

CONFIDENTIAL

INTERVIEW
of
David Hesse, Esq.

for the
SENATE JUDICIARY COMMITTEE

February 5, 2001
4:00 p.m.
Committee Room 2
State House Annex
Trenton, New Jersey

PRESENT AT INTERVIEW:

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

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New Jersey Department of Education

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Jeffrey J. Miller, Esq.
Assistant Attorney General

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ERIC H. JASO, ESQ.: Mr. Hespe, as I said before, my name is Eric Jaso. I'm an associate at the firm of Latham and Watkins. Michael Chertoff, who is a member of the firm, has been appointed Special Counsel to the Senate Judiciary Committee of the State to undertake an investigation into racial profiling and other issues.

And we appreciate your making yourself available today.

COMMISSIONER DAVID HESPE: My pleasure.

MR. JASO: Let me first administer the oath.

If you'd stand, please, and raise your right hand?

(Oath administered)

MR. JASO: Thank you.

If we could just go around the room so that everybody could put their name on the record.

STEPHEN M. HOLDEN, ESQ.: Good afternoon.

Stephen M. Holden, Counsel for the New Jersey Senate, Senate Minority.

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

ASST. ATTY. GEN. JEFFREY J. MILLER, ESQ.:

Jeffrey Miller, Counsel for Mr. Hespe.

MR. JASO: Okay.

And, as before, we have two individuals here who are administering the taping equipment.

Mr. Hespe, if I could just ask you to start by telling me your educational background and then your employment history.

MR. HESPE: Yes. I have a bachelor's degree from Rutgers College and a Juris Doctor degree from Rutgers Law School in Newark. I'm admitted to the Bar of New Jersey and New York, Third Circuit, and the District Courts in both States.

After graduating from law school in 1985, I was a law clerk in Mercer County for Judge Fox and Judge Brennan. I then entered the private practice of law in 1986 -- law firm, general practice, East Brunswick, law (indiscernible) of Richard Simon -- left there in 1989 to become Associate Counsel for the Office of Legislative Services in the Education Section.

Left that post in February of 1994 to become Governor Whitman's Associate Counsel for Education and Higher Education. Left that post in the spring of 1997 to become Assistant Commissioner of Education. Left that post in March -- March 20th, 23rd, somewhere in that area -- 1998 to become First Assistant Attorney General. Left that post on March 19th or 20th of 1999, to become Commissioner of Education, which post I'm currently serving in.

MR. JASO: We will mainly be-- I will mainly be questioning you today with regard to your duties as First Assistant.

And again, that's -- that ran from 3/98 to 3/99?

COMMISSIONER HESPE: That's correct.

MR. JASO: Is that an appointed position?

COMMISSIONER HESPE: No. It is a -- selected by the Attorney General.

MR. JASO: Let me start by clarifying a particular term, which is -- will come as no surprise -- will be used and referred to from time to time, which is racial profiling.

I would like you to define for me your understanding of the term racial profiling, as it was -- as it is understood to you now, and as -- if different, as it was understood to you during your tenure as First Assistant.

COMMISSIONER HESPE: Sure. I think the definition of racial profiling certainly changed in my mind during the year I was at the Attorney General's Office very much.

At the -- at the beginning it was focused on law-enforcement strategies in terms of, most particularly, traffic stops. I think over time and as I became more familiar with the issue, I saw it really had a number of different components -- one of which was lack-of-diversity issues within the Division, which was in the Department of Law and Public Safety. So, the one I was most familiar with -- the Division of State Police-- Workplace issues -- discriminatory workplace issues -- and the third being law-enforcement tactics.

And I-- My current view of racial profiling is that it does encompass all three of those issues in my mind that currently--

MR. JASO: Going back to your employment history -- and with reference to your government jobs -- did you, prior to being appointed First Assistant, have any experience in law enforcement?

COMMISSIONER HESPE: No.

MR. JASO: Either directly or indirectly?

COMMISSIONER HESPE: No.

MR. JASO: When you were appointed -- and I use that term-- You mentioned that you're selected by the Attorney General. But when you took that job in March of '98, how were you -- and--

Well, I should ask if you were, in fact, debriefed by anyone, either orally

in a meeting or in any kind of documents, with regard to your new responsibilities?

COMMISSIONER HESPE: Absolutely. I had a number of conversations with the Attorney General regarding what he would expect of a First Assistant Attorney General.

MR. JASO: And were there any written materials that he presented to you -- or that anyone presented to you -- in that regard or in that context?

COMMISSIONER HESPE: Other than an organization chart, which I remember discussing specifically with the Attorney General, I don't remember any other materials being given to me.

MR. JASO: My colleagues will indulge me, because I have to take my own notes. (laughter) I sent our own intrepid paralegal--

COMMISSIONER HESPE: Could I-- Let me correct that.

MR. JASO: --to go back to Newark.

COMMISSIONER HESPE: I also got the budget book -- the book that the Department of Law and Public Safety presents to the appropriations committees -- which outlines the various roles of the divisions in the Department. So I had that document, as well as an organization chart.

MR. JASO: Did you sit in a meeting one-on-one with the Attorney General during this debriefing session or was anyone else there? Or were there multiple sessions?

COMMISSIONER HESPE: There were a couple of sessions -- I think two -- and they were with the Attorney General only. They were over lunch.

MS. GLADING: Can I just clarify something? Who was your immediate predecessor and your immediate successor as First Assistant

Attorney General?

COMMISSIONER HESPE: Janice Mitchell Mintz was my predecessor, and Paul Zoubek was my successor.

MS. GLADING: Thank you.

MR. JASO: And what issues did the Attorney General discuss with you as being significant issues that you would have to address?

COMMISSIONER HESPE: Well, first and primary, the First Assistant Attorney General was responsible for coordinating the activities of a number of the divisions in the Department. I believe they're -- and I can't name them, but I know there are probably close to 11 of them -- divisions in the Department -- some of which the Attorney General would have a much more hands-on role than others.

The Division of Law, certainly, was one where the Attorney General would have a very hands-on approach, the Division of Criminal Justice, the Division of State Police--

But a number of the other divisions, the First Assistant would very -- would have that hands-on operational role with the various Division heads, be it Gaming or Racing or Elections or Civil Rights, Consumer Affairs. There's probably a whole bunch I'm forgetting. ABC-- There's a number of them, and there's probably three or four I've even forgotten.

MR. JASO: Did the Attorney General discuss with you -- during your debriefing -- the pendency of certain cases, raising the issue of selective prosecution? That is, for example: the *Soto* case -- if you're familiar with that one.

COMMISSIONER HESPE: No.

MR. JASO: Did he mention any other cases that were pending at the time?

COMMISSIONER HESPE: Involving racial profiling?

MR. JASO: Right.

COMMISSIONER HESPE: No.

MR. JASO: Did he discuss the issue of selective prosecution or racial profiling in any fashion with you during those debriefing sessions?

COMMISSIONER HESPE: No.

MS. GLADING: Did anybody else in the -- who was part of briefing you on department affairs, brief you on those issues?

COMMISSIONER HESPE: No. I -- in fact, after assuming the office in March -- did have one-on-one meetings with the Division directors. I don't recall that issue arising.

MR. JASO: So, is it fair to say that in none of your debriefing sessions with any individual, the issue was raised directly or indirectly?

COMMISSIONER HESPE: That's correct. It was not raised.

MR. JASO: To your recollection, did you have any kind of knowledge about the issue prior to assuming the First Assistant position?

COMMISSIONER HESPE: No.

