

CONFIDENTIAL

INTERVIEW
of
Terrence P. Farley, Esq.
for the
SENATE JUDICIARY COMMITTEE

February 5, 2001
10:00 a.m.
Committee Room 2
State House Annex
Trenton, New Jersey

PRESENT AT INTERVIEW:

Eric H. Jaso, Esq. (Special Counsel to the Committee)
Jo Astrid Glading, Esq. (Democratic Counsel to the Committee)

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Assistant Prosecutor
Ocean County, New Jersey

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ERIC H. JASO, ESQ.: Mr. Farley, welcome. Thank you very much for coming. And again, I apologize for the mixup in the time.

T E R R E N C E P. F A R L E Y: No problem.

MR. JASO: Let me just start by putting you under oath. If you'd just rise and raise your right hand, please. (Oath administered)

Mr. Farley, my name is Eric Jaso. I'm an associate at the firm of Latham and Watkins. Michael Chertoff of our firm, who is a member of Latham and Watkins, is the special counsel to the New Jersey State Senate Judiciary Committee investigating, among other things, the history of what has been -- come to be called racial profiling in the State of New Jersey.

Before we start, I would like to ask each of the individuals in the room, starting with, I believe, your counsel to introduce himself or herself, just so that we'll have the names on the record.

DEPUTY ATTORNEY GENERAL FLANAGAN: Brian Flanagan, Deputy Attorney General, Division of Law.

MR. JASO: We have two staff members who are conducting the taping, Suzanne Slavin, from Latham and Watkins, paralegal.

JO ASTRID GLADING, ESQ.: I'm Jo Astrid Glading. I'm staff counsel for the Senate Democratic Office.

MR. JASO: Okay, let me start Mr. Farley, if I could, by simply asking you to tell me your educational background?

MR. FARLEY: I graduated from Parsens College in Fairfield, Iowa, in 1963; from Rutgers University School of Law in 1966; and probably have attended 500 to 1000 different law enforcement schools throughout the country.

MR. JASO: When you say attended, do you mean attended to take classes or to give classes?

MR. FARLEY: Yeah. Well, if did it to give, it would be five times that number, because I do a lot of teaching.

MR. JASO: Very good. If you could walk me through your employment history focusing on any jobs you've had with the New Jersey State government?

MR. FARLEY: New Jersey State government, I've only had one from 19-
- I guess it was April of 1994 through September, excuse me, December of 1997. I was a director of the State Division of Criminal Justice.

MR. JASO: Tell me your other employment history briefly, if you would?

MR. FARLEY: After a one-year trial court judicial clerkship, I went to a firm in Toms River and eventually became a partner. I was there for 20 years. The firm had various names. It's was Novins, Farley, Grossman and York, I think, when I left. I then became the First Assistant Prosecutor in Ocean County from 1987 to October, I think it was, of 1992. I became the Director of the National Drug Prosecution Center in Alexandria, Virginia, which is a branch of the National District Attorneys. And I left there to come to be the Director of the Division of Criminal Justice.

MR. JASO: Is the Director of Criminal Justice an appointed position?

MR. FARLEY: Yes, sir.

MR. JASO: And who appoints that position?

MR. FARLEY: It's appointed by the Attorney General, I guess, with the consent of the Governor.

MS. GLADING: So you were appointed by Attorney General Poritz?

MR. FARLEY: Poritz, yes.

MR. JASO: And since December of 1997, what jobs have you had?

MR. FARLEY: Oh, I'm sorry. I apologize.

MR. JASO: That's okay.

MR. FARLEY: I'm the First Assistant Prosecutor, Director of the Narcotics Strike Force in Ocean County. Again, I went back, when I left the Division, and went right back to Ocean County.

MR. JASO: And is that also an appointed position?

MR. FARLEY: Yes, appointed by the County Prosecutor.

MR. JASO: We will focus today -- it will come as no surprise on your role as Director of the DCJ. So, if you could explain to me briefly what the responsibilities of that title are, who do you report to or did you report to, and who reports to you?

MR. FARLEY: I was afraid you were going to ask that. The easy part of it is I report directly to the Attorney General. Everybody in the Division of Criminal Justice reported directly to me, that was about 125 lawyers, maybe 150 investigators. We had about 300 support staff. The place has doubled, I think, since I left, in size. And the responsibilities, basically, outside of the State Police, you're in charge of all law enforcement, policies, procedures, investigations. It's a job that is so far reaching it literally doesn't have a definition. Basically, we oversaw the 21 county prosecutors offices, 527 municipal police departments, 23 police academies, and all policy and procedure we dealt with the Legislature directly on -- all law enforcement matters, usually passed through us that were going to go to the Legislature or

were there, and they asked our opinion on. We have the legislative staff. You name it, we did it.

MR. JASO: What is the chain of reporting responsibility between the State Police and that office?

MR. FARLEY: There is none. The Attorney General is my boss. The Attorney General is the boss of the Colonel of the State Police. We were each directors within the Division of Law and Public Safety.

MR. JASO: When you first took the job in, I believe you said, April of '94, how were you debriefed on your new responsibilities?

MR. FARLEY: Well, I had a pretty good idea what they were before from having dealt with the Division literally since it started. I was a criminal defense lawyer for a long period of time and was involved in cases with the Division. As a county prosecutor, I dealt with them all the time, because they were our supervisors. There was a Prosecutors Supervisory Bureau within the Division, so I knew a great deal about that. And once I was offered the opportunity for my first interview, I read everything I could about the Division and talked to everybody I could and pretty much got a handle on what the Division had done and what we could do.

MR. JASO: Did you-- And just before we get into whether and how you were debriefed when you actually obtained that position, but you just described what, I think, we can call in shorthand some homework about the job.

MR. FARLEY: Right.

MR. JASO: Is that right? What types of significant issues, if any, did you identify at that time that would have, or that you expected to face, if you

did get the job as director?

MR. FARLEY: As an outsider who dealt with the Division, I felt that we were looked at by a lot of law enforcement agencies as sort of the enemy and not the supporter. I felt that one of the problems that we had internally was the length of time cases and investigations took from beginning to fruition, and I wanted to have our people more involved in supporting other law enforcement agencies as far as manpower, policies, ideas, and things like that. I felt it should be much more of a hands on law enforcement agency than I personally perceived it to be. That was my goal when I went there, and that's what I explained to everybody when I got there.

MR. JASO: Let me first ask you whether the length in time that you described is one of the reasons that there was, in your mind, some friction between the law enforcement community and that division?

MR. FARLEY: That certainly was one of the reasons. I think it was the reason for friction with a lot of other people, defense lawyers, myself. I had been involved in a number of cases with the Division that just seemed to drag on forever, and I didn't like that idea. And I also told the people at the Division, contrary to the way probably most other people might look at that position or other similar positions, that I was not a numbers person. I didn't care how many people we indicted. I wanted good indictments. That was my goal. So, if, you know, somebody felt they were under pressure and indict five people or twenty people in the course of a year, they didn't have to worry about that any more. What I wanted to see was a case brought to us, approved for investigation and prosecution, and moved.

MR. JASO: Okay. Since we're going to be talking quite a bit about this

today, I would just like to make sure that we are both on the same page as to the following term, which is racial profiling. Could you explain to me in your own mind what you understand racial profiling to be as you sit here today?

MR. FARLEY: Stopping people solely on the basis of their race.

MR. JASO: And when you say stopping, what--

MR. FARLEY: Either a motor vehicle stop or a stop of a pedestrian.

MR. JASO: Is this definition, again as you sit here today, different from your understanding of a racial profiling term and/or issue, if you had one, at the time in '94 when you were applying for the director job?

MR. FARLEY: I didn't have one -- gave it very little thought in my life. I had opportunities to discuss profiling, law enforcement profiling, in the past, but I think, if my recollection's correct, the only time that I really ever paid any attention to the word race -- or the term racial profiling-- I think there was a pending suit in Maryland that I had heard about when I was in Alexandria, because I worked quite closely with some people on the Maryland State Police on a bunch of projects.

MR. JASO: Well, let's start then with -- you had mentioned that you had come into contact with racial profiling issues in previous, perhaps, educational settings, is that what you said?

MR. FARLEY: Not what I said.

MR. JASO: I'm sorry.

MR. FARLEY: I said law enforcement profiling.

MR. JASO: I'm sorry. Law enforcement profiling. Thank you for correcting me.

What exactly is law enforcement profiling?

MR. FARLEY: Profiling or modus operandi, call it whatever your want, is taking factors into consideration to determine whether somebody is a potential suspect and should be looked at more carefully than the next person. I think maybe a simple example would be if you're at an airport and you're a customs officer, where are you going to start looking for or who are you going to deal with and concentrate your limited time and effort and abilities towards. The cases that discussed it were the kind of cases where we looked at issues of mostly narcotics, source cities, people coming to airline ticket counters paying cash not in advance, just buying a ticket and getting on a plane, short term trips to source areas. Somebody gets on a plane, pays 3000 bucks for a round-trip ticket to Columbia or to Hawaii, the nature of the person's appearance at times would be significant, but it was a whole gambit of factors that you took into consideration in any given situation.

For example, again, if I were investigating a case of a home invasion robbery of an Asian person, I would immediately concentrate my efforts on one of several Asian gangs. That's there primary focus. That's what they do. Would almost never be a Columbian or a Dominican or a Jamaican or any of the streets gangs, the Crips and stuff, that's not their style. That's the kind of crimes that a particular group committed. If I today versus maybe that time had a great deal of concern about the methamphetamine trade, in those days I would have looked toward biker gangs, because they had a long-term relationship with the American Mafia to manufacture and distribute methamphetamine, whereas today most of it comes from Mexico, and I would look for Mexican organizations. That's the kind of thing I mean by profiling.

MR. JASO: Where did you first, if you can remember, come into

contact with the concept of law enforcement profiling?

MR. FARLEY: Or MO, probably when I was about six years old watching TV.

MR. JASO: Did you have any kind of formal-- You said you had participated in many, many, many thousands of classes, was that something that was typically taught at these classes?

MR. FARLEY: It would, in many cases, especially in the narcotics field, you would certainly be dealing -- or gang schools, for example, you'd be dealing with talking about groups without a doubt, absolutely.

MR. JASO: Now, moving forward to when you got the job as director, do you recall any formal or informal debriefing by anyone within the Division to explain to you what the leading issues were as you started your new job?

MR. FARLEY: No.

MR. JASO: Were you given any kind of documents or a briefing book to--

MR. FARLEY: Yes.

MR. JASO: Okay. And what was that -- what did that consist of?

MR. FARLEY: It was called a transition report.

MR. JASO: A transition report?

MR. FARLEY: Right.

MR. JASO: And do you remember who authored that?

MR. FARLEY: No, sorry, I don't.

MR. JASO: Was it a binder? I mean, what was--

MR. FARLEY: Yeah, there was--

MR. JASO: --to your recollection, what was the document itself?

MR. FARLEY: It was a folder of some kind, and my understanding was it was traditional whenever a new director came in there was a transition-- Actually, I think every time there was a change of government, too, there were transition reports. There was a law enforcement transition report, I think, done either by or for the Legislature and the Governor. And I certainly saw those kinds of things.

MR. JASO: Do you recall whether the issue of racial profiling was mentioned in that document?

MR. FARLEY: I do not believe so. I don't have any recollection of that being something that we, as a Division, were dealing with.

MR. JASO: Do you recall there being any mention in that document of any of the pending litigation that pertained to racial profiling--

MR. FARLEY: I'm not--

MR. JASO: --that is--

MR. FARLEY: I'm sorry.

MR. JASO: --the motion to suppress in certain--

MR. FARLEY: I don't think they existed at the time, and if they did, I was unaware of it. The first case mentioned I recall ever is *Soto*. And I have a small bit of knowledge about that, and that was the only case I knew about ever.

MR. JASO: We'll get to that one, obviously.

MR. FARLEY: Right.

MR. JASO: Do you recall whether citizen complaints with regard to what they perceived to be unfair stops were mentioned in that document?

MR. FARLEY: I don't believe so. I don't believe that was an issue at all

that was presented to me.

MR. JASO: At that time or ever?

MR. FARLEY: Well, let's say at that time and rarely beyond that.

MR. JASO: Okay.

Do you have any follow-up questions on-- (Gliding, negative response)

Let me show you a document here. This document for the record is a document bearing Bates label at the bottom left-hand corner of OAG-6689 through 6728. The topmost document is a memorandum from Alexander Waugh-- Is that how you pronounce his name, Waugh?

