as set forth in subsection (b) of section 10 of P.L.1971, c.182 (*C.52:13D-21*) shall take effect January 17, 2006." Chapter 382, L. 2005, was approved on January 14, 2006.

N.J. Stat. § 52:13D-24

Section 205 of L. 2006, c. 47 provides: "This act shall take effect July 1, 2006 and, if enacted after that date, shall be retroactive to July 1, 2006." Chapter 47, L. 2006, was approved on July 11, 2006.

Section 120 of L. 2008, c. 29 provides: "This act shall take effect immediately and any actions necessary to implement this act may be taken any time thereafter. General implementation shall be completed no later than 12 months following enactment." Chapter 29, L. 2008, was approved on June 30, 2008.

Cross References:

Restriction on offer of gifts, etc. to certain State officers or employees., see *52:13C-21b*.

Restriction on acceptance of gifts, etc. from lobbyist, governmental affairs agent by legislation, staff, see *52:13D-24.1*.

Administrative Code:

1. *N.J.A.C. 19:25-20.3B* (2013), ELECTION LAW ENFORCEMENT COMMISSION, \$ 250.00 annual limit on gifts.

2. N.J.A.C. EO 2010 No. 24 (2013), level= CHRIS CHRISTIE, 24(2010).

LexisNexis (R) Notes:

CASE NOTES

1. In reference to a prosecution for honest services fraud, nothing in New Jersey state law rendered *18 U.S.C.S. § 1346* either unconstitutionally vague or inconsistent with due regard for federalism concerns with respect to the allegations of a quid pro quo bribery arrangement between a state senator and a university dean. The allegations were consistent with the New Jersey Bribery Act, *N.J. Stat. Ann. § 2C:27-2*, and New Jersey conflict of interest laws, *N.J. Stat. Ann. §§ 52:13D-14, 52:13D-24. United States v. Bryant, 556 F. Supp. 2d 378, 2008 U.S. Dist. LEXIS 51395 (D.N.J. 2008)*.

2. In reference to a prosecution for honest services fraud, nothing in New Jersey state law rendered *18 U.S.C.S. § 1346* either unconstitutionally vague or inconsistent with due regard for federalism concerns with respect to the allegations of a quid pro quo bribery arrangement between a state senator and a university dean. The allegations were consistent with the New Jersey Bribery Act, *N.J. Stat. Ann. § 2C:27-2*, and New Jersey conflict of interest laws, *N.J. Stat. Ann. §§ 52:13D-14, 52:13D-24. United States v. Bryant, 556 F. Supp. 2d 378, 2008 U.S. Dist. LEXIS 51395 (D.N.J. 2008)*.

3. Failure of a commissioner of the Board of Public Utilities (BPU) to follow-up on the billing and payment for dinners that he attended that were hosted and paid for by a regulated electric utility constituted ethics violations pursuant to *N.J. Stat. Ann. § 52:13D-24*, despite the facts that the commissioner instructed the host to submit a bill to the BPU, that the BPU's travel coordinator was advised by the commissioner that when the request for reimbursement arrived, she could take care of it, and that this instruction to bill the BPU was in accordance with a longstanding and accepted BPU practice. *Executive Comm'n on Ethical Stds. v. Salmon, 295 N.J. Super. 86, 684 A.2d 930, 1996 N.J. Super. LEXIS 419 (App.Div. 1996)*.

LAW REVIEWS & JOURNALS

1. *57 Rutgers L. Rev. 1175*, Article: Restoring the Public Trust: An Agenda For Ethics Reform of State Government and a Proposed Model for New Jersey.



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GO TO THE NEW JERSEY ANNOTATED STATUTES ARCHIVE DIRECTORY

N.J. Stat. § 52:13D-24.1 (2014)

§ 52:13D-24.1. Restriction on acceptance of gifts, etc. from lobbyist, governmental affairs agent by legislation, staff

a. Except as expressly authorized in section 13 of P.L.1971, c.182 (*C.52:13D-24*) or when the lobbyist or governmental affairs agent is a member of the immediate family of a member of the Legislature or legislative staff, no member of the Legislature or legislative staff may accept, directly or indirectly, any compensation, reward, employment, gift, honorarium or other thing of value from each lobbyist or governmental affairs agent, as defined in the "Legislative and Governmental Process Activities Disclosure Act," P.L.1971, c.183 (*C.52:13C-18 et seq.*), totaling more than \$ 250.00 in a calendar year. The \$ 250.00 limit on acceptance of compensation, reward, gift, honorarium or other thing of value shall also apply to each member of the immediate family of a member of the Legislature, as defined in section 2 of P.L.1971, c.182 (*C.52:13D-13*) to be a spouse, child, parent, or sibling of the member residing in the same household as the member of the Legislature.