MR. JASO: Do you recall when the first time the issue was brought to your attention?

COMMISSIONER HESPE: It's-- I'm unclear as to the exact point. I do know that by May of '99, I was involved-- No. Restart that.

May of 1998, I was involved in a couple of -- of issues, which I think are related to racial profiling. The first was working with Tom O'Reilly on the

recruitment, selection, and promotion policies of the State Police in regard to a -- having a Washington firm prepare some reports for us that we were then going to use as the basis for mapping out reforms for the Division on those issues.

The Washington firm-- The acronym is PERF. I -- I -- I do not recall what that stands for.

MR. JASO: PIRF?

MS. GLADING: PERF.

COMMISSIONER HESPE: PERF. Yes.

The second, was I was also looking at the internal affairs investigations. We had gotten a referral of an individual -- I believe his last name was Morton -- who was stopped on the Turnpike -- northern terminus -- and alleged that he was treated discourteously and that he believed he was targeted due to his race.

And that began some conversations between myself, other OAG staff, and the State Police on what their investigation -- what their investigation practices were -- how they handled this type of incident. And in fact, we followed this complaint through the internal affairs process at the State Police, and I think it allowed us to understand exactly where the flaws were in that system. And that was number two. Bring that back. That was the second area where -- I think in the spring of '98, I was becoming involved in this issue -- was understanding the internal affairs process.

MR. JASO: What about the-- At some point, did you learn of the Turnpike shooting incident?

COMMISSIONER HESPE: Yes. That was, I think, again in the spring

of '98. I think that--

MR. JASO: It was in April of '98, I believe.

COMMISSIONER HESPE: April of '98?

I think that was--

MR. JASO: April 23rd, I guess.

COMMISSIONER HESPE: I think that -- that began an investigation by the Division of Criminal Justice, which -- a lot of the information of which, when it became available in the summer and fall, did start congealing a lot of the other initiatives we were looking at at the time.

So, the answer is yes, I am aware of that.

MR. JASO: Did the two things that you mentioned before -- the internal affairs procedures and the recruitment issue -- did they precede, to your recollection, the Turnpike shooting incident?

COMMISSIONER HESPE: Definitely the recruitment, selection, and promotion preceded it by -- by quite some time. My focus on internal affairs-- The referral came in contemporaneously with the Turnpike incident.

But I can't say whether it preceded it by a week or -- or happened -- the Turnpike shooting happened that week, the week after. It was around that period of time. It could have been late April or early May. So, it could be after it, but I'd be stretching, and I just can't -- can't recall the actual date.

MR. JASO: And when you say the referral, you're referring to the Morton incident?

COMMISSIONER HESPE: That's right. That's right.

MR. JASO: Anything else right now?

MS. GLADING: On the-- Were you being briefed regularly on the

progress of the Hogan-Kenna investigation?

COMMISSIONER HESPE: Not regularly. I did attend a -- a few briefings, but it was a CJ investigation, and normally, I wouldn't be in on regular progress reports on an investigation. That would be the Director of Criminal Justice's responsibility. So I would not normally be in any regular feedback on that, but I did attend at least a couple.

MS. GLADING: Was that Mr. Zoubek at that point?

COMMISSIONER HESPE: That would be Director Zoubek at that point in time.

MS. GLADING: And when you refer to internal affairs investigations, are you talking about State Police, IAB investigations?

COMMISSIONER HESPE: Correct. Correct.

MS. GLADING: Okay.

Did you continue an involvement in State Police internal affairs investigations, or was the Morton case an isolated incident?

COMMISSIONER HESPE: No, actually the Morton case, I think we were using as a test case, where we thought there were serious allegations by a credible witness, who had -- we thought -- presented some very well-documented identifications, occurrences. And we were engaged with the State Police on this issue generally.

But the Morton case was, I think, the test case for us. We were seeing -- as it moved through every step of the process of the investigations over there. And I think in terms of-- As the impetus for the report--

MS. GLADING: The report?

COMMISSIONER HESPE: The State Police report that was announced

in February of '99.

MS. GLADING: The interim report.

COMMISSIONER HESPE: Exactly. Well, I guess the -- the concept of the report -- the -- the decision to do a report.

I think our experiences with the -- preceding that -- with our engagement with the Division on internal investigations, and particularly the Morton incident, I think did -- did allow us to make some conclusions that there were things that needed to be looked at seriously in terms of reforms of the investigation process -- the IAB process.

MS. GLADING: Was records falsification an allegation in the Morton case? In terms of--

COMMISSIONER HESPE: I do not believe so.

MS. GLADING: --falsifying patrol charts?

COMMISSIONER HESPE: There was a report that was done by IAB, and that might give more information. I do not recall.

But clearly in terms of the feedback we were getting in the fall on the Hogan and Kenna case-- I remember going to one briefing that CJ gave where they indicated that there was--

ASSISTANT ATTORNEY GENERAL MILLER: I would just instruct the witness that we have an understanding that the Hogan and Kenna investigation -- because it is a pending criminal matter -- is off limits for right now.

MS. GLADING: It was your witness who went there, not me.

ASSISTANT ATTORNEY GENERAL MILLER: I understand.

MR. HOLDEN: You've used the pronoun we a couple of times.

(affirmative response) When you say we, who did you mean -- specifically with regard to the Morton investigation.

COMMISSIONER HESPE: Al Ramey. Al Ramey is an Assistant Attorney General assigned to the Office of the Attorney General.

Al was point person on EEO matters and also used in order to address some of these discrimination complaints that we'd received then.

MR. HOLDEN: Was there a higher level -- formal or informal group -- discussing the issues developing in the Morton matter in May of '98?

COMMISSIONER HESPE: I'm not following what you're saying.

MR. HOLDEN: With whom did you meet to discuss the outcome and the progress?

COMMISSIONER HESPE: Well, the investigation took many months. I don't remember actually getting an investigatory report probably until very late in '98, if not early-'99.

My discussions, I think, were with Al and probably with Lieutenant Colonel Dunlop or Fedorko -- I can't remember which one.

MR. HOLDEN: At what point did the Attorney General intersect in your investigation?

COMMISSIONER HESPE: Intercept?

MR. HOLDEN: Intersect in these conversations?

COMMISSIONER HESPE: He was certainly aware that I was looking at the internal affairs issue, but until I had something more formal to present to him, that the -- there really wasn't anything to do, until we received the -- exactly how the Division was going to dispose of that case. What was their investigatory report? What was the proposed sanction? And that didn't

happen until either late-'98 or early-'99.

So, it was very much myself working on the issue with Al Ramey and the State Police.

MR. HOLDEN: And was there a time of which you and Al and either Dunlop or Fedorko met with the Attorney General to discuss the outcome of the Morton fact-finding?

COMMISSIONER HESPE: No, I don't -- I don't believe-- I think that that -- there was a meeting regarding that issue with the Attorney General. I'm trying to recall.

I do remember when I got the investigatory report. Actually, I believe it was early '99. And I remember I presented it to Paul Zoubek. It was a confidential report, and I remember presenting it to Director Zoubek as part of his investigation, which -- his criminal investigation. And also as part -- and at that point, I believe he had also begun the report on State Police practices in terms of racial profiling -- and also presented to him as part of that, as well.

MS. GLADING: When was this? Do you remember what month?

COMMISSIONER HESPE: It was early 1999. I don't remember the month. I was-- It was probably just about the time I was nominated to be Commissioner of Education, which would place it at early February.

MR. HOLDEN: Did you get to follow up on where the report went after Mr. Zoubek reviewed it?