MR. FARLEY: Yes.

MR. JASO: Dated September 21, '94, to then Attorney General Poritz. If you could just take a moment to look through that document.

MR. FARLEY: Okay. I have a basic idea of what it says.

MR. JASO: Do you remember seeing this document at the time that you--

MR. FARLEY: If you had asked me that before showing it to me, my answer would have been absolutely no, but I think those are my notes on it. It looks very much to me like my handwriting.

MR. JASO: On what pages, specifically?

MR. FARLEY: All of them. Oh, excuse me, 2, 3, 4--

MR. JASO: Okay, let's stick with the first document, which is the first four pages.

MR. FARLEY: That's the one I'm talking about.

MR. JASO: Just for the record, you've referred to OAG-6690, 6691, and 6692.

MR. FARLEY: Correct.

MR. JASO: Why don't we just go through and identify, if you can, the rest of the handwriting. It appears to be different handwritings.

MR. FARLEY: No. I think this is all me.

MR. JASO: Are you--

MR. FARLEY: My handwriting appears to be different to me every day, too, so that's why I was a little surprised when I saw it, because it-- I would have to guess that's all mine.

MR. JASO: How about turning to the page labeled 6693, which is the second draft?

MR. FARLEY: That is not mine up in the right-hand corner.

MR. JASO: Okay.

MR. FARLEY: And I do not believe that's mine on the bottom.

MR. JASO: And then turn two more pages and there's some more handwriting.

MR. FARLEY: Nine-five.

MR. JASO: Nine-five and nine-six.

MR. FARLEY: Does not appear to be mine.

MR. JASO: Do you recognize whose it is?

MR. FARLEY: No. No. I don't either recognize it as mine or can I tell you who it -- whose it was.

MR. JASO: Okay. Let's go back to 6693--

MR. FARLEY: Fine.

MR. JASO: --which is the one that says draft at the top, to Wayne Fisher, etc. Do you recognize who--

MR. FARLEY: Oh, okay. No. I do not. As a matter of fact, I'm trying to check the initials myself. I can't place that.

MR. JASO: Again, I'm sorry, sir.

MR. FARLEY: I don't recognize it, although it could be Alexander Waugh's.

MR. JASO: Okay. Just underneath the initials there, it says see-- I think it says Director Farley. Is that what it looks like to you?

MR. FARLEY: No.

MR. JASO: It doesn't?

MR. FARLEY: I think it says directives, something or other. That's definitely not anybody else's spelling of my name that I could tell.

MR. JASO: Okay.

MS. GLADING: The right side might be cut off to that?

MR. FARLEY: Yeah. I'd understand that, but--

MR. JASO: All right. Well, I guess--

MR. FARLEY: Oh, okay, that could be. There could be a name beyond that, but not this -- two words on top of one another -- certainly isn't me.

MR. JASO: Well, let me ask you this then, do you remember this draft with the handwriting that is 6693 through 6696 being forwarded to you?

MR. FARLEY: I can't tell you, because I haven't had a chance even to see this. I've never seen it, you know-- At least, in a recent term, I don't know whether I've ever seen it or not.

MR. JASO: Okay. Well, let's go back to the first--

MR. FARLEY: Okay.

MR. JASO: --copy of this memorandum. Let me draw your attention

to 6692, which is the last page.

MR. FARLEY: Okay.

MR. JASO: First of all, do you remember, generally, what this document, having reviewed it briefly today, do you remember what it was about?

MR. FARLEY: Looking at it now, I do.

MR. JASO: And what is your recollection?

MR. FARLEY: It was a report from Alexander Waugh to the Attorney General about the New Jersey Advisory Commission which was working with the U.S. Commission on Civil Rights.

MR. JASO: And do you recall what-- Do you recall independently from this document any dealings that you had with that Commission or with debriefing the Attorney General on this meetings that's referred to in the document?

MR. FARLEY: Can you repeat the first half of that question?

MR. JASO: Do you recall any dealings that you had with any members of this Commission?

MR. FARLEY: No.

MR. JASO: Let me draw your attention to the second paragraph. Could you just read to yourself the second paragraph on the first page--

MR. FARLEY: The first page?

MR. JASO: --starting, "The following people--"

MR. FARLEY: Yep.

It comes as a total shock to me.

MR. JASO: Well, do--

MR. FARLEY: I see what it says.

MR. JASO: Do you recall attending the meeting that's described in the paragraph?

MR. FARLEY: Absolutely not.

MR. JASO: You did not.

MR. FARLEY: Oh, no, I didn't say I didn't.

MR. JASO: Okay. You just don't recall it?

MR. FARLEY: I don't recall.

MR. JASO: Okay. Do you recall having any conversations with any of the individuals listed here in the memo, including Mr. Waugh, Attorney General Poritz, Director Stewart, Colonel Williams, Communications Director Taylor, Special Assistant Young, with regard to this meeting or this report?

MR. FARLEY: I do not recall any.

MR. JASO: Take a look at the first page of the report, which you can turn to immediately following the two draft -- or the two memos, which starts OAG-6697--

MR. FARLEY: Six-six-nine-seven?

MR. JASO: Yeah.

MR. FARLEY: Okay.

MR. JASO: It's with the big letters, the use and abuse--

MR. FARLEY: Yeah. I see it.

MR. JASO: Do you recall this report or reviewing it at the time.

MR. FARLEY: Off the top of my head, no. Does that mean I didn't see it? No.

MR. JASO: Turn to the second page of-- Sorry. If you-- I'm going to

flip back and forth. I'm sorry.

MR. FARLEY: Okay. Just give me a page number.

MR. JASO: Yes, 6690, which is the second page of the entire packet.

MR. FARLEY: Yep.

MR. JASO: You said that you -- it looks like your handwriting?

MR. FARLEY: Definitely. And that circling is something I typically did in quick reviews of documents and making notes for myself, and I had a suggestion down here. That's definitely my wording and my writing.

MR. JASO: What does that say?

MR. FARLEY: Alternate route.

MR. JASO: Do you remember what alternate route means and--

MR. FARLEY: Absolutely.

MR. JASO: Okay.

MR. FARLEY: We had a trial practice. One of the other hats that the director of the Division of Criminal Justice wore was-- I was the chairman of the Police Training Commission for the State of New Jersey. That's automatic. And the alternate route-- Normally, the way you get into a police academy is you take a test to get on a police department, you're one of the people finally picked, and they sponsor you in whatever academy it is. The alternate route allowed young people who wanted to be in law enforcement, but didn't have jobs readily available, to go to select community colleges, get a degree, and enter certain assigned seats at a police academy, come out as a certified police officer without a job, which had never happened before, and that list would then be provided to municipalities looking for new officers.

The reasons were severalfold. It gave people who traditionally didn't get

involved in law enforcement an opportunity to come in, which I thought was a wonderful idea. And the second thing, also, there was a lot of complaining in and about that time by the municipalities as to how much training cost, and these people actually paid their own training. And, I guess, maybe the complaint wasn't so much that it cost X amount of dollars to train a cop, but you could train him, he'd come to work for you one day and get stolen by another department next door, and you just lost all that money for training and things like that. So, the alternate route was something that is still, unfortunately, just a trial project. I think it's something that we could use statewide, personally.

MR. JASO: Was it put into place when you were the director?

MR. FARLEY: No.

MR. JASO: Was it already in place?

MR. FARLEY: Yes, sir.

MR. JASO: I see.

Let's turn to page -- the next page, which is 6691. And again, you indicated that the underlining and circling appears to be yours?

MR. FARLEY: Yes, sir.

MR. JASO: Could you read me your handwriting on the left?

MR. FARLEY: Community policing rather than only during adverse contacts.

MR. JASO: And what is the meaning of that, if you can recall?

MR. FARLEY: The fourth-- It says, "The fourth recommendation calls for local police departments to create feedback loops such as questionnaires on summonses to establish a level of public satisfaction," etc., etc. Community

policing had just come back into fashion. It was something I was always in favor of. I was on the International Association of Chiefs of Police Community Policing Committee. We helped design programs for community policing at the Division of Criminal Justice. We had Federal grants to do that.

MR. JASO: Just so that we're clear, if I may interrupt, what is the definition of community policing?

MR. FARLEY: Community policing, basically, in its basest definition is getting cops out of cars, back on the street, walking the beat, talking to people, becoming officer-friendly again. And I felt that that was a solution to the fourth recommendation. I can tell you that this is typical of my review of a document immediately. My first thoughts get circled, a note, so when I come back to it, if I do come back to it later on, I'm going to have that initial reaction there. And that's exactly what this is. There's no question about that.

MR. JASO: Okay. Let's move on the next-- Well, let me actually go back to the-- There is a-- I think you wrote how on the previous--

MR. FARLEY: Third recommendation.

MR. JASO: Yes.

MR. FARLEY: Right.

MR. JASO: Paragraph.

MR. FARLEY: I was--

MR. JASO: And that says it calls for the evaluation of local law enforcement personnel to include evaluation and an assessment of an officer's sensitivity to cultural awareness and diversity.

MR. FARLEY: And my gut reaction was how? Who was going to

decide? How are we going to go about it? There's certainly no test, no standard, anything that I had ever encountered, and I was certainly willing to listen to whoever had some suggestion in that regard, but I had -- didn't have the slightest idea.

MR. JASO: Was that something, if you can recall it at the time having that reaction, was this recommendation something that had ever come up before to your knowledge?

MR. FARLEY: Not to my knowledge.

MR. JASO: Let's move on to the next -- or the subsequent paragraph which starts, "The fifth recommendation," and if you could just explain to me your comment there?

MR. FARLEY: Okay. My comments are that the grand jury reviews all criminal conduct and that was specifically in relation to the partial sentence, "of a civilian review board."

MR. JASO: And what is the connection between the grand jury's review of criminal conduct and this civilian complaint review board proposal?

MR. FARLEY: I've always had a very simple opinion that civilians shouldn't be looking at police officers other than if they've been looked at already in the criminal context and they'd make decisions as jurors, not as independent people. That untrained civilians shouldn't be determining what goes on in police departments or how it's done.

MR. JASO: Was that something that had previously been suggested or discussed to your recollection?

MR. FARLEY: I can't tell you since this is only, I guess, seven or so months after I came into the Division, whether we had discussions at that

point already, but certainly I've discussed civilian review boards for years with many people.

MR. JASO: So it wasn't a policy idea that was unique to New Jersey?

MR. FARLEY: Oh, no. There are places that have them.

MR. JASO: Let's turn to the next page, if you would.

MR. FARLEY: Okay.

MR. JASO: And focusing on the paragraph starting, "The sixth recommendation--" And I don't think I can read your writing there.

MR. FARLEY: That's all right. I can't either. I could tell you parts of it.

MR. JASO: It appears to say they--

MR. FARLEY: It says they would like reporting, and it looks like-- Oh, I know what it must be. I thought it was S-E-P. It's probably S-Y-S-T. My guess is they would like a reporting system, but that's a guess.

MR. JASO: Do you recall who the they were that you were referring to?

MR. FARLEY: I'm assuming it must have been the Commission, because all of these paragraphs were the recommendation from the Commission. And I was explaining, I think probably to myself, that they're looking for a system here, rather than just some report.

MR. JASO: The next paragraph says, "The seventh recommendation calls for law enforcement agencies to do more minority recruiting. The State Police does this extensively."

MR. FARLEY: And my answer was very tough. It is the toughest job in law enforcement that I have ever had -- to recruit minorities. I've spent time on the county level, the state level, discussed it at the Federal level, and there

are all kinds of reasons, but it is an extremely, extremely difficult proposition to get minorities to want to be law enforcement officers. And being in narcotics, in particular, I was in great need at all times of minority people, and people who could speak foreign languages and were of different ethnicities. And I literally killed myself doing it, and we made a big push when I was at CJ. And quite frankly, I don't think I was much more successful than anybody else. It's just almost impossible, not-- I guess somebody has a way that they might see a better way to do it, but I've never come up with that magic bullet.

MR. JASO: Having looked through your handwriting, does this refresh your recollection as to whether you had any discussions with anyone with regard to your thoughts on this document?

MR. FARLEY: No. What this tells me is I read the document. And as I was reading it to -- so that if I had to refer to it again, I would go back to those highlighted areas. Whatever I circled and underlined to me is a highlight, and my immediate responses or thoughts like alternate route and community policing and the grand jury comment were things that immediately came to me that we're already doing or should be done or ways to react to those recommendations.