b. The prohibition in subsection a. of this section on accepting any compensation, reward, gift, honorarium or other thing of value shall not apply if received in the course of employment, by an employer other than the State, of an individual covered in subsection a. of this section or a member of the immediate family. The prohibition in subsection a. of this section on accepting any compensation, reward, gift, honorarium or other thing of value shall not apply if acceptance is from a member of the immediate family when the family member received such in the course of his or her employment.

c. Subsection a. of this section shall not apply if a member of the Legislature or legislative staff who accepted any compensation, reward, gift, honorarium or other thing of value provided by a lobbyist or governmental affairs agent makes a full reimbursement, within 90 days of acceptance, to the lobbyist or governmental affairs agent in an amount equal to the money accepted or the fair market value of that which was accepted if other than money. As used in this subsection, "fair market value" means the actual cost of the compensation, reward, gift, honorarium or other thing of value accepted.

d. A violation of this section shall not constitute a crime or offense under the laws of this State.

HISTORY: L. 2003, c. 255, § 2, eff. Apr. 13, 2004; amended 2004, c. 27, § 26, eff. June 16, 2004; 2005, c. 382, § 15, eff. Mar. 15, 2006.

NOTES:

Effective Dates:

N.J. Stat. § 52:13D-24.1

Section 8 of L. 2003, c. 255 provides: "This act shall take effect on the 90th day next following enactment except that sections 5, 6 and 7 shall take effect immediately." Chapter 255, L. 2003, was approved on January 14, 2004.

Section 18 of L. 2005, c. 382 provides: "This act shall take effect on the 60th day following enactment, except that the change in membership of the Executive Commission on Ethical Standards as set forth in subsection (b) of section 10 of P.L.1971, c.182 (*C.52:13D-21*) shall take effect January 17, 2006." Chapter 382, L. 2005, was approved on January 14, 2006.

Administrative Code:

1. *N.J.A.C. 19:25-20.3B* (2013), ELECTION LAW ENFORCEMENT COMMISSION, \$ 250.00 annual limit on gifts.

LexisNexis 50 State Surveys, Legislation & Regulations

Lobbyists



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N.J. Stat. § 52:13D-25 (2014)

§ 52:13D-25. Disclosure or use for personal gain of information not available to public

No State officer or employee, special State officer or employee, or member of the Legislature shall willfully disclose to any person, whether or not for pecuniary gain, any information not generally available to members of the public which he receives or acquires in the course of and by reason of his official duties. No State officer or employee, special State officer or employee, or member of the Legislature shall use for the purpose of pecuniary gain, whether directly or indirectly, any information not generally available to members of the public which he receives or acquires in the course of and by reason of his official duties.

HISTORY: L. 1971, c. 182, § 14, eff. Jan. 11, 1972.

NOTES:

Administrative Code:

1. *N.J.A.C. 13:69-4.4 (2013)*, CHAPTER GENERAL PROVISIONS, State Records Storage Center: retention schedule; storage; destruction.

2. *N.J.A.C. 13:69-4.9 (2013)*, CHAPTER GENERAL PROVISIONS, Penalties.



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N.J. Stat. § 52:13D-26 (2014)

§ 52:13D-26. Inducing or attempting to induce legislative member or state officer or employee to violate act; penalty

No person shall induce or attempt to induce any State officer or employee, special State officer or employee, or member of the Legislature to violate any provision of this act or any code of ethics promulgated thereunder. Any person who willfully violates any provision of this section is a disorderly person, and shall be subject to a fine not to exceed \$ 500.00 or imprisonment not to exceed 6 months, or both.

HISTORY: L. 1971, c. 182, § 15, eff. Jan. 11, 1972.



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N.J. Stat. § 52:13D-27 (2014)

§ 52:13D-27. Short title

This act shall be known as, and may be cited as, the "New Jersey Conflicts of Interest Law."