COMMISSIONER HESPE: I believe it -- it was referred to in the -- in one of his -- either the interim report or the final report. So, I think it was certainly taken into account in those reports.

MR. JASO: I'm gonna hand you a document.

I brought some extra copies this time--

MS. GLADING: Oh, thank you.

MR. JASO: --but not enough, because more lawyers keep coming in.

MR. HOLDEN: We -- we can share, though.

MS. GLADING: Yes, we can.

I'm just seeing if you already have this one. If it's one I pulled or not.

MR. JASO: This document, for the record, is a memorandum from Alfred Ramey to David Hesper, dated May 19th, 1998, a one-page memo bearing the Bates number OAG-5797.

COMMISSIONER HESPE: This was Al and I's first discussion about the handling of internal complaints. This was about the time where I referred -- when I discussed with Al the need to follow a -- the Morton complaint through the process. And I had asked Al to outline for me his understanding of how that process would unfold. And so that -- I think that pinpoints the middle of May when I began to look at this issue.

MR. JASO: So the reason--

Well, let me ask you this first: Did you ask him to prepare a memorandum?

COMMISSIONER HESPE: I asked him to give me information on how the complaint investigation would ensue, and I don't remember if I asked for 'em in writing or asked in any particular medium -- but I remember asking.

MR. JASO: But it was instigated by the particular Morton investigation? Is that right?

COMMISSIONER HESPE: Yes, that's -- that's right.

MR. JASO: Were there other complaints -- either specific or in general --

a number of complaints that were also of concern to you and anyone else within your--

COMMISSIONER HESPE: Yes. As we did follow this case through, and as we engaged the State Police on the internal investigation issue, I believe we did ask them for more information on the investigations concerning misconduct issues in the winter of '98.

MR. JASO: And when you say misconduct issues, you're referring to what type of misconduct?

COMMISSIONER HESPE: Where allegations are made against a trooper, that they were engaged in racial profiling or some altering of records or something like that.

MR. JASO: And just to clarify -- going back to when you first came in in March -- in these debriefing meetings with the Attorney General and/or with other individuals, the issue of citizen complaints or defendant complaints with regard to troopers was not discussed?

COMMISSIONER HESPE: That's correct.

MR. JASO: Any follow-up?

MS. GLADING: Nope.

MR. JASO: Okay.

I've just handed the witness another one-page document. This being a memorandum dated May 26th, 1998, from Mr. Fahy to Attorney General Verniero, copied to Mr. Hespe and Mr. Zoubek, bearing Bates number OAG-5383.

Do you recognize this document?

COMMISSIONER HESPE: No.

MR. JASO: I note that there is a check mark next to your name.
Is that your check mark?

COMMISSIONER HESPE: No. It's probably the secretary in Criminal Justice indicating that that was delivered to me.

MR. JASO: Do you have any recollection of the question of whether a violator survey -- as it's described herein -- would be undertaken at that time?

COMMISSIONER HESPE: No.

MR. JASO: Do you know who underlined this document?

COMMISSIONER HESPE: No.

MR. JASO: It indicates -- the first sentence, "In the past, our office has consulted with experts regarding the viability of conducting a violator survey."

Do you have any recollection of that being the fact? That at some point previous to May 1998, the DCJ had consulted with experts regarding the viability of conducting a violator survey?

COMMISSIONER HESPE: No. I have no recollection.

MR. JASO: Have you ever discussed a violator survey with anyone during your tenure as First Assistant?

COMMISSIONER HESPE: Yeah, I believe that there were points as the Division of Law was preparing for the *Soto* -- I believe, appeal -- that there were discussions at which I was present when the issue of data did -- did arise, but it wasn't an issue that I was involved in in terms of any chain-of-command issues. It was not an area where I had any real substantive knowledge or expertise.

And I was present at those meetings just as the First Assistant is often present at meetings, because it's an issue that the Attorney General is involved

in. It's the decision-making process or a briefing process. That if a project arose out of that meeting, he might -- would often assign that to the First Attorney -- First Assistant Attorney General to lead that.

No such project arose out of those meetings, and I was not involved in any of the decisions or any of the operational activities regarding -- regarding the data collection.

MR. JASO: Did the Attorney General direct you, or was it your understanding of part of your responsibilities to attend such meetings as his representative?

COMMISSIONER HESPE: No. To my recollection, I -- the meetings I attended where this issue was discussed, the Attorney General was also present.

MR. JASO: They described-- Well, Mr. Fahy describes the violator survey as having a purpose of determining the population. Again, I'm in the first sentence. "Determining the population of persons most likely to be stopped based upon offenses committed."

Do you have an understanding of what that means?

COMMISSIONER HESPE: Could you indicate where in the letter that appears?

MR. JASO: Sorry. First sentence. They want to conduct--

Well, it says that they've considered the via-- It's the first sentence.

COMMISSIONER HESPE: "Viability of conducting a violators survey to determine the population of persons most likely to be stopped based upon offenses committed?"

MR. JASO: Right.

COMMISSIONER HESPE: And could you restate the question? Or just re--

MR. JASO: The question is, do you understand what Mr. Fahy means by the purpose of the survey being to determine the population of persons most likely to be stopped based upon offenses committed?

COMMISSIONER HESPE: No.

MS. GLADING: Do you know what a violator survey is?

COMMISSIONER HESPE: Excuse me?

MS. GLADING: Do you know what a violator survey is?

COMMISSIONER HESPE: If it has a particularly technical term, I do not. I believe that violator surveys see what individuals are violating the laws of a particular Turnpike, highway, something along those lines.

Now, as to the technical aspects of what the survey would look like and things like that, no. But I do believe that -- that--

MS. GLADING: No, I meant--

COMMISSIONER HESPE: The general purpose, yes. I'm familiar with that, but any technical aspect, I'm not.

MS. GLADING: Do you recall discussions around the wisdom of doing a violator survey like this or was there any disagreement or controversy within the AG's Office about this idea of doing a violator survey?

COMMISSIONER HESPE: I remember conversations about it. But I cannot recall whether the pros and cons were indicated. Whether they either were -- there were practical problems with the -- with the survey, I don't recall.

MS. GLADING: Do you remember an issue being raised in the *Soto* -- in the course of the *Soto* appeal, about whether or not the State could take the

position that certain minorities might be more likely to drive -- to violate traffic laws, and therefore, might be more likely to be pulled over, which would skew a general consent or stop -- stop-data statistics?

COMMISSIONER HESPE: I do remember conversations about what the meaning of certain data is or -- or was or could be, but I don't remember any of the aspects of that conversation. I do remember that conversation did occur. I just don't know what was said, by whom, or the -- or the -- or even the general proposition for comments. I just -- I just don't recall.

A lot has happened between then and now -- three years -- and I just don't recall.

MS. GLADING: I understood your earlier testimony, though, to be that you -- your recollection is that the violator survey was raised and brought up and discussed in the context of the *Soto* appeal?

COMMISSIONER HESPE: That's right.

MS. GLADING: Okay.

COMMISSIONER HESPE: That's correct.

MR. JASO: Looking at the last sentence in the first paragraph -- it says, "We can continue to consult with experts in the field of statistical analysis and monitor litigation from other jurisdictions to determine whether an acceptable survey is developed."

Do you recall whether anyone in-- Do you recall that Mr. Fahy was -- or his department was monitoring litigation from other jurisdictions?

COMMISSIONER HESPE: I -- I never received any information to that extent either orally or in writing or in any other way. So -- I--

The question is, do I recall? And, no, I don't recall him ever mentioning

that.