MR. JASO: Do you recall forwarding this to anyone after you finished writing it -- writing these comments on it?

MR. FARLEY: No.

MR. JASO: What was your practice if you were to forward it to someone, if you had one?

MR. FARLEY: It's probably not the kind of document-- I don't know-- I guess I got it from Alex Waugh, would be my guess, because he used to send

me all kinds of stuff, but-- I don't have any indication on here to, you know-- For example, this next one, where it says draft to Wayne Fisher. If I was sending it to Wayne Fisher, I probably would have said up top, Wayne, or Debbie, or, you know, depending on who it was going to. But I don't see that, so I can't tell you I ever forwarded it to anybody.

MR. JASO: Okay. Let's look back at that last page, which is 6692, in the last full paragraph, which you can take some time to read, since it's fairly lengthy.

MR. FARLEY: Thanks.

Okay.

MR. JASO: Could you attempt to read for me what the marginalia is on the right-hand side?

MR. FARLEY: Yeah. Reading that tells me what-- The first one I couldn't figure out at all, the one that starts with an *H*, but it's how, and that applies--

MR. JASO: Again, how?

MR. FARLEY: How, H-O-W.

MR. JASO: H-O-W. Okay.

MR. FARLEY: It's cut off, I think, probably, but it's -- that's what it was, and that's the one that says requiring evaluations -- the same response I had earlier. Love to do it, but how do you do it?

MR. JASO: With regard to the multicultural sensitivity evaluations?

MR. FARLEY: Replied to No. 1, right.

MR. JASO: Yes.

MR. FARLEY: Number 2, feedback loops, no, because that was the

reference to community, not the community, to civilian review boards. And I told you I was definitely opposed to that. Next one is county-level biased incident review committees. The answer was-- My reaction -- I shouldn't say the answer -- my reaction was no and-- Number 4 was no, and I think I added the bottom part to it that says politically correct -- question mark -- we'd get crucified.

MR. JASO: And 4 refers to public reporting on bias and other misconduct complaints and dispositions.

MR. FARLEY: Right.

MR. JASO: What was your understanding of that recommendation? I think, if I'm not mistaken, it's the 6th recommendation--

MR. FARLEY: Okay. Thanks.

MR. JASO: --on the same page.

MR. FARLEY: Okay. That's it. And did you say, what was my reaction to that?

MR. JASO: Well, what was your understanding of what was the--

MR. FARLEY: Just what No. 6 says -- the system that I wasn't crazy about, when I read No. 6.

MR. JASO: The idea of reporting publicly the complaints with regard to police officers?

MR. FARLEY: And filing annual reports and dispositions of personnel matters, yes, because that's what this system calls for.

MR. JASO: I'd just like to point out that Ms. Glading has left the room.

Could you explain to me the comment, "politically correct -- we'd get

crucified.”

MR. FARLEY: I thought it was something that in the area of political correctness it was just one more step in interfering with law enforcement processes and procedures. And the “we’d get crucified” applied to, in my mind, the law enforcement community would not -- I don’t think -- take kindly to it, and for good reason. There were all kinds of processes in place already to deal with these situations. We had statewide disciplinary rules. We had use of force rules. The Division was very much conscious of reacting to those kind of issues. And I just saw this as being no more than somebody trying to satisfy political correctness and didn’t agree with it.

MR. JASO: Ms. Glading has returned. No problem, I just wanted to put it on the record.

Who is the we in “we’d get crucified,” if you can--

MR. FARLEY: Law enforcement. And it may be that “we” might be the Division in my mind. I can’t step back that well, but probably the Division, now that I think about it, is that we’d get crucified by law enforcement for suggesting it. We had a very -- strict controls over all internal affairs and investigations already. There was a set process that every single police department had been trained in. Everyone had to follow. Every county prosecutor’s office had a unit, was trained, and we were the ultimate arbiter when it came to that if, you know, it hadn’t been resolved in that chain.

MR. JASO: Does this refresh your recollection as to whether complaints -- citizen complaints of misconduct and bias by police officers was a significant issue at that time, in the ’94 time period?

MR. FARLEY: I’m not sure I can answer your question.

MR. JASO: Do you understand it?

MR. FARLEY: I understand it--

MR. JASO: Okay.

MR. FARLEY: --but significant to me in the realm of everything else probably not in my top priorities, because it's not something that I was dealing with on an everyday basis, except the individual complaints. Those were important to me. What was going on conceptually, other than having this kind of input, I didn't have anything to do with what was going on with the Civil Rights Commission. That was an Attorney General prerogative, not something involving the Division, other than Alex Waugh was the person who sought input from everybody. And I was constantly being sent stuff from him that really had nothing to do with me, or very little to do with me.

MR. JASO: Now, just-- I know that I asked this before, but now that we've talked about this document in some more detail, do you recall attending any meetings, either in preparation with what appears to be the Attorney General's meeting with these folks from the New Jersey Advisory Committee or attending such a meeting yourself?

MR. FARLEY: I have absolutely no recollection of attending any pre-meetings. Reading this, seeing what it says, seems to tell me that I was there. Do I have a distinct recollection of that meeting? Not really.

MR. JASO: Lastly, if you could turn to Page OAG-6716, which is -- appears to be Page 16 of the attached report. Now, there is some handwriting on this page which is very faint.

MR. FARLEY: Much too nice to be mine.

MR. JASO: Okay. That was my question. Do you have any knowledge,

looking at it today, as to who this--

MR. FARLEY: None.

MR. JASO: Any additional questions?

MS. GLADING: Actually, yes. I do have one additional question, if I could borrow your document.

The back of this report contains addendums from some of the Commission members. If you've covered this while I was out of the room--

MR. JASO: No.

MS. GLADING: --I apologize.

There is an addendum from Zulima Farber, who was the chairperson of the Advisory Committee. If you look at what is numbered OAG-6724, the third paragraph on that page discusses testimony by Keith Jones, who was the then director of the State NAACP. I wonder if you could just take a second to read that third paragraph.

MR. FARLEY: I don't see it.

MS. GLADING: OAG--

MR. FARLEY: Six-seven-two-four?

MS. GLADING: --6724 begins with this-- Oh, it doesn't mention Keith Jones. His name is--

MR. FARLEY: Oh.

MS. GLADING: --mentioned on the prior page.

MR. FARLEY: Oh, okay. Sorry.

MS. GLADING: It begins with -- this agency.

MR. FARLEY: Okay. Fine. Okay, I've read it.

MS. GLADING: I just wanted to know if that -- if that topic and those

allegations, by Keith Jones specifically, were part of any discussions that you were part of in the Attorney General's Office?

MR. FARLEY: No, because it's totally false based upon my recollection of anything that occurred. It says that the State Police said that they had a policy to stop blacks or Hispanics in new cars. That was never a policy, and it would have been in direct violation of all the directives for troopers to do that. So to say that they've admitted that there's a problem there, comes as a total shock to me. I don't think they-- You know, I'm not sure they admitted that to this day, except in the case of some sort of rogue troopers, but it certainly was never a policy. And now she's saying what's the profile, and she's saying the profile is they're black and they have a new car or they're Hispanic. That's absolutely untrue as far as what the profile was. It just didn't happen.

MS. GLADING: Okay. I'm wondering if you might recall any-- My question was, whether you recall any discussions within the Department about these allegations that were raised as part of this report?

MR. FARLEY: Well, when you say the Department, you mean the Department of Law and Public Safety?

MS. GLADING: Uh-huh.

MR. FARLEY: Do I recall that? No, because I probably would have recalled my blood pressure going up.

MS. GLADING: Okay. Thanks.

MR. JASO: Mr. Farley, if at any time you need to take a break, please just holler.

MR. FARLEY: I'm fine.

MR. JASO: I'm going to hand you two more documents. These are two

single-paged documents. The first bearing the Bates number OAG-6730, that is a November 22, 1994 memo from Alexander Waugh to Terrence Farley. The second being a one-page document bearing the Bates number OAG-6733, a letter from Dr. Irene Hill-Smith of the New Jersey Advisory Committee to the United States Commission on Civil Rights to Attorney General Poritz. That's dated October 4th, 1994. It's-- Did I say October? October 4th, 1994.

MR. FARLEY: Okay.

MR. JASO: Do you recall either of these documents?

MR. FARLEY: No.

MR. JASO: Do you recall being asked by Mr. Waugh to prepare a response to any letter from the New Jersey Commission?

MR. FARLEY: Do I have independent recollection other than this document? No.

MR. JASO: Does the document refresh your recollection?

MR. FARLEY: No.

MR. JASO: Do you recall discussing with anyone independent of writing a letter in response to the Commission -- or the Committee, I should say -- discussing possible responses to their proposals?

MR. FARLEY: Could you repeat that?

MR. JASO: Sure. Do you recall independent of being asked whether you were -- whether or not-- Let me just reask it again. Do you recall discussing with anyone possible responses to the Committee's proposals?

MR. FARLEY: I don't have independent recollection, but that first document would sort of imply to me that I was making notes and probably had some discussion.

MR. JASO: Well, you said you'd made notes, but you didn't say you discussed it with anyone. If you can recall--

MR. FARLEY: Because I'm not sure. I don't have any independent recollection of discussing it with anybody.

MR. JASO: Do you have any general recollection of--

MR. FARLEY: No.

MR. JASO: --discussing it with anyone?

MR. FARLEY: No. But again, Alex Waugh and I had probably had a thousand discussions when he was there about anything that he ever sent me. Ninety percent or better didn't apply to me, but he might ask me questions, and I would give him off-the-cuff answers or whatever. This one in particular, 7/30, doesn't ring a bell at all, because I have-- I wish I knew what the standards for recruitment of minority police officers were, and I wish I was the genius who came up with them, but I don't ever remember doing that. And the uniform statewide reporting system is something I already discussed with you that I was dead set against, and I don't remember ever writing anything about either one of these. And quite frankly, I don't remember anybody in the Division of Criminal Justice being assigned to do any of that either.

MR. JASO: Okay. When Mr. Waugh would give you a document -- copy a document to you with the either explicit or implicit directive that you provide your comments, look at it, think about it, and as you've testified, would write your thoughts down on a document, was it his policy or procedure or habit to call you up or discuss it with you in followup.

MR. FARLEY: I can't speak for him.

MR. JASO: Well, I'm just asking what your understanding of his

practice was?

MR. FARLEY: I would assume.

MR. JASO: Well, is that-- Well, do you recall -- do you have-- What you, I think, just said were thousands of discussions on all different things.

MR. FARLEY: Absolutely.

MR. JASO: And was his, to your recollection, was his policy to copy you-- Well, let me just back up and say, you said, if I'm not mistaken, that he would copy you on all sorts of things including things that were not particularly within your expertise or area of responsibility and ask you for feedback. Is that right?

MR. FARLEY: Uh-hum.

MR. JASO: And how would that feedback occur?

MR. FARLEY: Half the time, I guess, would be-- I shouldn't say that. Half of the time I'd walk into his office, grab a piece of candy, tell him, what the hell are you asking me about this for? I don't have the slightest idea.

MR. JASO: And would you do that on your own volition or would he ask you to come in to--

MR. FARLEY: Usually both.

MR. JASO: --you know, did you look at that memo?

MR. FARLEY: Both.

MR. JASO: So is it fair to say that it was a fairly informal process between you two?

MR. FARLEY: I would say so. We had-- You know, we had a working relationship, a good working relationship, as far as I was concerned, but we were very informal in most-- At least I was. I'm a much more informal person

than Judge Waugh is.

MR. JASO: And would you-- Were your offices near each other?

MR. FARLEY: No. I was on the 5th floor. He was in the Attorney General's Section on the 8th floor.

MR. JASO: Looking at this memo from him to you, do you recognize the handwriting on the right-hand side there, "To Director Farley, did a response ever go out? If so, may I have a copy?"

MR. FARLEY: No, but I think that's his initials.

MR. JASO: His meaning Mr. Waugh?

MR. FARLEY: Yes.

MR. JASO: And it's dated 12/7/95, which I would note is over a year after the memo itself.

MR. FARLEY: Right. That's what I'm saying. I don't ever remember seeing this memo then or the first time around, or a year later when it allegedly came back. That doesn't mean it didn't. I'm not telling him I have the best recollection in the world, but I just, at least, this one does not ring a bell.

MR. JASO: Would you say that it was unusual for Mr. Waugh to wait a year to followup on something that he'd asked you to do?

MR. FARLEY: I would say so.

MR. JASO: Anything else?

MS. GLADING: No.