HISTORY: L. 1971, c. 182, § 17, eff. Jan. 11, 1972.



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N.J. Stat. § 52:13D-28 (2014)

§ 52:13D-28. Online tutorial on legislative ethics; certification; members of legislature, participation in annual ethics training, consultation with Ethics Counsel

The Legislature shall provide an online tutorial on legislative ethics for its members and State officers or employees and special State officers or employees in the Legislative Branch of government. Each member of the Legislature and officer or employee in the Legislative Branch shall take the tutorial no later than April 1 of every even-numbered year. Each Executive Director shall submit a certification to the Ethics Counsel for himself or herself and for his or her respective staff members that they have completed the online tutorial. Each member of the Legislature shall submit to the Ethics Counsel a certification that he or she and his or her district office staff members have completed the online tutorial. The certification shall be public information. Failure to take the tutorial and file the certification shall be reported by the Ethics Counsel to the joint committee.

In addition to the tutorial, all officers and employees in the Legislative Branch shall participate in annual ethics training as directed by their Executive Directors and all members of the Legislature shall participate in annual ethics training as directed by the President of the Senate for members of the Senate and by the Speaker of the General Assembly for members of the General Assembly. The Executive Directors, the President of the Senate, and the Speaker of the General Assembly shall also direct the process by which completion of the training is verified. Such verification shall be filed with the Ethics Counsel. The verification shall be public information. Failure to participate in the training and file the verification shall be reported by the Ethics Counsel to the joint committee.

Each member of the Legislature shall consult with the Ethics Counsel each year regarding the requirements of the New Jersey Conflicts of Interest Law and the Legislative Code of Ethics and any other applicable law, rule or standard of conduct relating to the area of ethics. The assistance of the Ethics Counsel to members of the Legislature is subject to the attorney-client privilege. This assistance is intended as a service to the members of the Legislature and may not be deemed to diminish a member's personal responsibility for adherence to applicable laws, code provisions, rules and other standards of conduct. No privileged information provided to the Ethics Counsel by members of the Legislature or officers or employees in the Legislative Branch shall be used or admitted into evidence in any proceeding against them; but this shall not prohibit proceedings against them from evidence independently derived.

HISTORY: L. 2003, c. 255, § 4, eff. Apr. 13, 2004; amended 2007, c. 203, § 2, eff. Jan. 8, 2008; 2008, c. 16, § 2, eff. Apr. 21, 2008.

NOTES:

Amendment Note:

N.J. Stat. § 52:13D-28

2007 amendment, by Chapter 203, rewrote the section, which formerly read: "The Legislature shall provide a program on legislative ethics for its members and State officers or employees and special State officers or employees in the Legislative Branch of government no later than April 1 of every even-numbered year."

2008 amendment, by Chapter 16, in the first paragraph, added the third through sixth sentences; and in the second paragraph, added "and all members of the Legislature shall participate in annual ethics training as directed by the President of the Senate for members of the Senate and by the Speaker of the General Assembly for members of the General Assembly" to the first sentence, and added the second through fifth sentences.

Editor's Note:

Ethics Counsel, see *52:13D-22(d)*.

"New Jersey Conflicts of Interest Law," see *52:13D-12* et seq.

Effective Dates:

Section 8 of L. 2003, c. 255 provides: "This act shall take effect on the 90th day next following enactment except that sections 5, 6 and 7 shall take effect immediately." Chapter 255, L. 2003, was approved on January 14, 2004.

Section 3 of L. 2007, c. 203 provides: "This act shall take effect on the second Tuesday in January next following enactment." Chapter 203, L. 2007, was approved on Nov. 2, 2007.

EXHIBIT 25

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Upsala College

Bar/Court Admissions

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United States District Court for the District of New Jersey, 1976

U. S. Court of Appeals, Third Circuit, 1980

United States Supreme Court, 1987

Honors and Awards

Phi Alpha Theta, National History Honor Society

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EXHIBIT 26



January 9, 2006
Power Brokers

State Senator Who Combines Donations, Law Practice and Influence

By RICHARD LEZIN JONES

When Gov. James E. McGreevey stood in his outer office at the New Jersey State House nearly 17 months ago to tell the world that he was resigning because of an extramarital affair with a man, it was a moment that marked the very public demise of one political career and quietly confirmed the ascendancy of another.