MR. JASO: So in the discussion of, among other things, the *Soto* case, similar types of cases being pursued in other jurisdictions were not discussed with you, to your recollection?

COMMISSIONER HESPE: Not to my recollection, no.

MR. HOLDEN: In your role as Assistant Commissioner of Education, did you ever participate in meetings or conferences where discussions or statistical data was presented with regard to destructive student behavior or unauthorized entries into school premises?

COMMISSIONER HESPE: Sure. I'm very familiar with statistical analyses of any number of different issues -- student discipline to school funding to any number of different issues.

MR. HOLDEN: Did the issue of profiling students or making generalizations about -- about backgrounds of students emerge in your conversations prior to becoming the First Assistant Attorney General?

COMMISSIONER HESPE: You'd have to define what profiling students means for me.

MR. HOLDEN: Well, did -- did -- didn't the Department of Education develop any guidelines or frameworks with regard to student behavior?

COMMISSIONER HESPE: Student--

MR. HOLDEN: As it relates to ethnic background or origin?

COMMISSIONER HESPE: You're gonna have to actually pinpoint that a little bit, 'cause-- Did we develop frameworks? You mean, guidelines? Or--

MR. HOLDEN: Guide-- Yes.

COMMISSIONER HESPE: --doing what? For alternative programs?

MR. HOLDEN: Yes.

COMMISSIONER HESPE: Yes, absolutely.

MR. HOLDEN: And what were the bases for those?

COMMISSIONER HESPE: What were the bases for those? Norma-- For example: If it was an alternative school, it would be if a child was disruptive in the regular classroom to the point where they were jeopardizing not only their own education, but that of the other students. Then an alternative school might be a good placement option for them. So that would certainly be one programmatic option for disruptive students.

MR. HOLDEN: Was any data ever collected about the income background or the racial background of destructive students by the Department of Education?

COMMISSIONER HESPE: Income background of disruptive students? Not to my knowledge.

MR. JASO: Let's go back to the Attorney General's Department, hopefully.

This is a memorandum from Thomas O'Reilly to Jeffrey Miller-- (laughter)

MR. HOLDEN: Oh, well. (laughter)

MR. JASO: --August 28th, '98, bearing Bates numbers GC-2356 to 2358.

Do you-- I should add that it's copied to you -- Mr. Hespe -- and to Operations Audit Director Caccese.

Do you recall this memorandum?

COMMISSIONER HESPE: No, not particularly. But generally, this

would follow discussions that administrator and I O'Reilly -- Administrator O'Reilly and I -- were having regarding the selection, recruitment, and promotion practices of State Police and reforms that we could implement to address some of the issues being raised by PERF and others.

MR. JASO: So this pertains to the recruitment issue that you were discussing previously?

COMMISSIONER HESPE: It's not a lot of information here, as to whether it regards recruitment, selection, or promotion. But I think one of them-- Yeah, it would involve one of those three, because Administrator O'Reilly indicates that that is the subject area. But, from this, I don't really know which of those three areas this would address.

MR. JASO: At the top of the first page is an annotation that says, "Dennis FYI."

Do you know who wrote that?

COMMISSIONER HESPE: Where is this?

MR. JASO: At the front page, top.

COMMISSIONER HESPE: Oh. Dennis FYI. One of the people who works for Director Caccese is a fellow by the name of Dennis Crowley. And I know Dennis was involved with the administrator on some of these issues, so I would believe that this memo was sent to Dennis Crowley from Caccese.

MR. JASO: Was there, in fact, a training team created that -- of the type described in the first page?

COMMISSIONER HESPE: I don't -- I don't -- I don't recall. I don't know. I'd have to find out more about what the -- what issues the team was to -- was to address, before I can answer that question. I'm not clear on what

their--

MR. JASO: The document doesn't refresh your recollection of the idea of creating a training team?

COMMISSIONER HESPE: No. It could be-- A team could be involved in any one of those three issues -- promotion, how to evaluate; recruitment, how to recruit; and selection, regarding -- you know -- how a candidate would go through the selection process.

So a team could relate to any of those three, and also, I'm looking at the other departments involved here -- Corrections, OER -- and it doesn't help me in determining which one of those three areas--

MR. JASO: Any questions? (negative response)

COMMISSIONER HESPE: It does clear up what PERF stands for, though. Police Executive Research Forum.

MR. JASO: Yeah, I remember seeing it somewhere, but I couldn't recall where.

The next document that I'd like you to take a look at, Mr. Hespe, is this. A memorandum from you to -- well, a whole bunch of people, starting with Mr. O'Reilly, bearing Bates label OAG-4871 through 4873, dated September 29th, 1998.

Do you recall preparing this memorandum--

COMMISSIONER HESPE: Yes.

MR. JASO: --and the attachment?

COMMISSIONER HESPE: Yes, I do.

MR. JASO: Could you ask-- Could you explain to me how -- what the circumstances of the law-enforcement summit-- How it was suggested, or--

Who originally suggested having this summit?

COMMISSIONER HESPE: It was, I think -- came out of discussions between myself, Paul Zoubek, Tom O'Reilly, concerning community policing. And we thought that--

MR. JASO: Let me ask you first, before you go on: what is that?

COMMISSIONER HESPE: Community policing, I think, is a way for law enforcement to interact with the people it serves by becoming seen as a part of that community in a whole bunch of different ways. It's -- it's a very generic term for tying the law-enforcement community into the community it serves, and it could be done in any number of different ways.

MR. JASO: So that was the -- you were continuing to say, I believe -- the circumstances in which the idea for a law-enforcement summit came up?

COMMISSIONER HESPE: Yes. It was conversations between Tom O'Reilly, Paul Zoubek, and myself about community policing, especially given some of the work we were doing in terms of the Division of State Police, and how we could work with the State Police on some of the issues regarding their involvement with the public.

The State Police is unlike any other law-enforcement department in the State. They are a statewide entity. A lot of their work is done on highways, which are not really part of any real community -- that transcends a lot of communities, while not part--

And we were -- wanted to focus on this idea of community policing to try to bring the law-enforcement community closer to communities throughout the State. Especially the minority community, I think, was the focus of this summit -- to try to break down some barriers, to try to work on issues of

recruitment and selection -- which we did showcase some of the reforms of the State Police in terms of selection and recruitment at the law-enforcement summit in-- I think it was in December of '98.

We made some presentations regarding community policing and the role community policing can play in law enforcement accomplishing its goals, and certainly, the community being confident that law enforcement is protecting not only their property and lives, but their constitutional rights, as well.

MR. JASO: Was recruitment and selection, promotion issues with regard to the State Police, discussed during your initial debriefing with the Attorney General?

COMMISSIONER HESPE: He might have mentioned that -- that PERF was doing reports -- making recommendations on the selection, recruitment, and promotion process. That is probably likely that he mentioned that, but I can't recall specifically if he did or not, but it's likely that he might have.

MR. JASO: What other issues, with specific regard to the State Police, did the Attorney General discuss with you in those initial briefing sessions, if you can remember?

COMMISSIONER HESPE: I don't remember. I don't remember.

MR. JASO: So this recruitment and selection is the only one as you sit here today--

COMMISSIONER HESPE: Yeah, I think that was a--
I'm sorry.

MR. JASO: --that you can recall.

COMMISSIONER HESPE: I think that was a major issue that I was involved in very early on in my tenure as First Assistant. And due to that, I

think it's probably likely that he might have mentioned something about that. But these were oral conversations and, to a large extent, I think the briefings that I had with the Attorney General focused on the divisions that I would be working very hands-on with, which is all but the Law, CJ, and State Police.