MR. JASO: I'll give you two more documents here. Take a look at those, if you would, while I describe them for the record. The first is a document bearing the Bates label OAG-6734, dated December 18th, 1995, from Mr. Waugh to you and Mr. -- Colonel Williams. The second being a

memorandum bearing the Bates label OAG-6739, dated March 12th, '96, from Mr. Waugh to you -- Mr. Farley that is. Let's start with the -- if you had a moment to look at this.

MR. FARLEY: Can I have just another minute, please.

MR. JASO: Sure. Go ahead, help yourself.

MR. FARLEY: Okay.

MR. JASO: Let's look at the December '95 memo first.

MR. FARLEY: Right.

MR. JASO: Do you recall this memo?

MR. FARLEY: Nope.

MR. JASO: Looking at the handwritten annotation there, do you--

MR. FARLEY: That tells me I definitely saw it. That's my writing, and that was a note to my secretary, whose name was Candace. I always called her Candy. "Do we have any notes on this," meaning I didn't have any recollection in '95 of what he was talking about from '94.

MR. JASO: Okay.

MR. FARLEY: It was one of the unusual times that I didn't put, "What the hell is he talking about?" on the memo. I was a little nicer that day, I guess. And the second one--

MR. JASO: Well, it was Christmas time.

MR. FARLEY: Well, maybe -- never Christmas at the Division.

MR. JASO: So again, just focusing on the '95 memo--

MR. FARLEY: Okay.

MR. JASO: --no recollection of receiving it except for the fact that you put your--

MR. FARLEY: I clearly saw it.

MR. JASO: When you say to Candy, "Do we have any notes on this," what does that refer to?

MR. FARLEY: Do you know anything about this, because I surely don't.

MR. JASO: Well, would it be referring to handwritten notes that you yourself would keep?

MR. FARLEY: Probably.

MR. JASO: Did you keep them in a file?

MR. FARLEY: If I had them, I would have. I didn't keep them. She would, I assume.

MR. JASO: I understand. I'm just trying to find out what your--

MR. FARLEY: You see, this all goes back to the fact that you're asking me hypotheticals, because I don't remember being at the meeting, and I don't remember most of these follow-up documents either.

MR. JASO: I understand. I don't--

MR. FARLEY: And apparently, I didn't do anything about any of them either, based upon what I'm seeing here from year to year of me being asked what's going on and me either not replying or ignoring him.

MR. JASO: I understand, and I beg your indulgence.

MR. FARLEY: That's okay.

MR. JASO: I'm simply trying to refresh your recollection, if you have any, and we're not asking you to try to remember something that you can't remember.

MR. FARLEY: I have-- I have no complaints on what you're doing. I understand exactly why you're asking.

MR. JASO: Okay. So, let me just clarify what we are-- Just stepping back from these documents, what your normal practice was. If you had handwritten notes, say, from a meeting on a particular topic, would you ask your secretary to file them as a matter of course?

MR. FARLEY: Usually.

MR. JASO: And would-- Do you have a familiarity with the filing system within your office at that time?

MR. FARLEY: I would venture to this day if Candy's not around, nobody does.

MR. JASO: If Candy-- I'm sorry. I didn't hear you.

MR. FARLEY: (laughter) Isn't around, nobody does. No. Absolutely none.

MR. JASO: Were they files that were kept within your office, though?

MR. FARLEY: In my personal office?

MR. JASO: Yes.

MR. FARLEY: No.

MR. JASO: So there was sort of a more central filing for the--

MR. FARLEY: Yeah.

MR. JASO: --Department? Okay.

And looking at the second memorandum, and just let me ask you-- I think you had mentioned before, so I apologize if I'm reasking the same question or asking you something that you already answered.

Are we okay over there?

HEARING REPORTER: We're fine. I'm just changing tapes. Sorry.

MR. JASO: Okay. Good.

Do you recall there being a follow-up meeting with the Attorney General or between the Attorney General and the New Jersey Advisory Committee in early 1996?

MR. FARLEY: Do I have personal recollection, no.

MR. JASO: Does this document refresh your recollection at all?

MR. FARLEY: No, because it mentions a meeting that I allegedly attended on March 4th, that I have no recollection of and indicates that I apparently was going to do something about it. I have no recollection of doing that which is requested of me.

MR. JASO: Looking now at the 1996 memorandum, which is--

MR. FARLEY: That's what I was referring to, by the way.

MR. JASO: Oh, I apologize. Okay. I just want to make sure that we're talking about the same thing. Do either of these documents refresh your recollection?

MR. FARLEY: No. And I thought you said that-- Your question started out that there was a meeting in March of '96, which could only be covered by the March 12th, 1996 memo. That's why I was referring to that one in my answer.

MR. JASO: I understand. The other memo actually does mention that there is going to be a meeting, so that's--

MR. FARLEY: That's two years before, right?

MR. JASO: No.

MR. FARLEY: Oh, I'm sorry. I apologize. I'm thinking it's '94. Yes, it does, but that didn't mean anything to me either.

MR. JASO: Okay. I just need to be-- I'm trying to be clear for the

record, so that's why I'm just going one document at a time.

MR. FARLEY: I understand. I apologize.

MR. JASO: No. No. No. No problem.

MR. FARLEY: I had leaped to the next one.

MR. JASO: All right. So, just to be clear, again, the March '96 memo now that we're looking at -- no recollection of there being a meeting that you attended on March 4th.

MR. FARLEY: I don't have any recollection of being at a meeting.

MR. JASO: Okay. Drawing your attention to the last paragraph in this memorandum. This-- It says, "We have requested the Commission provide an agenda of topics for the meeting, which we hope will be forthcoming. However, we have been advised that they will want to talk about the Gloucester County Turnpike stop case in which the opinion was issued last Friday." Do you have any recollection of the Gloucester County Turnpike stop case being discussed or that you discussed it with anyone at this time?

MR. FARLEY: At what time?

MR. JASO: March of '96?

MR. FARLEY: Yes.

MR. JASO: And what were those discussions and who did you have them with?

MR. FARLEY: I think I had a discussion with Jack Fahy who worked again, at that time, for the AG. At some point, Jack came over to work for me, and I can't tell you. So there's a little bit of overlap that I'm fuzzy on dates.

MS. GLADING: I'm sorry. Can I just clarify at some--

MR. FARLEY: Yeah.

MS. GLADING: --point subsequent to this discussion--

MR. FARLEY: I can't tell you when it happened. Some time from the time -- '94 through whatever, '97 -- Jack left the Attorney General's staff directly to work on my staff directly, but continued to work on this project, which was the Attorney General's project -- the *Soto* case. This is the *Soto* case, as far as I know.

MS. GLADING: And when you left the Department, Jack was still on your staff and still working directly on *Soto*?

MR. FARLEY: When I left the Division? Jack had been-- By that time-- He had-- When he came to work for me, I think he came as second in command for our grand jury section. I think Judge DeVesa was still there, and he worked for the judge, but I think it may have been that we knew Fred would be leaving, because he was getting a judgeship, and I needed somebody who knew that process and procedure -- was a book guy to take over that -- and Jack was, in my mind, the perfect guy for that. And I just can't tell you when it happened. And I think, to continue your question, that he also continued to work on the *Soto* case. That's my -- the best of my recollection.

MR. JASO: Okay. Going back to my original question and following up on it, do you recall what discussions you had with Mr. Fahy about the *Soto* case at that time?

MR. FARLEY: The only part of the discussions I remember is Jack feeling that the opinion was not correct, and not correct primarily based on the fact that the opinion rose or fell on expert testimony that he thought was garbage. And there was then a follow-up meeting, and that meeting was with Attorney General Poritz. And I think, and again, at--

MR. JASO: Who else was at this--

MR. FARLEY: That's what I'm going to tell you right now.

MR. JASO: Okay.

MR. FARLEY: I think, based upon recent events that I've heard and people talking to me -- I'm not sure I have an independent recollection of who was there -- but I believe that Jack was there.

MR. JASO: Mr. Fahy?

MR. FARLEY: Yes, I'm sorry. Jack Fahy. Deputy Director Stone, probably Anne Paskow, who was the head of our Appellate Section, myself, the Attorney General, and I honestly can't tell you anybody else. Al Waugh might have been there, because this was his project. I'm just not sure.

MR. JASO: When you referred to the project, could you explain in more detail what you understood that project to be?

MR. FARLEY: All of this stuff that we've been discussing today. All of these civil rights and racial profiling issue, or issues if that's-- I'm not sure they were called racial profiling at the time, but all of the issues related to the Civil Rights Commission and this stop contest in Gloucester County.

MR. JASO: Is it fair to say then that the citizen group complaints/recommendations over the years and the *Soto* and related stop cases were all part and parcel of what was known internally as the Attorney General's project?

MR. FARLEY: I can't say that at all. No. I just told you that all of this together was stuff they worked on. I called it a project for lack of a better term.

MR. JASO: Did other people call it a project?

MR. FARLEY: I have no idea what other people called it.

MR. JASO: But there were specific individuals who were tasked with dealing with these issues, to your knowledge?

MR. FARLEY: Al Waugh, as per all of those memos we've already discussed.

MS. GLADING: If I can just clarify something on this. In your role as a supervisor of county prosecutors, did you have a line authority in effect over the Gloucester County case and Jack Fahy's involvement in it?

MR. FARLEY: The answer would be normally yes, but because Jack was assigned to handle this and was an Attorney General's employee that I never saw that as the case for this particular matter. There were times in other matters where prosecutors would discuss with us whether or not a case should be appealed and whether or not our Appellate Section would handle it versus their Appellate Section. So those things did happen, but I don't think this case happened in that normal course. I think, again, that came through Waugh's office and Jack worked on the 8th floor, rather than what I call the 5th floor then. It was just DCJ.

MR. JASO: Anything else? All right.

How are you doing? Do you need a break or anything like that?

MR. FARLEY: No.

MR. JASO: Okay. A little bit longer.

I've handed you a-- I've handed the witness a memorandum bearing Bates number OAG-502 and 503, two-page memorandum from John M. Fahy to Terrence P. Farley, dated April 19th, 1996. Could you just take a moment to look through that, if you would?

MR. FARLEY: Okay.

MR. JASO: Do you remember this memo?

MR. FARLEY: I remember it. I don't have independent recollection of getting it, but reading this I clearly knew everything that's in there. I had contact, at least, with everything that's in there.

MR. JASO: Let me first ask you, do you remember asking Mr. Fahy to prepare this memorandum?

MR. FARLEY: No.

MR. JASO: Based on your dealings with Mr. Fahy, would this be something that he would have done on his own, or would he have--

MR. FARLEY: Can--

MR. JASO: Let me just finish asking the question?

MR. FARLEY: Go ahead.

MR. JASO: Or would you have requested or do you think somebody else would have asked him to write it and send it to you?

MR. FARLEY: I can't answer any part of that question. I just don't know.

MR. JASO: Okay. I note on the first -- in the first sentence, it indicates, "this memorandum is submitted to provide you with information concerning the status of developments involving the State Police 'profiling issue.'" Do you recall having an understanding at that time what was-- Well, let me ask you first what your understanding of the term in quotation marks profiling was at that time?

MR. FARLEY: Well, if anything that I've ever seen dealing with it answers that question for me, this does. The subject -- selective prosecution

issue involving State Police stops -- that's what we described this as all along is selective prosecution. Did the term profiling get used at times? I'm sure the answer's yes, but that was not in my mind a common thread. It was selective prosecution, although it clearly dealt with race.

MR. JASO: If you could turn to the second page under heading two, State Police, "A committee was formed by Colonel Carl Williams to provide an institutional response to the Gloucester County ruling. Lieutenant Colonel Littles chairs the Committee, which also includes representatives from IAB, Training Bureau, and Affirmative Action Office. AG Susswein and I also attend meetings at the request of the State Police and our input has been encouraged." Do you recall that Committee, what it was doing, whether you had any participation in it?

MR. FARLEY: The Committee, based upon what this says, is they were preparing a State Police response. I had nothing to do with it, other than, I believe, based upon comments that have been made over the last six months or so, that I probably either at the request of the State Police, which is the more probable reason or on my own, assigned Fahy and Susswein there.

MR. JASO: You assigned them?

MR. FARLEY: But I think it probably would have been at their request.

MR. JASO: At who's request?

MR. FARLEY: The State Police.

MR. JASO: Who was your main contact with the State Police on a day-to-day basis?