During the nationally televised news conference that afternoon in August 2004, all eyes were trained on Mr. McGreevey, whose admission meant the end of a political life he had nurtured for more than two decades.

But standing barely noticed to one side of the crowded anteroom was State Senator Raymond J. Lesniak of Union County, long one of the state's most effective Democratic fund-raisers, whose widening sphere of influence included shaping the extraordinary moment when Mr. McGreevey resigned.

Days before his announcement, Mr. McGreevey sought out Senator Lesniak and confided that he was gay - an admission the governor made to the senator even before he told his wife, Mr. Lesniak later recalled. And it was the counsel of Mr. Lesniak, a born-again Christian and a friend from Mr. McGreevey's days as the mayor of Woodbridge, upon which the governor relied while weighing whether to leave office.

If nothing else, Mr. Lesniak's behind-the-scenes role in Mr. McGreevey's departure validated his position as one of the state's most influential power brokers. When Governor-elect Jon S. Corzine takes office on Jan. 17, one of the most closely watched aspects of his administration will be its interaction with the Democratic leaders who parlay their ability to raise campaign funds into influence machines that affect everything from policy to government spending.

Mr. Lesniak is one of a handful who wield their influence under the State House dome, a few dozen paces from the governor's office. While most of those who run the state behind the scenes are unelected, Mr. Lesniak is, in essence, a hybrid who multitasks as an elected official and political leader. Like his State Senate colleague Sharpe James, who is also the mayor of Newark, and Robert Menendez, New Jersey's newly designated United States senator, he has emerged as a central figure at the intersection of political, legal and business interests.

At the heart of that nexus is Mr. Lesniak's law firm, Weiner Lesniak, based in Parsippany. In the past decade, it has done legal work for scores of New Jersey municipalities, collecting millions of dollars. In many instances, the contracts awarded to Mr. Lesniak's firm came after the senator or his allies offered campaign contributions or other political support to local officials who decide who will get the work, a fact that Mr. Lesniak acknowledges.

While such trade-offs are hardly novel or unique to New Jersey's power brokers, what sets them apart is the prevalence and common acceptance of the practice.

"I don't deny that," Mr. Lesniak said of connections between his support and contracts for his firm. "People say, 'You raise money for people who get elected and then they hire your law firm.' I go, 'Shocking, isn't it?' Are you supposed to hire people who donated to your opponent?"

By Mr. Lesniak's estimates, government work accounted for as much as a quarter of his firm's business in recent years. Currently, he said, it accounts for about 10 percent.

Weiner Lesniak earned more than \$8 million in the past eight years by representing Newark in a long-running lawsuit that accused the Port Authority of New York and New Jersey of shortchanging the city of hundreds of millions dollars in lease payments for the Newark airport. The two sides agreed last month to settle the suit for \$450 million.

During the 1990's, when Mr. McGreevey was the mayor of Woodbridge, Weiner Lesniak collected more than \$5 million in fees from the municipality. At the same time, the firm contributed about \$41,800 to Mr. McGreevey's campaigns, according to public records.

Mr. Lesniak said that most of the government work is brought in by the roughly 40 lawyers at the firm. But does it hurt that one of the firm's senior partners is Ray Lesniak?

"No, of course not," he said.

Such links have made Mr. Lesniak vulnerable to critics who say that campaign cash and other political interests play too large a role in the awarding of government contracts. One result, they say, is higher costs, ultimately borne by taxpayers.

Mr. Lesniak's detractors also say that his law firm and extensive political network of close allies - which directly translates into 3 votes in the 40-member Senate, including his own, and 5 in the 80-member General Assembly - enable him to exert a presence in deals large and small.

In many cases, the influence is wielded at the most local level. In Plainfield, for example, candidates backed by one of Mr. Lesniak's allies,

Assemblyman Jerry Green - who, according to public records, has received thousands of dollars in campaign contributions from Weiner Lesniak in the past decade - gained control of the school board in 2003.

Controlling a school board might seem like small stakes in the political world. But because Plainfield has been named a special-needs district under the Abbott decision - a 1998 state court ruling that ordered New Jersey to spend as much to educate students in its poor districts as in its wealthiest ones - it is flush with additional state and federal aid.