MR. JASO: And you mentioned that the State Police was one of the ones that the Attorney General, himself, was most hands-on with.

Is that correct?

COMMISSIONER HESPE: That's correct.

In terms of was I in the chain of command? In terms of issues and decisions coming up with those three, the First Assistant was not, with most of the other ones, the First Assistant was.

MS. GLADING: Was not in the chain of command in terms of State Police?

COMMISSIONER HESPE: That's right. Carl Williams would work directly with the Attorney General on most issues.

MR. HOLDEN: It's interesting. You indicated that you had many conversations with the Attorney General with regard to what was expected. And what's your -- what's your sense of what was expected of you as you moved into the job in March of '98?

COMMISSIONER HESPE: Well, I think overriding, it was someone to try to organize a very big department -- a department that had more division than any other department had.

I had diverse responsibilities in that-- Clearly, I was not selected because of -- of expertise in law enforcement or law, for that matter. I was selected for my organizational and management skills, and that's what the-- That's what

was expected of the First Assistant -- that there was a very large area to this department, a very broad jurisdiction, that the First Assistant would be expected to know what the various divisions were doing and to work with them on priority projects.

And everything from racing legislation to Mike Tyson's licensure to whatever else was -- was happening in those various divisions, that would be something the First Assistant would be involved in.

MR. HOLDEN: Was there an explanation given as to why the three divisions that you were excluded from the chain of command made?

COMMISSIONER HESPE: No. I don't think it's an exclusion from the chain of command, as much as it is a practice of the Attorney General working one-on-one with the division directors.

It's the-- That very much those are the divisions that have the greatest responsibility in the department, where the Attorney General was -- just the importance of those divisions -- had a -- very much a hands-on role with them. But he couldn't have that same relationship with every one of the 11 or 12 divisions, and that's where the First Assistant came in to a large extent -- is to try to have that relationship.

And then to, certainly, be there with the Attorney General's schedule. As the Attorney General is working through issues, you would -- you would sit in on those meetings. You would -- you know -- see if he needed you to take on any tasks, and do it or not, depending upon what -- what -- where he thought you were needed. You know?

The position of First Assistant Attorney General -- you're not assigned to the most important issues in the department, you're assigned to the issues

where there is the greatest need for someone to be there. And, oftentimes, that's where the Attorney General is focused on one issue, you might very well be focused on another. And it's not an importance degree, as much as it is a where the need is.

MR. HOLDEN: How would you characterize the management style of the Attorney General, in your experience?

COMMISSIONER HESPE: I think he is a-- He's a very good manager, in my mind. He, I think, has a very good handle on the issues that are coming before him. He has a very good ability to schedule meetings. So I would say his management style is very good.

MS. GLADING: Which Attorney General are we talking about?

COMMISSIONER HESPE: Peter Verniero was the only Attorney General I served for.

MS. GLADING: And the three divisions -- just to clarify-- It's DOL, CJ, and the State Police?

COMMISSIONER HESPE: That's correct.

MR. JASO: Anything else?

MR. HOLDEN: If I may--

MR. JASO: Go ahead. Please, please. I just didn't want to--

MR. HOLDEN: From your perspective, if you recall, what were the principal issues of concern in those three divisions? And -- and in March of '98, when you--

COMMISSIONER HESPE: When I came on, what were the--

MR. HOLDEN: --when you came on.

COMMISSIONER HESPE: --major issues? Well, certainly one of the

major issues at the time I came on was the-- Insurance fraud was a major issue at that point in time. The insurance fraud prosecutor, the insurance fraud report, all of those were major issues at that time.

There are also various transitions occurring in the department. I remember that. The Division of Elections, I think, was being transferred. I think the Department of State had the Division of Elections coming over. There was another transition going on that -- I can't recall what it was, but I know there were a couple of transitions in terms of change in the organizational structure that was going on.

Racing, off track -- OTB -- the legislation was moving through in terms of racing.

MS. GLADING: Still is.

COMMISSIONER HESPE: What was that?

MS. GLADING: No, no. There's still racing legislation. (laughter)

MR. HOLDEN: It's a very slow horse. (laughter)

COMMISSIONER HESPE: It still hasn't occurred.

Abbott was a big issue for the Division of Law at that time. I think an *Abbott* decision was, at that point, either being argued or had been argued, but in either event, it was before the Division of Law.

So those are just a snapshot of the issues that were -- that were-- Some of the issues that we -- I remember discussing with the AG.

MR. HOLDEN: There were no ripples from the *Soto* case that were of concern?

COMMISSIONER HESPE: I'm sure they were of concern to him, but they weren't raised with me.

MR. HOLDEN: You say concern to him, you mean the Attorney General?

COMMISSIONER HESPE: To the Attorney General, absolutely.

But, again, those-- You know, he was very much laying out for me what the issues that he was going to have -- have me work on, and that wasn't -- wasn't one of them.

MS. GLADING: How would it work? Would you have meetings with the Attorney General each morning? Or--

COMMISSIONER HESPE: Yes, we would have-- He would have morning meetings of the Office of Attorney General staff: Tom O'Reilly, myself, Brian Litten, Al Ramey, Nancy Kaplen -- who was an Assistant Attorney General in OAG at the time -- and there's a couple -- there's a couple others -- Roger Shatzkin -- who was the PIO -- and a couple of the other members of OAG staff.

So we'd have those meetings just where any -- just in-- I think his management-- In terms of good management, I think actually I adopted those morning meetings when I went to the Department of Education, 'cause I think they're a good way to exchange information.

Because then, at the point, the schedules become very hectic, and the only time you really might be able to exchange information is that morning meeting. You might have a very difficult time getting a hold of anyone during the course of the day, so I think they -- they were effective in terms of allowing for an exchange of information.

But more of a scheduling nature there -- they lasted 10 minutes, maybe 15 minutes tops, and it was really more of a scheduling -- we have to do this.

They weren't substantive meetings as much as they were process meetings.

MS. GLADING: Were there regular meetings that involved Mr. Miller and Mr. Zoubek?

COMMISSIONER HESPE: There might have been regular meetings with the AG, but I--

MS. GLADING: You weren't--

COMMISSIONER HESPE: --weren't-- Probably was not involved in most of those. If I was attending, it'll probably be on a particular issue, or I'd just see a meeting on the AG's schedule that--

I always had the luxury -- our offices were adjoining -- of going into any meeting the Attorney General was having and attending, but I believe there might have been regular meetings, but I wasn't there.

MS. GLADING: Did you ever go into any meeting that he might have been having with Colonel Williams or with Director Zoubek in which the topic of the *Soto* case or suppression motions around the State were being discussed?

COMMISSIONER HESPE: Yes, I'm -- I'm certain that I was in at least a couple of those meetings, 'cause I remember the topic being raised.

I remember more of the *Soto* -- at meetings in the early-'99 -- I think contemporaneous with the appeal.

Suppression motions? In *Soto*?

MS. GLADING: No. Other -- other *Soto*-like cases. Suppression motions in cases like in Hunterdon and Mercer?

COMMISSIONER HESPE: No.

MS. GLADING: Burlington?

COMMISSIONER HESPE: Not to my recollection.

MR. HOLDEN: If I may, just for a moment, go back to the memo where there was a panel discussion on community justice and drug interdiction.

COMMISSIONER HESPE: The law enforcement--

MR. HOLDEN: Yes.

Were you familiar with the work of the Drug Interdiction Training Unit within the Division of State Police?

COMMISSIONER HESPE: Drug interdiction?