MR. FARLEY: It depended what the issue was. I worked with so many different units. Obviously, my equal there was Colonel Williams. And if there

was something that needed us to discuss it directly, I would sit down or talk to him on the phone, but I dealt with -- literally from road troopers to station commanders.

MR. JASO: Do you recall having any conversations with Colonel Williams with regard to either these particular cases or the profiling issue in a more -- general terms?

MR. FARLEY: You know, I honestly do not have any recollection of any meetings or conversations -- just the Colonel and I -- about this issue at all. I do not.

MR. JASO: Any meetings where other people were present where you discussed it.

MR. FARLEY: I can only guess--

MR. JASO: I don't ask you to guess, if you can recall?

MR. FARLEY: Then the answer-- I don't.

MR. JASO: Okay. The second paragraph begins, "an attempt is being made to respond in a positive way to the decision by addressing the criticisms expressed by the court." Do you understand what that sentence means? That is, who is attempting to respond in a positive way, if you recall?

MR. FARLEY: I assume, since he's talking about the Committee, he means the Committee.

MR. JASO: Do you recall anything-- Does this refresh your recollection as to whether there was any discussion between you and anyone else with regard to attempting to respond to the court's decision?

MR. FARLEY: If I had any, it would have only been with Jack Fahy and maybe Debbie Stone, but I don't have any independent recollection of having

it make sense that I would have.

MR. JASO: Okay.

MS. GLADING: Are you done with that?

MR. JASO: Yes.

MS. GLADING: I want to ask you about the second paragraph on the first page of that memo -- the discussion of the Hunterdon County litigation. I wonder if you could take a second to look at that.

MR. FARLEY: Go ahead. I read it quickly before.

MS. GLADING: Okay. The last sentence of that paragraph makes a reference to buying some time, while other efforts to resolve this matter, which we discussed, have pursued. What is your recollection of what that means?

MR. FARLEY: Absolutely zero.

MS. GLADING: You don't-- Do you recall ever having a discussion with Mr. Fahy about the Hunterdon County case?

MR. FARLEY: I knew of the Hunterdon County case. I know independently in my mind I knew of it.

MS. GLADING: What did you know of it?

MR. FARLEY: That there was another case being raised on selective prosecution. And I think what we wanted to do was get through the first one and get a final appellate decision, which we thought would be favorable, based on the information we had been provided and it would end all these other ones.

MS. GLADING: So you wanted to buy time, you think, to get the case through the Appellate Division?

MR. FARLEY: That's-- That's the only thing that makes any sense to

me without having totally independent recollection, yes. I think we were looking to get some final court ruling, which would be, you know, something of statewide significance.

MS. GLADING: Okay. On that same topic-- Well, actually, while we're on this document, let me just jump to the top of the second page, the first full paragraph. It makes reference to "discoveries being provided to the public defender, but State Police are independently looking at records in the affected counties to assess whether any problem exists. I will be apprised of their findings so we can make tactical decisions regarding how to proceed in each county." What is your recollection of what that meant?

MR. FARLEY: Other than what it says, none.

MS. GLADING: What do you think it means? How would you interpret what that meant?

MR. FARLEY: My understanding of the basis of these cases was that there was a disparity -- a numerical disparity between the number of certain minorities being stopped in two regards, one in their relationship to the total population, and two, in regard to their total numbers riding the major highways. And I-- My-- I suspect what Jack was saying, they're looking to see if there's a problem here, because that's what the whole decision was based on. And as I said, we were led to believe, at least I was, all along that the figures being used by the expert for these people were dead wrong.

MS. GLADING: Did Mr. Fahy followup on this and then inform you of what the numbers were in those affected counties?

MR. FARLEY: I don't have any recollection.

MS. GLADING: Okay.

MR. JASO: Can I ask one additional question on that document?

That same paragraph where it indicates “the State Police are independently looking at records in the affected counties to assess whether any problem exists,” did you know about this time in April of '96 whether or not, apart from this memorandum, the State Police were, in fact, reviewing their own records with regard to stops?

MR. FARLEY: I have to answer no, but you probably deserve an explanation.

MR. JASO: If you think one is appropriate, please go ahead and explain.

MR. FARLEY: If you were to say to me that in April 1996 I knew exactly what they were doing in relation to the case, I have no recollection. I know this Committee was formed. I know the Committee's objective was to find out is there a problem, and if there were, suggest procedural changes so that we can get by those problems. And at some point, either I suggested or they suggested-- And I guess they suggested that we have some input through our people with them to make lawyers, in effect, available. They didn't have other than, you know, minimal legal advice internally. And Jack was handling this case, and Ron Susswein to me is the best criminal justice mind in the country -- that they had input from him.

MR. JASO: So just to clarify, was it your understanding that it was the Committee that started the process or instigated the process of this review?

MR. FARLEY: I can't tell you that.

MR. JASO: Do you know whether there was any review going on either apart from or prior to the Committee's being formed?

MR. FARLEY: It depends when the Committee was formed, and I don't

know the answer to that.

MR. JASO: Okay.

MS. GLADING: I wonder if I can stay on the topic of the Hunterdon County case for a minute, if that's okay with you?

MR. JASO: Sure.

MS. GLADING: This is DOJ-7760, and it's a letter from Hunterdon County Prosecutor, Assistant Prosecutor, to Detective Tom Gilbert, and I-- At the top of the second page of it, there is a reference in that first paragraph to plans by Ransavage and you to make a decision about representation of the State in this case.

MR. FARLEY: That would go exactly to what you asked me before.

MS. GLADING: Yeah. Do you recall those discussions with Prosecutor Ransavage?

MR. FARLEY: No, I don't, but it would make total sense that that -- those discussions took place. One of the things that we tried to do at the Division was take over difficult, complex cases that were handled in an appellate section, because we had a much bigger appellate section than most county prosecutors did. Of course, Sharon's case would have been relatively small because of the size of her office, so it makes total sense that that was occurring.

MS. GLADING: Did you recall how you resolved who was going to handle these cases?

MR. FARLEY: No.

MS. GLADING: The-- On that same topic--

MR. FARLEY: The same document?

MS. GLADING: No, the same topic.

MR. FARLEY: Is it all right if I stand and stretch for a minute?

MR. JASO: Oh, absolutely.

MS. GLADING: Yeah. Bad back?

MR. FARLEY: Yeah, real bad.

MS. GLADING: I can sympathize.

MR. JASO: Like I said, if you need to take a break and walk around the block or anything.

MR. FARLEY: No. No. I'm fine. It's just that I have a real bad back and sometimes it goes.

MS. GLADING: If you can take a look at that -- something you've probably have never seen. Here's an extra.

MR. FARLEY: Oh, great, thanks.

MS. GLADING: I think you need to really review the entire document?

MR. FARLEY: I do?

MS. GLADING: Okay.

MR. FARLEY: No. I'm sorry.

MS. GLADING: I don't think--

MR. FARLEY: Okay.

MS. GLADING: But it does discuss a meeting that was held on the 12th of April at which--

MR. FARLEY: Where is that?

MS. GLADING: It is-- It's in the middle of the second page.

MR. FARLEY: Okay.

MS. GLADING: Mr. Fahy and Mr. Susswein were apparently at this

meeting, can you see that?

MR. FARLEY: Uh-huh.

MS. GLADING: Okay. In that next paragraph under the Gloucester County appeal, it discusses “if the appeal is successful, the next phase will most likely involve a remand where each individual case is heard. “ Fahy noted that “should this happen, the individual troopers may be subject to intense scrutiny in respect to training, discipline, and a statistical review of their enforcement patterns, including race.” It goes on to say that “it was agreed that a review would be initiated of the 19 Moorestown State Police cases to ascertain which troopers were involved. And once identified, an analysis of their activity will be conducted to identify any potential negative issues should they be called upon to testify.” At the very end of that paragraph it says, “if this review uncovers substantial problems, it would be recommended that additional thought be given to proceeding with the appeal.” What’s your recollection of that issue in the context of *Soto*?

MR. FARLEY: If you’re talking about in recollection of this document, I don’t have any.

MS. GLADING: I understand that.

MR. FARLEY: If you’re talking about why would -- what were the considerations in *Soto*? The considerations were pretty simple. We had lost the case based upon what we were informed was bad mathematics -- junk math, as I think the term was used. And if that should change by this review that they’re talking about here, that could change the entire situation. And any lawyer worth his salt knows bad facts make bad law. So if we had now bad facts that we were unaware of and the facts didn’t support our position, which

was a concern by the way from people, that we might have to just drop the appeal and go with what the court said, because we were basing our decision on one set of facts. If the facts turned out to be different, obviously, we'd have to reconsider.

MS. GLADING: So is it correct to say that the decision of whether or not to continue that appeal was always contingent upon a review of the facts of -- the factual records of these troopers, and their own -- their individual statistics?

MR. FARLEY: Always is the term only that bothers me in your question.

MS. GLADING: At this time, I mean.

MR. FARLEY: At that time, certainly, it would be a consideration.

MS. GLADING: If you could turn to the next page on that document, the first paragraph. And as I promised, this is getting back to Hunterdon, the first and second paragraph.

MR. FARLEY: Okay.

MS. GLADING: The second paragraph discusses a significant IAB history, that's Internal Affairs Bureau history, involving one of the troopers in the Hunterdon County case. It's the last sentence of that second paragraph. For the record, we're on Page 1375, at the moment, GC.

MR. FARLEY: Okay.

MS. GLADING: Do you recall this being an issue in your conversations with Prosecutor Ransavage?

MR. FARLEY: No.

MS. GLADING: Do you recall any problems at all with those -- with the Hunterdon County case?

MR. FARLEY: My best recollection is the only conversations I would have had with her would have been over who was going to handle the appeal and why. I don't remember any-- Quite frankly, this information here, even looking at it today, doesn't ring a bell that I ever knew these facts.

MS. GLADING: Okay. Would Jack Fahy have had responsibility in connection with these cases or would you have been dealing directly with Prosecutor Ransavage?

MR. FARLEY: I'm not sure that I understand your question.

MS. GLADING: Well, I'm not sure-- These facts were apparently gathered for a reason, and there was -- was apparently somebody in the Division of Criminal Justice or in the Attorney General's Office who State Police felt needed these facts. And I'm wondering why they would have gathered them and who they would have reported them to?

MR. FARLEY: I'm gathering that all this was done as a result of the work of this Committee -- Lieutenant Littles's Committee or, excuse me, Lieutenant Colonel Littles's Committee -- that this is all part and parcel of what they were doing to determine whether or not this problem truly existed, whether there was selective prosecution and vis-à-vis the natural things you would look for.

MS. GLADING: But in terms of handling the specific Hunterdon County case, as we saw in the previous letter that your office had some involvement with Prosecutor Ransavage, and I'm trying to--

MR. FARLEY: In deciding or recommending or accepting her recommendation as to whether or not the Division's Appellate Section would handle it. That was my recollection of our only involvement in those decisions.

MS. GLADING: I think actually this was a trial level court. I think these were discovery motions in the Superior Court.

MR. FARLEY: Oh, okay. Then that even.

MS. GLADING: So it would have been whether the Division's Trial Section would handle?

MR. FARLEY: Most likely. And again, because there were cases that appear now to be of statewide significance. We had had-- You know, we're dealing with *Soto* and now these other cases are being seen as offshoots of that, and it would be logical and we have more resources, so--

MS. GLADING: Okay. Do you have any recollection how the Hunterdon County case was resolved?

MR. FARLEY: No.

MS. GLADING: Do you recall any discussions with any county prosecutors about plea bargaining cases, selective enforcement cases, because of a concern that those discovery motions, suppression motions, might be lost?

MR. FARLEY: Do I have independent recollection? No.

MS. GLADING: Do you have general recollection?

MR. FARLEY: A guess, that's it.

MS. GLADING: What would your guess be?

MR. FARLEY: My guess would be yes.

MS. GLADING: You would--

MR. FARLEY: It would be logical.

MS. GLADING: To discuss plea bargaining cases?

MR. FARLEY: To discuss the disposition of the cases in every way.

MS. GLADING: Thanks.

Do you know something-- I'm sorry. I wonder if just -- to avoid jumping around--

MR. JASO: Sure.

MS. GLADING: --from one topic to another, I did have another question on this topic of the Hunterdon cases. Would that be okay with you?

MR. JASO: Please.

MS. GLADING: You sure?

I have the document.

MR. FARLEY: Okay.

MS. GLADING: Do you-- I'm looking specifically at the last paragraph of this memo, the reference to the Prosecutors Office being uncomfortable with pleading these cases out to reduce charges because of the first degree crimes charge. For the record, we're looking at OAG-552. Do you have any recollection of this memo and of that discussion?