One of the reconstituted board's first acts was to replace the legal counsel that had served the district since 1972. The firm that was awarded the contract? Weiner Lesniak.

Last month, the district gave the firm another yearlong contract, worth about \$80,000.

Board officials did not return calls about the contract. But one resident active in Democratic politics, who had been briefed on the board's closed-door discussions but would speak only if granted anonymity, for fear of alienating Senator Lesniak, said: "They knew that it was going to cost more over time. And that this was payback for contributions and influence that had been gotten."

Mr. Lesniak said there is nothing improper about the way his business has benefited from his politics.

"I operate within the law totally and exclusively," he said. "But I'm not going to unilaterally disarm myself or the people that I support."

A bachelor bon vivant who dispenses advice with the enthusiasm of a self-help guru, Mr. Lesniak, 59, cuts a distinctive figure in the Senate, with his gravelly baritone and his eagerness to seize the spotlight.

In the last month, he has donned a red Santa hat on the Senate floor to lead a sing-along to a recording of [Bruce Springsteen's](#) rendition of "Santa Claus Is Coming to Town"; traveled to Arizona to cheer on Rutgers at its first bowl game since 1978; led a holiday party at a women's shelter sponsored by the Sisters of Charity; and sent out greeting cards showing him on vacation in France wearing a hat bearing the logo of the rapper Eminem.

He has embraced the "boss" label, but recently said that he has found some hypocrisy in how it is applied.

"I am amused, quite frankly, by the prejudices of the press," he said in an interview last week in his office in the State House annex. "When they refer to union leaders, they always say union bosses, yet when they refer to corporate leaders they never say corporate bosses. The same thing with politicians. Politicians can be leaders or they can be bosses, but the press always says boss."

"I do consider myself a leader. That's why I've stuck around."

Mr. Lesniak's legislative career began in 1978, when he was elected to the General Assembly. He was elected to the Senate five years later and has served there ever since.

Friends attribute his passion for politics to lessons learned from his mother, Stephanie, a committeewoman in Elizabeth for 30 years who was a dogged campaigner for her son until her death at 85 in 2003.

As a young lawmaker, Mr. Lesniak was known for his pioneering environmental legislation, including New Jersey's clean water laws. "Ray was green when it wasn't cool," said Charlotte DeFilippo, the Union County Democratic leader and a longtime ally of Mr. Lesniak's.

Over the years, Mr. Lesniak seemed to garner more political clout with each legislative session - and his position was only strengthened by his work as a lawyer.

"He was the first one to meld being a political boss, a powerful legislator and he has a high-powered law firm," said Jeff Tittel, director of the New Jersey chapter of the Sierra Club. "He was really the first legislator to put all three together - power, politics and pay-to-play."

That helped Mr. Lesniak emerge as a major player through the late 1980's and into the early 1990's, including a turn as leader of the state Democratic Party. He ran President Clinton's 1996 re-election campaign in New Jersey.

"People come and go in New Jersey fairly quickly," said Ross Baker, a political scientist at Rutgers University. "Ray Lesniak's been a very durable person on the scene."

He has also been ever-evolving. Mr. Lesniak, who has never been married, says he had a spiritual re-awakening about five years ago when a girlfriend ended their relationship abruptly.

"It had to do with a loss of control and a need to have control," said Mr. Lesniak, who was raised as a Roman Catholic. "I found out that giving up a need to control things is so stress-reducing and allowed me to live life a day at a time and get more out of every moment and every day. So I've done a lot of spiritual reading."

His status as an evangelical Christian and the founder of an antipoverty group called Democrats for the Soul has enhanced his power. He has become something of a father confessor for many of his political peers, including Mr. McGreevey, who took a job at Mr. Lesniak's law firm after leaving office. (He later resigned after questions were raised about his work on behalf of a firm that won a billion-dollar construction contract while he was governor.)

After leaving the Army in the late 1960's, he played accordion in a polka band, Jolly Rich and the Polka Stars, to help pay his way through Rutgers.

10/20/2014

State Senator Who Combines Donations, Law Practice and Influence - New York Times

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A framed copy of one of their albums, "Polkas With a Kick," is on a wall in his office. "Can you pick me out?" he asked, pointing to a band photo on the back cover. "It isn't easy." As if trying to read a born-again, polka-playing political boss would be.

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