MR. HOLDEN: Training Unit.

COMMISSIONER HESPE: No. No.

MR. JASO: I've handed the witness a document, which is a one-page memo with a one-page attachment, dated November 24, 1998, from Mr. Hespe to Attorney General Verniero, bearing Bates numbers OAG-4880 and 4881.

Do you recall this memorandum?

COMMISSIONER HESPE: Yes, I do.

MR. JASO: Did you write the attached draft letter?

COMMISSIONER HESPE: Yes, I did.

MR. JASO: Did you write this letter at Mr. Verniero's request?

COMMISSIONER HESPE: Yes. As part of the law-enforcement summit, we wanted to send out a letter inviting people from all types of different organizations -- from law enforcement to community groups, the prosecutors, faith-based organizations -- and this was the letter that we sent.

MR. JASO: I draw your attention to -- if you look at the draft letter -- the third full paragraph, indicating that, "We've assembled distinguished

speakers and panelists from New Jersey and throughout the country to develop strategies and concerns with: 1, race, community, and law enforcement.”

What in particular was that topic meant to address, to your knowledge?

COMMISSIONER HESPE: That particular topic -- item 1, was back to community policing as a strategy for addressing the fact that polls were showing that minority citizens had concerns with how -- how well law enforcement represented their interests -- protected their interests.

And that was the community policing issue in a nutshell. That we thought community policing -- or at least, a dialogue on the issue and presenting community policing as one of -- of -- of the strategies that might be effective -- would be a good way, a good focus for the summit. And, in fact, it was one of the two or three main issues at the summit.

MR. JASO: Did you discuss the role of community policing in addressing minority perceptions with regard to law enforcement with the Attorney General?

COMMISSIONER HESPE: Yes. In fact, I think we -- we shared with him some of the literature or some of the substance of the speaker -- whose name I cannot recall at this point, but who had spent a lot of time working on that particular issue -- with the Attorney General as we put the program together for the summit.

MR. JASO: All right.

And when you say we discussed with the Attorney General, who is the we?

COMMISSIONER HESPE: Tom O'Reilly and Paul Zoubek.

MR. JASO: Any questions on that?

MR. HOLDEN: Mr. Hesse, who brought to your attention a concern for dialogue with regard to the issue of race, community, and law enforcement?

COMMISSIONER HESPE: This was a conversation that Tom O'Reilly and Paul and myself had had for a number of months. Clearly, our involvement on diversity issues with the State Police or my following some of the internal affairs complaints -- including the Morton complaint -- the aftermath of the Turnpike shooting, our -- our--

It appeared to us that there were avenues that we should pursue beyond selection, promotion, and recruitment -- beyond internal affairs, beyond CJ's investigation of the Turnpike shooting -- to try to have a dialogue between law enforcement and the minority community -- community in general.

And we saw the law-enforcement summit as one way to have that dialogue, to focus law enforcement and community groups on the -- on the greater issue. And that's--

MR. HOLDEN: What -- what-- Were you able to participate with the Attorney General in -- in these conversations?

COMMISSIONER HESPE: Absolutely. The Attorney General made the decision to have a law-enforcement summit. He embraced the concept of what it -- the summit -- would be about and actively participated in developing the summit.

MR. JASO: Anything else? (negative response)

I've handed you a memorandum -- actually two memoranda attaching an article. The cover sheet is a memorandum from Colonel Williams to Deputy Superintendent, and executive officer, and Mr. Tom Gilbert. This -- this bears the Bates numbers OAG-5880 through 5884.

The second page -- if you'll turn to that--

COMMISSIONER HESPE: What -- what numbers?

MR. JASO: Pardon?

COMMISSIONER HESPE: What were those numbers?

MR. JASO: I'm just--

COMMISSIONER HESPE: Oh, those numbers. Oh, okay.

MR. JASO: Sorry, I'm just reading them to the record so we'll be able to tell what we were looking at.

COMMISSIONER HESPE: I just didn't -- didn't understand what you were referring to.

MR. JASO: The second page here, which has 5881 at the bottom--

COMMISSIONER HESPE: Okay.

MR. JASO: --is a memorandum from Thomas O'Reilly to you, Mr. Zoubek, and Colonel Williams.

Do you recall receiving this memorandum?

COMMISSIONER HESPE: Yes. This was a few weeks after the law-enforcement summit. And Paul-- Sorry. Scratch that.

Tom O'Reilly would periodically bring to our attention information regarding the issues that we either discussed at the summit -- or bearing on other issues -- to us. And I think this is just part of Tom's distributing -- bringing that type of information to our attention.

MR. JASO: Do you recall having any conversations with any of these individuals -- Mr. O'Reilly, Colonel Williams, Mr. Zoubek, or anyone else -- with regard to this particular article?

COMMISSIONER HESPE: It's possible I discussed them with Paul --

the similarities between what was being alleged in the Morton complaint and what happened in this situation. I don't particularly recall that conversation, but it's quite possible.

I would -- would normally discuss with Paul issues like these, so it's quite possible I discussed with Paul the similarities between this and Morton, but I don't particularly recall that conversation.

MR. JASO: Did the conversation deal with only the similarities with the Morton case or with similarities with general issues of racial profiling that you'd been dealing with?

COMMISSIONER HESPE: Certainly, coming out of the law-enforcement summit where that issue was discussed -- and I believe even county prosecutors coming out of the summit were asked to develop programs to -- to put in place some of the community police -- policing concepts-- That certainly, the conversation could have been a lot more global than just the Morton case.

MR. JASO: Did you have discussions with either the Attorney General or Mr. Zoubek subsequent to the law-enforcement summit, talking about how it went?

COMMISSIONER HESPE: The timing-- In January time-- A lot of things were coming together in January; the *Soto* appeal, the aftermath of the law-enforcement summit -- where a tremendous amount of information, I think, was received and exchanged -- and information from the investigation of--

ASSISTANT ATTORNEY GENERAL MILLER: Again, I direct the witness to stay away from the Hogan and Kenna investigation.

COMMISSIONER HESPE: Okay.

And other information was coming together in January, and so, I think this topic was very much discussed in January of '99. And I think it was during that period of time -- between January and early-February -- that the decision was made that we need to do something and be very aggressive in pursuing this issue.

MR. JASO: Who made that decision?

COMMISSIONER HESPE: The Attorney General.

MS. GLADING: He made that decision in January of '99?

COMMISSIONER HESPE: Some-- Well, I think by early-February he had made that decision, clearly. I don't necessarily know when, but I do know this was that period of time when the -- a lot of things were coming together and decisions were being made that we do need to-- Even though we had, I think -- had seen some progress.

For example: The selection and recruitment reforms were -- were announced in December. But, on the other hand, there is -- there's a lot more that needed to be done, and I think in January and early-February a decision was made to pursue those and pursue them aggressively. And I gather the impetus for that -- or the media for that -- was the -- is the calling for an investigation and a report on State Police.

MS. GLADING: When did you first hear that there might be a vacancy on the Supreme Court?

COMMISSIONER HESPE: When did I first hear?

MS. GLADING: In that period of time.

COMMISSIONER HESPE: I don't know. I -- I know by February, I

think, that there was some inkling there might be a vacancy, but I don't recall any notice to me before then. I'd have to-- I don't even know when the public-- I couldn't even tell you when the public--

MS. GLADING: That's okay.

COMMISSIONER HESPE: --when the official resignation occurred. But I don't recall.

MR. JASO: Well, I can tell you that, according to my records, it happened on February 25th, 1999.