MR. FARLEY: I recall seeing this memo. This memo does ring in my mind as something I think I saw. Discussions, no.

MS. GLADING: Do you recall if there was an interest by the Attorney General's Office in persuading the Hunterdon County Prosecutor to plead these cases out?

MR. FARLEY: I would have to tell you, if it was me, the answer would have been absolutely no, because that would have been my position, too.

MS. GLADING: Who would have taken the position then that--

MR. FARLEY: I'm not sure anybody did or whether that was a general process that they were all talking about with all these cases to move the process along. I honestly don't know, but I feel comfortable it wasn't something that

came from me.

MS. GLADING: This memo's a little odd, because it goes directly from Mr. Fahy to Mr. Ciancia, and I wonder if you know why? That would have been the route this memo took with you copying on it.

MR. FARLEY: Probably because he was his direct boss. Again, I don't remember when he came to me, but these particular cases, these selective prosecution cases, were a carryover from his time when he was assigned to the Attorney General's Office. If he had already come to CJ, he was still dealing with the 8th floor, not so much with me other than, I guess, keeping me advised of what was going on, because it was not a project. And again, I use that term at -- only because I say it a lot of Criminal Justice. The Attorney General's Office was handling these issues. We were not specifically. We were asked questions, as you can see from these memos and things, but--

MS. GLADING: So this was happening-- This was being handled at the highest levels of the Department.

MR. FARLEY: It was being handled at the Attorney General's level, because that's where the people who were assigned to deal with the State Police were located. That was their legal staff who were devoted to the State Police issues.

MS. GLADING: But in terms of handling criminal cases and providing assistance to counties with criminal cases, that would have been a CJ task, is that right?

MR. FARLEY: It would have been, except this is sort of a highbred. This is not the kind of thing, I would guess, that they would normally be involved in from an advisory legal capacity. We certainly were used to

handling criminal cases, and we certainly were used to dealing with county prosecutors in dealing with them, but I don't know that people on the 8th floor generally tried criminal cases.

MS. GLADING: Okay. This memo is-- That paragraph is a little unusual, too, because it makes reference to the statistical information concerning the arresting officers, but it doesn't say what that statistical information is. It seems to assume that all the recipients of this memo knew what the stats were on these two -- these arresting officers. Do you have any recollection of what the statistics--

MR. FARLEY: I don't get-- I don't agree with your analysis, unfortunately.

MS. GLADING: It's okay.

MR. FARLEY: Not that I'm trying to be-- But I get the impression that he's going to supply her with information that he has learned in regard to the statistics. And I'm assuming this statistics, having breezed through the other document you showed me--

MS. GLADING: Right.

MR. FARLEY: --deal with what was referred to in that document that was found through the Committee's efforts.

MS. GLADING: Because it goes from the idea of supplying statistics to then the idea of pleading out cases that involve serious charges.

MR. FARLEY: And--

MS. GLADING: Do you think it's safe to assume that the statistics were bad?

MR. FARLEY: Could be.

MS. GLADING: Is that a reasonable reading of it?

MR. FARLEY: It's-- Yeah. It could be a reasonable reading of it that there were things that they found in relation to that particular case that said better to plea bargain than to get an adverse ruling.

MS. GLADING: Okay, thanks.

MR. JASO: I had previously handed the witness a document bearing the Bates numbers OAG-5249 through 5253, a memorandum dated December 5th, 1996, from Mr. Fahy to Mr. Waugh, which is copied to Mr. Farley. If you could take a moment to look at that.

MR. FARLEY: Other than reading it verbatim, it appears to be a history of lawsuits involving selective enforcement going back to the earliest one that he's aware of up through the present.

MR. JASO: He being the author, Mr. Fahy?

MR. FARLEY: Yes.

MR. JASO: On the first page, do you recognize any of the handwriting on the top there?

MR. FARLEY: No.

MR. JASO: Do you recall receiving a copy of this memorandum?

MR. FARLEY: Don't have a specific recollection of it, no.

MR. JASO: Do you have a general recollection?

MR. FARLEY: The problem is -- the contents I'm familiar with some of, so I don't know whether it came from this memo or other memos.

MR. JASO: Do you--

MR. FARLEY: I must tell you, the contents on the first page I don't even think I knew. And I'm assuming it predated my time as a director,

because it talks about a case where troopers were charged criminally and people retired and stuff, and I don't have any recollection of that happening on my watch.

MR. JASO: Do you recall there being a concern at the time by Mr. Waugh or the Attorney General or anyone else within the Department that they needed to get a handle on the history of selective enforcement within New Jersey?

MR. FARLEY: The history versus the issue, I can't answer. Certainly, the issue was a concern.

MR. JASO: At that time?

MR. FARLEY: Certainly, at the time of this memo in December of 1966, yes.

MR. JASO: Ninety-six?

MR. FARLEY: What did I say?

MR. JASO: Sixty-six. (laughter)

MR. FARLEY: Old brain.

MR. JASO: That's okay. It was a good year.

MR. FARLEY: Yes.

MR. JASO: Let me ask you to turn to the third page, which is 5251.

MR. FARLEY: Yes, sir.

MR. JASO: The middle paragraph talks generally about something called the State Police Drug Interdiction Unit, which this memorandum states was modeled after a Federal program developed by the DEA called Operation Pipeline. Do you have any familiarity with Operation Pipeline?

MR. FARLEY: Yes, sir.

MR. JASO: What is your knowledge of Operation Pipeline?

MR. FARLEY: It was a course being taught by the DEA, the Drug Enforcement Administration, that went from -- or included the issues of profiling, vehicle compartments, the routes normally traveled by drug couriers, the source cities, the destination cities, and things like that. It was a general course dealing with the issue of interdicting drug traffickers.

MR. JASO: And it was a training course, is that correct?

MR. FARLEY: Yes.

MR. JASO: And it was a training course given by the DEA for--

MR. FARLEY: Yes.

MR. JASO: --who?

MR. FARLEY: For--

MR. JASO: Law enforcement officers?

MR. FARLEY: --State, county, and local law enforcement officers, yes.

MR. JASO: What time period did this training occur in, if you can recall?

MR. FARLEY: I took it, but I can't even tell you whether I took it in my-- Oh, yeah, it had to be in my first stint in the prosecutor's office, so I would say probably between '90 to '92, somewhere in there.

MR. JASO: You mentioned that it discussed profiling. Do you mean law enforcement profiling?

MR. FARLEY: Yes.

MR. JASO: Did the--

MR. FARLEY: And specifically, not racial profiling. As I've said, every

course I've ever been to discussed profiling especially for drug couriers, but never, ever, ever did I hear anybody say you stop a black or you stop a Hispanic or that other comment made allegedly by Ms. Farber about stopping them in a certain car -- that being enough to do it -- that was never, ever discussed in my presence in any training.

MR. JASO: These training seminars with regard to Operation Pipeline did, in fact, discuss the ethnicity of certain gangs, as I think you testified to originally -- gangs and other people involved in organized crime.

MR. FARLEY: You know, I can't tell you whether Pipeline did, but it certainly was the subject in many other drug interdiction-type courses. Would I be shocked if you told me Pipeline didn't? No. Because it would be the norm. But I just don't-- Pipeline to me is -- my recollection of it -- and it-- Maybe they had a different course, but it seemed to me I-- It was a day or maybe even less of training.

MR. JASO: Look at the bottom of the page, please, the same page. It indicates that this issue-- And I guess considering the topic of the memorandum is profiling issue, it says "Has been raised in other states often in the context of civil suits. Our office is presently cooperating with the states of Maryland and Illinois in formulating defenses to such litigation. Does that refresh your recollection as to any communications, cooperation between anyone within the New Jersey State government and the governments of the states of Maryland and Illinois with regard to racial profiling issues?"

MR. FARLEY: No, because by our office, I think, he means upstairs and not Division of Criminal Justice. I did mention to you, I think, earlier that the first time I heard of the selective prosecution cases was in Maryland, so the

Illinois one doesn't even refresh my recollection today. I don't ever remember that being the case, but I'm assuming it is.

MR. JASO: Well, I'm just asking you whether you had any knowledge, regardless of whether it was under your particular bailiwick?

MR. FARLEY: Any knowledge of?

MR. JASO: Of communications or cooperation between the governments of the State of New Jersey and other state governments?

MR. FARLEY: Nothing that I had anything to do with, no.

MR. JASO: Now, I think you had testified earlier that one of your responsibilities was to oversee training of law enforcement personnel, is that correct?

MR. FARLEY: As the Director of the Police Training Academy, we reviewed and set the mandates for what the minimum requirements were for graduating from the Academy, yes.

MR. JASO: Did it also have to do with the substance of what was taught?

MR. FARLEY: Not on that level, although I guess maybe it may have been a responsibility that I just -- I don't ever remember me specifically saying -- seeing a course and saying, oh, don't say this or you can't say that or-- Because I certainly wouldn't have had the time to do that, to look at course by course by course by course.

MR. JASO: Were you ever asked to review particular training materials with regard to law enforcement profiling?

MR. FARLEY: Not that I recall.

MR. JASO: Look at the Page 5252, which I think is the next page?

MR. FARLEY: Uh-huh.

MR. JASO: The second paragraph after *B*, proactive response. It says, "It was also determined that a review of present case law, including the status of the *Soto* decision should be presented to all sworn personnel in a training session. This training will take place in 1997 as part of an updated search and seizure course in which Assistant Attorney General Susswein is participating." Does that refresh your recollection as to your knowledge of a planned, at that point, revision of the training with regard to search and seizure?

MR. FARLEY: I don't know that I ever took it as a plan to change the training, but rather to update it and to make sure that everything was within the parameters of what we knew the law to be.

MR. JASO: Do you recall whether you were -- you participated in reviewing the existing policies to update them?

MR. FARLEY: Ron Susswein and I discussed search and seizure issues probably hundreds of times. Can I say specifically it was -- here's this, you know, part of this course or that course? I can't say that, but we certainly did discuss search and seizure issues all the time.

MR. JASO: Were these meetings informal or discussions or telephone conversations?

MR. FARLEY: Ron and mine?

MR. JASO: Yes.

MR. FARLEY: Mostly informal. Ron's office was around the corner, and we talked all the time. We were-- I brought him back to the Division. He had left. And I brought him there for exactly those reasons. That, as I told you, I think he's the best criminal justice mind in the country.

MR. JASO: Do you have anything on this?

I know we're getting toward lunch time. I'm going to try to wrap this up fairly shortly. I don't know how much you have, whether it would be appropriate to take a break now or--

MS. GLADING: I don't think I have too much. I want to check a couple -- two of the documents over there that you've received.

MR. JASO: Okay. I'll tell you what. I'll hand the witness two documents here, and then we can take a five-minute break. You can look at the documents, and then we'll reconvene. Okay.

DEPUTY ATTORNEY GENERAL FLANAGAN: How much longer do you think we have?

MR. JASO: Well, if we come back within five minutes, because I just need to run to the restroom. I would expect that I would be done by half past. I don't know how much she has.

(Off the record)

HEARING REPORTER: Back on the record now.

MS. GLADING: What documents are you on?

MR. JASO: Well, if you could start-- You handed him some documents as well, right?

MS. GLADING: No.

MR. FARLEY: No.

MR. JASO: You didn't. Oh. Okay.

This is-- These are two documents. One bearing the Bates number OAG-811 through 813, which is a cover memo from Mr. Waugh to Mr. Farley, dated February 6th, 1997. The second being another memo bearing Bates

number OAG-818, a one-page memo from Mr. Waugh to Mr. Farley, also of the same date, February 6th, 1997.

MR. FARLEY: I see them.

MR. JASO: Do you recall this-- Let me just-- First, the memo with attachment -- 811. Do you recall this memorandum?

MR. FARLEY: I have some recollection of an incident like this occurring, yes.

MR. JASO: The incident referring to the stop of Kenneth Green, DAG?

MR. FARLEY: Correct.

MR. JASO: What is your recollection?

MR. FARLEY: That it occurred.

MR. JASO: Do you recall receiving this memorandum and the attachment?

MR. FARLEY: Not offhand, but I assume I did. As a matter of fact, that's probably how I became aware of the issue.

MR. JASO: Do you recall having any discussions with Mr. Waugh or any of the people who were CC'd on this memorandum with regard to this incident?

MR. FARLEY: I have no specific recollection of any conversations, no.

MR. JASO: Any general recollections?

MR. FARLEY: No.

MR. JASO: Did you recall-- Do you recall having any discussions with then Attorney General Verniero with regard to this particular incident?

MR. FARLEY: No.

MR. JASO: Do you recall having any discussions with Attorney General

Verniero with regard to selective prosecution?

MR. FARLEY: Honestly, no.

MR. JASO: How about with Director LaVecchia?

MR. FARLEY: No, I don't think I ever did.

MR. JASO: Do you recall whether you followed up on this particular incident as Mr. Waugh requests in the memorandum?

MR. FARLEY: Specific recollection versus assumption, no.

MR. JASO: And your assumption would be what?

MR. FARLEY: That I would have followed up on it. That's the kind of thing that there are processes and procedures in place to handle.

MR. JASO: What was the process?

MR. FARLEY: Our Internal Affairs policy statewide, based upon a lot of experimentation and review of other policies, always starts with the Department in which the officer is employed. And by directive--

MR. JASO: The officer you mean the person of -- with regard to--

MR. FARLEY: The alleged offending officer, yes.

By directive -- and I assume it had to be an Attorney General directive, each municipal department, no matter how big or how small, has to have an Internal Affairs Unit. Each prosecutor's office does. Everybody was trained in Internal Affairs and that would have been the normal procedure. If I saw this in the normal course of a day, probably handed it to somebody and said, get West Windsor to do an initial report on that, have prosecutor-- Is that Mercer County, I guess, West Windsor? -- whoever the Mercer County prosecutor was at the time, review this, and if there's a problem get back to me or get back to me with the results, one or the two.

MR. JASO: To your recollection, was it typical for Mr. Waugh to copy the Attorney General on memoranda to you?

MR. FARLEY: I don't-- I can't answer that.

MR. JASO: You don't know.

MR. FARLEY: No.

MR. JASO: Looking at the second one-page memorandum-- Well, let me ask you this first. Did you ever talk to the complainant, Kenneth Green, with regard to this?

MR. FARLEY: I doubt it.

MR. JASO: Why?

MR. FARLEY: It would have been unusual for me to directly handle-- I mean, you know, we get complaints of State Senators and local municipal officials and if I talked to everybody about who was the subject of every one of those memos I wouldn't have gotten much else done. The process would have normally been followed is my best guess, and I may have eventually seen a report resolving it or requesting authorization for a resolution. It could happen either way.

MR. JASO: Do you know Kenneth Green? Did you, at that time?

MR. FARLEY: I don't think so.

MR. JASO: Look at the one page--

MS. GLADING: Just two quick questions on that. Would you typically have then forwarded it to the Attorney General what the resolution was of the case?

MR. FARLEY: This one I probably would have.

MS. GLADING: Why?

MR. FARLEY: Because it came from them, and it involved an employee of the Division, excuse me, of the Department. Otherwise, no. I mean, we reviewed all State Police internal affairs, disciplinary decisions. Sometimes we'd be asked by county prosecutors to review or to supersede them even, which we had authority to do. But to send a particular case from me to the Attorney General would have been highly unlikely because those -- you have a lot of that type of situation. If anybody, and I don't see a disposition here-- If we had a written disposition, my guess is it would have been sent to Alex Waugh, because he requested what's going on.

MS. GLADING: Is it unusual for you to receive a memo in which the Attorney General is copied on a matter like this?

MR. FARLEY: You see, I can't say that. I would say the answer's no, but I can't say because it came from Waugh versus somebody else the answer is no. I probably got hundreds, if not thousands, of memos that went to the Attorney General. Technically, if you read the statute, I'm the person in charge of all law enforcement for the Attorney General, so a lot of people would send me a lot of stuff that I had little or no interest in or little or no contact with just because I was who I was.

MS. GLADING: Thank you.

MR. FARLEY: And I don't mean me by the way, I mean the person in that director's chair. I was no different than anybody else.

MR. JASO: I think I might have asked a similar question before with regard to an earlier document. But again, turning your attention back to the first memo where Mr.--

MR. FARLEY: What -- 811?

MR. JASO: Yes.

MR. FARLEY: Okay.

MR. JASO: The-- Waugh indicates in the memo-- He uses the term "profile" stop and then "profile computer run." What was your understanding of what that term profile meant in this context?

MR. FARLEY: Well, the allegation by the Deputy Attorney General is, basically, he was black, and he felt he was stopped inappropriately, and he was stopped inappropriately based upon an officer randomly taking his vehicle registration and putting it into the computer.

MR. JASO: I understand. If-- Just looking at the term profile stop at that time, February 1997, would you have had an understanding of what someone meant when they said profile stop?

MR. FARLEY: I assume I would have.

MR. JASO: Did you or did you not to the best of your recollection?

MR. FARLEY: I'm-- Again, I'm assuming I would have known what it meant by that time.

MR. JASO: Well, let me ask you this way. Would it have referred to-- The way it's put here in quotation marks would it have referred to law enforcement profiling or racial profiling?

MR. FARLEY: No, racial.

MR. JASO: Would it be fair to say that anyone within the Department at that time would have a similar understanding of what the term profiling meant?

MR. FARLEY: I don't-- I would not even attempt to speak for what other people in the Department knew.

MR. JASO: To your understanding, was it a commonly-used term?

MR. FARLEY: Actually, no.

MR. JASO: And on what basis do you say it was not?

MR. FARLEY: Well, I say it wasn't, because as I told you, I never even encountered the term, and I've been in law enforcement for a considerable period of time until I think I was in Virginia and heard the term used in relation to the Maryland case. And I heard it only in the Division in relation to these -- this overall picture starting with *Soto* and going through the other cases. So the answer is, I don't know that it was such common knowledge yet. It-- Certainly not to the -- anywhere near to the extent it is today.

MR. JASO: Right. I'm just trying to take a snapshot of that time.

MR. FARLEY: I can't give you any more accurate one. That I don't think it was anywhere near as significant a term then as it is today. I think if you ask most, certainly narcotics, officers at that time about a profile stop it was a profile based upon a whole load of factors for narcotics intervention.

MR. JASO: Was the term profiling typically used in this context or with that meaning, I should say, in relation to the *Soto* case and the related litigations at that time?

MR. FARLEY: Was the term profiling used for *Soto* and the related cases? Is that what you're asking?

MR. JASO: In that context.

MR. FARLEY: Yeah. One of two terms -- selective prosecution and/or profiling were, I think, probably interchangeable.

MR. JASO: Okay. And looking briefly at the one-page memorandum bearing Bates number 818. At the top of the page it says, "discussed with

Alex.” Is that your handwriting?

MR. FARLEY: I don't think so.

MR. JASO: Do you know whose handwriting that is?

MR. FARLEY: No.

MR. JASO: Okay. Anything else on these?

MS. GLADING: No.

MR. JASO: Let me show you a document. This is a document bearing the Bates label OR-214 through 218, an executive directive from Attorney General Poritz dated July 9th, 1996. Is this document familiar to you?

MR. FARLEY: Yes.

MR. JASO: Do you recall the circumstances which led to the issuing of this particular executive directive?

MR. FARLEY: Use of force rules constantly changed and this was a revision suggested by the-- I'm assuming the Police Bureau at Division of Criminal Justice. Again, I'm assuming the process would have been the normal. We discussed it. Everybody in the director's chairs and myself agreed that there -- whatever changes it made-- And quite frankly, I'd be hard pressed to tell you what they were. Oh, okay. It's notifications changes. It's just minor stuff. I think the only change was that we had to get notified of any shooting by a law enforcement officer involving death or serious bodily injury and that wasn't always the case.

MR. JASO: We meaning?

MR. FARLEY: Division of Criminal Justice.

MR. JASO: Do you recall an inquiry by the Department -- Federal Department of Justice with regard to selective prosecution or selective -- I

should say, enforcement racial profiling?

MR. FARLEY: An inquiry to me?

MR. JASO: Any inquiry of the State of New Jersey?

MR. FARLEY: No.

MR. JASO: You have no knowledge-- You have no knowledge, as to be clear, of any investigation and let me give you a time frame in the period of '96, '97, by the Federal Department of Justice into New Jersey State Police profiling practices?

MR. FARLEY: I'm aware today that there was and maybe still is, but--

MR. JASO: Were you aware back then is my question.

MR. FARLEY: I can't-- I don't have any recollection of being aware in 1996 of that, no.

MS. GLADING: Or in '97 while you were at the Department?

MR. FARLEY: I honestly can't answer it. I just don't have a recollection of -- at what point I became aware of it again. Keep in mind, racial profiling, as far as this whole concept was concerned, was not something that was in my mind directly involved as something the Division was intimately involved in other than supplying some people to work on it. It was a matter being handled by Alex Waugh's section and the people who oversaw what was going on with the State Police. And obviously, you can see, I've been copied on some memos and stuff, and obviously we did followup. But it wasn't on my front burner.

MS. GLADING: Would you have been--

May I interject a few questions?

MR. JASO: Please, go ahead.

MS. GLADING: Would you have been at an equal level as George

Rover?

MR. FARLEY: No. I would have been-- I'm trying to think if George actually worked for me for a while, but I think I would have been his superior if he did.

MS. GLADING: Oh, he was not the director of the-- Oh, okay. He was at ABC, I think, at this point.

MR. FARLEY: He went to ABC eventually. He had been in the Attorney General's Office. I think an Assistant Attorney General. And if you're going to just look at that term, Brian's an Assistant Attorney General. I was. I had lots of Assistant Attorney Generals. Not lots of, a number who worked for me that I wouldn't consider had the equal authority that I did. The director would set it apart.

MS. GLADING: My question was a little-- Let me ask it this way. Did you have any recollection of George Rover being involved in the racial profiling issue?

MR. FARLEY: I can't specifically say that I knew George was involved in that issue, but I knew George directly worked on State Police issues. I thought that was, quite frankly, his full-time job until he went to ABC, I guess, is where he went.

MS. GLADING: Okay. And after going to ABC, would you have assumed that he wouldn't be working on State Police issues at that point?

MR. FARLEY: Yes.

MS. GLADING: Okay. And Susswein was a subordinate of yours, Ron Susswein, right?

MR. FARLEY: Correct.

MS. GLADING: And he had-- He was working on this special project for lack of a better word?

MR. FARLEY: Yes, he was. Right.

MS. GLADING: At the AG's Office?

MR. FARLEY: Right.

MS. GLADING: Was he reporting to you on his work for them and keeping your apprised?

MR. FARLEY: Obviously, Fahy was sort of the reporter. Did Ron have conversations with me? I don't doubt it. Ron and I talked all the time. Ron was a deputy director. Somebody I had contact with literally on a daily basis.

MS. GLADING: Right. Do you remember what his views were on the issue of racial profiling and what was going on at that point in the Department after *Soto*?

MR. FARLEY: That's a lot of questions that you asked. I know Ron's position on profiling versus racial profiling were basically the same as mine. You cannot profile on the basis of race alone. There's a lot of things -- factors that you can use to profile and it's completely proper. I don't think there's any question that we agreed on that issue. As far as what his thoughts were as to what was going on, I really can't answer that.

MS. GLADING: Are you computer literate? Do you use the computer?

MR. FARLEY: No.

MS. GLADING: Do you know how to use E-mail?

MR. FARLEY: No.

MS. GLADING: No. So you didn't use E-mail while you were at the Department, I guess?

MR. FARLEY: They got so far as to teach me how to turn my computer on, and I once put my name in it and I shut it off. And when people came into my office, they would use it for sticky notes, and I'm really embarrassed that you asked that question. Someday I'll tell you why. I'm going to be the only person on earth never to use one. There's a reason.

MS. GLADING: I'll be waiting to hear.

MR. FARLEY: You don't want to hear it on this record, because it will make me go totally crazy.

MS. GLADING: Something about the Federal Government being able to read your thoughts through your cavities?

MR. FARLEY: No. It's-- These modern flicks. The people who are going to come and conquer the world are inside those computers. I'm going to be the super hero who stops it, because I was never infected by a computer.
(laughter)

MS. GLADING: Your first inclination would have been right?

MR. FARLEY: See that. I told you.

MS. GLADING: Do you have another document you wanted to move to?

MR. JASO: This is some way to discredit all of your testimony at once.
(laughter)

MR. FARLEY: If you want? (laughter) That's why I said to you, it's-- You probably don't want to go any further with that. I'm sure I turned bright red when you asked about a computer.

DEPUTY ATTORNEY GENERAL FLANAGAN: And for the record, I guess we should put on that he is joking.