COMMISSIONER HESPE: Okay. That was in-- Was that-- Whose vacancy?

MR. JASO: Justice Pollock.

COMMISSIONER HESPE: Pollock. Yeah-- Certainly, I probably knew a matter of days ahead, but I don't recall having much advance notice of that.

MS. GLADING: And in your work on the Morton case -- I meant to ask you this earlier -- did you inquire whether there were any -- whether there was any statistical analysis that might validate what you suspected had occurred in this case -- that he had been profiled?

COMMISSIONER HESPE: Statistical analysis?

MS. GLADING: Yes.

COMMISSIONER HESPE: No. This was very much focused on how the internal affairs pursued the investigation. What credibility did they -- did they give to various components of Morton's story; how they went about moving this up the chain of command; and, in fact, what was the -- the outcome of the case in the end.

So we were focused on how it -- how the internal affairs -- I think it's a

bureau -- actually took -- took a citizen complaint on discrimination grounds and how that was handled by the Division of State Police.

And I think coming out of that, we all understood that there were some serious problems with how those complaints are being -- being handled.

MR. HOLDEN: Do you recall when you first started dealing with statistical data as to traffic stops and as to violations?

COMMISSIONER HESPE: When I first?

MR. HOLDEN: In your capacity--

COMMISSIONER HESPE: Was made aware of that?

MR. HOLDEN: Yes.

COMMISSIONER HESPE: Because I never really had any role in collecting or analyzing--

MR. HOLDEN: No. Oh, no. I understand. I understand that.

COMMISSIONER HESPE: When I first-- It must have been in the fall of '98 -- was the first time I can recollect the issue of data actually being raised, and I'm not even sure what the context was.

It was -- it was a meeting at which I was probably an -- it was at an ancillary meeting on the topic.

MS. GLADING: Do you recall if the data was troubling or--

COMMISSIONER HESPE: Was the data troubling? Yes. Did I understand the data? No.

All I knew was I thought someone should explain this data, and that's -- that's-- When I saw the data, that's all -- that's all-- From what I can recollect, my thought was, yes, the data was troubling, but I didn't understand the data. I really didn't have much exposure to law-enforcement data at that point to

know whether this was normal or not normal, but it certainly was of concern.

But I think my immediate reaction was, we need to have someone explain why we're seeing this information.

MS. GLADING: Did you talk with anyone about that?

COMMISSIONER HESPE: Yeah, definitely, I think there were efforts under way to try to explain why this data was happening. Certainly there were a lot of people that were dealing with that, but I wasn't involved in any -- any real significant way with that, other than to know that other people were working on that issue.

MR. HOLDEN: Do you recall the kind of meeting when you first learned about this data?

COMMISSIONER HESPE: No, I don't.

MS. GLADING: Do you recall requesting the data from the State Police?

COMMISSIONER HESPE: Do I recall requesting data? I recall conversations with the State Police regarding what they were doing on this issue.

MR. HOLDEN: At whose direction?

COMMISSIONER HESPE: At whose direction?

MR. HOLDEN: Since it wasn't your division.

COMMISSIONER HESPE: I think it was my involvement either with the internal affairs issue or with the selection, recruitment, promotion issues, the diversity issue, that I had raised the issue with them of--

In terms of racial profiling -- as we defined it at the outset -- the Morton case allowed me to have a number of conversations with the State Police

regarding how they handled discrimination complaints of that -- of that sort and a number of conversations regarding -- you know -- what were they doing regarding that issue. And they indicated that that was all coming through the internal affairs. They would take each issue on its face and work it through that way.

Certainly, if they had other data or other reports or if they had done some analysis outside of that, I thought it was pretty clear to leadership that that would be something that I would like to have seen.

MS. GLADING: What data did you see that was troubling?

COMMISSIONER HESPE: The only thing that I saw--
You mean in terms of the Morton case?

MS. GLADING: No. You said you had seen some statistical data that was troubling.

COMMISSIONER HESPE: Yeah, I think it was the *Soto* data -- the *Soto* data.

MR. JASO: Maybe I missed--

MS. GLADING: I mean--
Go ahead.

MR. JASO: Sorry.

Maybe I missed the answer to your ques -- to the question that Mr. Holden had posed, which was who was it who -- if anyone -- asked you to try to obtain the data from the State Police?

COMMISSIONER HESPE: What data?

MR. JASO: The data we've been discussing -- the *Soto* data.

COMMISSIONER HESPE: No, no. I hadn't-- I hadn't discussed data.

What I said was, that in my reviewing the Morton case, I had indicated to the State Police several times that if they were doing any investigations outside of the IAB process, that I should be informed of that -- so I have the entire picture of what the State Police is doing regarding these allegations of discrimination.

So I never specifically asked the State Police for data, but I certainly indicated to them -- at least twice or three times -- that I wanted to know how they were dealing with these allegations of racial profiling like the Morton case, and how they were handling it. If there was anything going on beyond their internal affairs investigations, those were all issues that I would like to know about.

MS. GLADING: All right.

Earlier you said that in the fall of 1998, you'd thought that was your first recollection of data being raised. And I asked was there anything troubling about the data, and you said, "yes, and I thought someone should explain this data."

Which data were you referring to?

COMMISSIONER HESPE: *Soto*. The *Soto* data.

MS. GLADING: You were referring to *Soto* in the fall of '98?

COMMISSIONER HESPE: Yeah.

MS. GLADING: You were referring to 1994 data? That was your first knowledge of 1994 data?

COMMISSIONER HESPE: That's right.

MR. JASO: Who was your--

COMMISSIONER HESPE: *Soto* really wasn't-- You know, I don't

know what -- the *Soto* case -- how active the *Soto* case was between April of '98 and the fall of '99, but that was my first exposure to it -- was the fall of '99. So I don't really know what activities were happening in terms of the *Soto* case between April '98 and the fall of--

MS. GLADING: Who told you that--

MR. HOLDEN: The fall of '98.

COMMISSIONER HESPE: I'm sorry. Not the fall of '99, the fall of '98.

MS. GLADING: Who told you about the *Soto* data at that point?

COMMISSIONER HESPE: It was raised at a meeting.

MS. GLADING: With who?

COMMISSIONER HESPE: I don't recall. It was--

MS. GLADING: Was it State Police, OAG?

COMMISSIONER HESPE: It was definitely-- Well, I don't know definitely if the State Police were there. OAG individuals were there, and I don't know who else beyond that was there. 'Cause it was over in OAG, so I know OAG individuals were there, I just don't know what the context was other than that.

MR. JASO: You don't recall anyone specifically?

COMMISSIONER HESPE: No.

MR. JASO: How about Fahy?

COMMISSIONER HESPE: Fahy might have been there. Yeah, Fahy might have been there. Some of the DAGs from law might have been there, I'm just not -- not aware of--

These were issues that I was not directly involved in. If I was at the

meeting, I was there either because it was on the AG's schedule and therefore I attended the meeting, or something I was involved in -- either regarding internal affairs or recruitment, selection, promotion, or it was one of the briefings I attended on the CJ investigation. I don't know. It could have been any one of those.

MS. GLADING: Did you ever talk with Sergeant Gilbert about data?

COMMISSIONER HESPE: Sergeant Gilbert?

MS. GLADING: Tom Gilbert.

COMMISSIONER HESPE: About data? It's possible, but I don't -- I don't recollect. It could have been part of the other -- part of the other meetings I was having.

MS. GLADING: The other meetings being?

COMMISSIONER HESPE: If I was having something on selection or promotion or recruitment. I remember a number of meetings with State Police on selection and recruitment, a couple of meetings on the internal affairs workings.