MR. JASO: Yes, of course.

MR. FARLEY: No. I'm telling you the truth. (laughter) That's the worst part.

MR. JASO: Well, it's tape recorded, so it will reflect the laughter.

All right. Let me try to wrap up quickly here. Let me just show you this document. The Bates numbers are kind of cut off here, but it appears to be OTG-2550 through 2577. A report called the Model Quality of Life Program--

MR. FARLEY: Yes.

MR. JASO: --in which you were listed as an author.

MR. FARLEY: Yes.

MR. JASO: Do you recall this program--

MR. FARLEY: Yes.

MR. FARLEY: --and your participation in it?

MR. FARLEY: Yes.

MR. JASO: Were you the primary author of this?

MR. FARLEY: My guess probably Ron Susswein was with my input. Ron was my writer.

MR. JASO: What in general did this program address?

MR. FARLEY: Quality of life matters addresses the things that are affecting the greatest number of the public at any given time in the context that this was used to a great extent as an extension of our drug enforcement. It meant that we would go in and pick areas that had been most affected by narcotics or other drug trafficking and try to do our best to clean them up literally. Sometimes block by block. And it was an initiative that as it turned out, basically, as mandates from the State often are, or great ideas from the

State often are, used primarily by the county or local law enforcement. The idea here was to find areas in which we could use innovative law enforcement techniques to clean up specific areas that have been particularly inundated where kids weren't safe to go to school, where there was a park that no one could use because the drug gangs had taken it over, or just the dealers who were non-gang members. And it was supposed to be an emphasis literally away from where we normally would be, the highest profile cases and the largest dealers, to put a street-level effort together at the same time sort of overseen as a grand view by the State as to how we could help out doing this. And we had special enforcement zones, we had signs and notices, and stuff like that, much like the drug free school zones.

MR. JASO: In the preparation of this program and the report, was there any discussion or consideration of the racial profiling issue?

MR. FARLEY: If so, insignificant.

MR. JASO: Do you recall any specifically?

MR. FARLEY: Absolutely not.

MR. JASO: Any questions about that?

MS. GLADING: No, I don't.

MR. JASO: Lastly, going back in time to about November, December 1994, do you recall there being-- Well, let me-- Let me ask you if you recall becoming aware of some training materials which were potentially to be produced in discovery in one of the selective prosecution cases that appeared in some instances to describe people of various races and ethnicities in stereotypical fashion?

MR. FARLEY: I don't know if I understand your question enough to

answer it.

MR. JASO: Well, let me just show you what I have here--

MR. FARLEY: Okay.

MR. JASO: --and then maybe it will help. I don't an extra copy I'm afraid, so--

MR. FARLEY: I'm not trying to avoid the question.

MR. JASO: No, not at all.

MR. FARLEY: Because as I've told you, certainly ethnicity was often used in training. You don't ignore, as I said, the Chinese gangs doing home invasions and the Mexicans selling methamphetamine. You'd be pretty dumb to do that, but--

MR. JASO: Let me just say for the record that this is a document bearing Bates label GC-703 through 714. A memorandum from Mr. Waugh to Captain Juan Mattos, Division of State Police, dated November 22nd, 1994. I'm going to ask you to look at that, if you ever saw it at that time since--

MR. FARLEY: I don't recall seeing this at that time. I recall being informed about these two comments.

MR. JASO: Which comments?

MR. FARLEY: The homosexual deviant subculture and maybe not exactly in these terms, but blacks, value, and materials goods.

MR. JASO: Do you recall who informed you of that?

MR. FARLEY: Not the slightest.

MR. JASO: Do you recall discussing this issue or these matters with anyone at that time?

MR. FARLEY: I honestly can't. It seems to me I had some general

discussions about this being silly stuff, but I can't tell you in what context it was or with whom.

MR. JASO: Do you recall whether you discussed it with Mr. Waugh?

MR. FARLEY: No, I do not recall.

MR. JASO: Mr. Fahy?

MR. FARLEY: Don't recall.

MR. JASO: That's all I have for now.

MS. GLADING: I just want to clean up on a couple of things.

For the record, this is document GC-1562. And in particular, I'm interested in the third from the last paragraph.

MR. FARLEY: Is that the one starting with entering?

MS. GLADING: Uh-huh.

MR. FARLEY: Okay.

MS. GLADING: Do you recall what the broader plan was that was decided upon at that time?

MR. FARLEY: No.

MS. GLADING: The Division of Criminal Justice would have -- it seems would have had a role in determining a broader plan if there was a common, uniform statewide strategy.

MR. FARLEY: Well, see, that's the problem. I don't agree with that comment--

MS. GLADING: Okay. Tell me--

MR. FARLEY: --that we would had any significant role. And I think if Jack was talking about the role of the Division of Criminal Justice, he would have said that and he doesn't. He says, the State Police, the Attorney

General's Office, and the public defender's office.

MS. GLADING: Okay.

MR. FARLEY: I don't think I was involved in determining any broad plan. Obviously, the plan would have been simple. If this existed, it had to stop. And if these cases turned out that the material we originally were basing our decisions on was incorrect, and in fact, the numbers were accurate, then it obviously had to stop, and we should end the practice. Beyond that, I wasn't involved.

MS. GLADING: Okay. Is it possible to interpret this that the broader plan might have addressed how to minimize discovery in these cases?

MR. FARLEY: Well, it certainly wasn't with me.

MS. GLADING: Okay. I want to ask you about a document that's OAG-211. It's apparently part of a transition report from 1996.

MR. FARLEY: Okay.

MS. GLADING: Have you ever seen this document before?

MR. FARLEY: In it's form, I would say no. In actuality, the whole document, probably yes, because I probably participated in asking to have certain things included in it. The transition report, I'm assuming, was the transition from Attorney General Poritz to Attorney General Verniero.

MS. GLADING: Presumably.

MR. FARLEY: It's the only thing I can think of.

MS. GLADING: What do you recall about that transition process?

MR. FARLEY: That a transition report of significant issues was put together which is the standard operating procedure within the Department, and it would have been done. Beyond having a recollection of what we did, I

can't tell you.

MS. GLADING: Do you recall when it was done?

MR. FARLEY: Prior to-- My recollection is there wasn't a whole lot of time between the time we found out that Attorney General Poritz was leaving and Attorney General Verniero was coming aboard. So it was probably done immediately or begun at least immediately upon notice to us that she was being appointed to the Supreme Court.

MS. GLADING: Okay. Do you recall having any discussions with Peter Verniero as he came into office briefing him or bringing him up to speed on CJ issues?

MR. FARLEY: I don't have specific recollections. Did I do it? Absolutely.

MS. GLADING: Okay. On the Department of Justice inquiry, and I'm fast forwarding ahead now--

MR. FARLEY: Okay.

MS. GLADING: --six months almost.

MR. FARLEY: What time period?

MS. GLADING: December of '97 -- '96.

MR. FARLEY: Okay.

MS. GLADING: December of '96 into January of '97. I take it from your comments earlier, and I want to make sure I understood you correctly that you didn't have any involvement in the response to the Department of Justice inquiry?

MR. FARLEY: I don't even recall, except I've seen some documents of late, that it was going on. That doesn't mean it wasn't, obviously, because it

appears to be. But I don't have any recollection at all of it being a topic even, you know, from my standpoint.

MS. GLADING: Do you recall having any role in the subsequent review of the *Soto* appeal and the decision to both seek-- I guess it was in its interlocutory appeal so to--

MR. FARLEY: That would have been--

MS. GLADING: --seek the appeal and then to appeal it.

MR. FARLEY: --prior to that not--

MS. GLADING: Yeah.

MR. FARLEY: --subsequent.

MS. GLADING: Right. Do you recall participating as the-- Actually, the briefs in *Soto* were filed in '96, late--

MR. FARLEY: Prior to Attorney General Verniero.

MS. GLADING: No. Yeah, the initial brief. But then the actual appeal brief, the motion to -- the motion seeking leave to appeal was filed prior to Attorney General Verniero. The appeal brief itself was filed subsequent to him.

MR. FARLEY: I'm just trying to figure out why there would have been a motion seeking leave to appeal.

MS. GLADING: Interlocutory?

MR. FARLEY: I didn't even remember it being an interlocutory opinion. That shows you how much I knew about it. My recollection is there was an opinion, and I think the Burlington County Prosecutor's Office or with the Gloucester County--

MS. GLADING: Gloucester.

MR. FARLEY: That wouldn't have been Soto. Gloucester County Prosecutor's Office actually handled it. Late in the transition, from what I gather, not in the transition, it's a technical term-- Late in the process, I think, is when Jack Fahy got involved with them rendering advice.

MS. GLADING: Okay. All I'm trying to get at is what role, if any, you played in the substantive discussions in the decision within the Department, both to file the appeal and to continue to pursue the appeal?

MR. FARLEY: One discussion that I can recall to Attorney General Poritz. Me recommending that they do it based upon the facts as I knew it.

MS. GLADING: And that's it?

MR. FARLEY: And it was not an unanimous decision. I will tell you that.

MS. GLADING: Who did not want to appeal it?

MR. FARLEY: My recollection Debbie Stone and Anne Paskow had some concerns about the facts being bad facts. Because again, it's standard. They both have appellate backgrounds that you don't try bad facts because you make bad law. But my position was, the facts that as we were being told them to be, not as the judge found them to be, were fine from our standpoint, not reflective of any problems. And that the basis upon which the judge ruled was on this expert testimony. And that being the case, I wanted it appealed, because I thought down the road it would have a significant affect on law enforcement in general.

MS. GLADING: By the expert testimony, do you mean the statistical data?

MR. FARLEY: Yes.

MS. GLADING: Do you recall ever being part of discussions within the Attorney General's Office about the need to do a violator's survey? If that term's not clear to you, I can explain my understanding.

MR. FARLEY: All right. Go ahead.

MS. GLADING: A survey to determine if there's a racial composition of violators of motor vehicle laws.

MR. FARLEY: I thought that was done.

MS. GLADING: Just recently. No, actually, no. Your understanding is that a violators survey was done.

MR. FARLEY: I just assumed it was done, because how else would you get the statistical numbers that you-- You know, this whole case was about statistics, as best I could -- my recollection is.

MS. GLADING: It's on population -- travel statistics--

MR. FARLEY: Yeah, right.

MS. GLADING: --as opposed to violators.

MR. FARLEY: Okay. Then maybe I'm not even sure I know the difference there in the math part.

MS. GLADING: Okay. Fair enough.

MR. FARLEY: --but then the answer is definitely no, because I don't know the difference.

MR. JASO: Let me ask one question, if I may, to interject on the Attorney General's transition report. I think that you had mentioned that you had made some efforts to put particular issues into the report, is that correct? Do you remember what they were?

MR. FARLEY: No. Whatever-- What was given to me when I came as far as past transitions, we basically followed the same outline. These are issues. These are things we're doing, and maybe even a couple of cases of significance that were either pending or had recently been decided to give an idea to a new Attorney General what we were all about in as brief a format as possible.

MS. GLADING: Would you have briefed, do you think, the incoming Attorney General on the status of the different suppression motions that were pending around the state?

MR. FARLEY: Absolutely not.

MS. GLADING: Why?

MR. FARLEY: I'm not sure I knew what all the suppression motions were. As a matter of fact, looking at some of the documents today, I feel confident in saying there's some there that I never heard of.

MS. GLADING: Would Jack Fahy have briefed the Attorney General?

MR. FARLEY: Can't answer that.

MS. GLADING: Did you have any involvement as the *Soto* appeal was put together and proceeded in looking at any kind of State Police data or statistical information that was being generated at that point about stop rates?

MR. FARLEY: Other than I probably perused the brief, no independent stuff -- materials, excuse me.

MS. GLADING: Did you ever experience trouble in getting information from the State Police?

MR. FARLEY: As far as?

MS. GLADING: If you needed to call Colonel Williams to ask him to provide documents or to provide an IAB file maybe--

MR. FARLEY: Oh, no.

MS. GLADING: --and connected with a criminal case that you were handling.

MR. FARLEY: No, because--

MS. GLADING: Were they always forthcoming?

MR. FARLEY: Well, yeah, that was part of the process. We had to-- They couldn't close out an IAB file without coming to us. So it was important for us to have a relationship there. That was one area there was never a conflict that I can recall.

MS. GLADING: Okay. I'm done. I appreciate it.

MR. JASO: Thank you very much for coming.

MR. FARLEY: Thank you.

(INTERVIEW CONCLUDED)