The fellow's name was Gilbert? Sergeant Gilbert?

MS. GLADING: Tom Gilbert.

COMMISSIONER HESPE: Tom Gilbert?

MR. JASO: Do you remember who the State Police representatives were at the meeting?

COMMISSIONER HESPE: Yeah. Juan Mattos -- in terms of recruitment and selection. And there was a couple of meetings where I met with Colonel Williams and one or both of the lieutenant colonels.

One meeting on recruitment and selection where I think we met with the

entire senior staff of the State Police, because it was that important of an issue to them. And as we were bringing to -- to -- to close what the recommendations are, I think we met with around the entire senior staff of the State Police at some time.

But I certainly remember a couple of conversations with Carl Williams and his lieutenant colonels on, for example, the Morton complaint -- how internal investigations were handling some of these discrimination complaints.

But I don't specifically recall any conversations with -- with -- with Gilbert.

MR. JASO: Who was it that you asked to give you any additional data that they might have?

COMMISSIONER HESPE: It was probably either to-- Well, again, it wasn't -- I don't think I ever said the word data -- I wanted-- I think it was more -- more, if you're doing any other investigations regarding these issues -- these discrimination complaints -- I'd like to know about it.

So I don't think I ever mentioned the word data. Data wasn't as much of an issue at that time in my mind, as much as it was how are they -- how are they working through these complaints. Is it only through the internal affairs? Is this something that leadership of the State Police is doing something else on outside of that forum?

MS. GLADING: And what did you find out?

COMMISSIONER HESPE: Find out?

MS. GLADING: You worked on the Morton case for 10 months.

COMMISSIONER HESPE: Yeah, absolutely.

MS. GLADING: And what did you learn in that process?

COMMISSIONER HESPE: Well, coming out of that, I think that there were serious problems in my mind as to how the State Police handle complaints -- civilian complaints -- everything from how they intake the complaints to how the investigations are conducted; to how they are -- how they are resolved; how they are disposed of by the -- how they're ruled on by the chain of command over in the State Police; how they differ from how the other investigations are done in the department.

MS. GLADING: Did you ever read the *Soto* decision?

COMMISSIONER HESPE: Did I ever read the *Soto* decision? No.

MS. GLADING: Did anyone ever mention to you that Judge Francis was extremely critical of the State Police handling -- the capacity of IAB to handle citizen complaints in the *Soto* case?

COMMISSIONER HESPE: That issue might have been raised during my examination of these issues by -- by someone, but I don't necessarily recall either being told that or it being a critical part of why I was doing what I was doing.

I think the issue was very much apparent, that the way these complaints were being handled might not have been as efficient as it could be. And I think as we looked at -- as we followed this case-- The Morton case, I think, was a perfect case, because I think it was very -- you know, very much a traditional case of racial profiling. To see how it was handled through the system -- I thought it was an excellent way for us to understand where the deficiencies of the system were.

And I think coming out of that, we had a very good understanding where the problems were -- where the EEO problems, as well we were looking at

during that time.

MR. HOLDEN: Did you ever prepare a report about your concerns on the Morton investigation?

COMMISSIONER HESPE: I got-- As I indicated earlier, we received the report from the State Police at the same time that the -- Paul Zoubek was beginning his investigation. And certainly what we learned, I think served as the impetus for parts of that call for an investigation. And I turned the entire matter over to -- to Paul Zoubek as I -- as I was transitioning out, for his inclusion in the report. And I also orally briefed Paul, as well, on what we had seen.

MR. HOLDEN: Did you do an exit memo?

COMMISSIONER HESPE: No, I don't recall an exit memo on this. Because the report was confidential, I didn't want to repeat allegations in the report. But I did orally brief Director Zoubek on this issue and provided him with the confidential report that the State Police had prepared.

And -- and I also, I believe, had conversations with Paul as this was moving through the process. And I think a lot of those conversations -- as we were making decisions in January as to how to move ahead on this issue -- I think a lot of that -- of what we'd learned over those months, I think, came to bear at that point, and we decided that we -- we needed to take that type of action as they -- beginning of an investigation -- a comprehensive investigation.

MR. JASO: Mr. Hespe, if you ever need to take a break, please let me know.

COMMISSIONER HESPE: No, I'm fine.

MR. JASO: I've handed you a memorandum, three pages long-- Well,

one page and two attachment pages, dated February 2, 1999, from Mr. Zoubek to Attorney General Verniero and to you, bearing Bates numbers OAG-5660 through 5662.

You had a moment to look at that. Can you tell me if you recognize it?

COMMISSIONER HESPE: No, I don't -- don't recognize it. But when was the date? February 2, 1999?

As I indicated earlier, I remember conversations around this point in time regarding *Soto*, and this is -- I gather -- perhaps a briefing memo before one of these -- those conversations. That's the best I can identify it for you.

MR. JASO: Do you-- Can you identify the handwritten -- it looks like a Post-it, at the top of the front page?

COMMISSIONER HESPE: No, it's not -- it's not -- not from -- not my secretary.

MR. JASO: Do you know who Patti is? P-A-T-T-I -- that's what it looks like, at least -- Patti.

COMMISSIONER HESPE: She might have been one of the secretaries either in Paul's office or OAG. Time, 9:30 at Morris County Court House? No. I don't remember any meeting in the Morris County Court House at 9:30.

MR. JASO: Do you remember having any meetings-- Well, let me ask you this: Did you request that Mr. Zoubek prepare this memo?

COMMISSIONER HESPE: No.

MS. GLADING: I think that's a -- it's referring to when the argument is scheduled.

COMMISSIONER HESPE: Oh.

MS. GLADING: It's referring to the contents of the memo.

COMMISSIONER HESPE: I don't-- Yeah, I can't place either the Post-it or the person who requested the memo.

MR. JASO: Do you recall-- Or I should ask you if this--

COMMISSIONER HESPE: When was the argument?

MR. JASO: It appears to have been February 24th, 1999.

COMMISSIONER HESPE: Was the argu-- Oh, I see.

MS. GLADING: It was delayed, I think. There was a delay.

COMMISSIONER HESPE: Yeah.

MS. GLADING: But that was the originally scheduled date, I believe.

COMMISSIONER HESPE: Yeah. The only thing that I would note is that the copies here are to our public information officers, and perhaps it was intended for them -- intended for their benefit -- to understand what was happening, perhaps? I don't know. That's pure conjecture, but I would just note the CC involves our public information office, who would not normally be copied on decision items -- items for decision, as opposed to jurally informational items, which this might very well be.

That's all I can -- all I can lend to your understanding is those -- those points.

MR. JASO: Could you turn to the third page, please?

The third page is an outline -- continuation of an outline from the second page indicating State Police initiatives to address allegations of racial profiling. And it says, "Past actions include," and it lists several items, and then at the bottom of that subsection (a) it says, "In the past, the Internal Affairs Bureau had conducted some internal audits involving the stop statistics

of various troopers. (these have been kept strictly confidential)”

To your knowledge, is that a correct statement?

COMMISSIONER HESPE: In the past, the Internal Affairs Bureau had conducted some internal audits involving the stop statistics of various troopers. I don't have any knowledge as to that.

MR. JASO: Is this not the same statistics or data that you were referring to previously? Or is that--

COMMISSIONER HESPE: No. The only statistics I was aware of was the *Soto* statistics. Now, I don't know if this refers to *Soto* or not. I think if not for the word statistics, I would say this might apply to the Morton case or some of the other discriminatory complaint cases, but the word statistics, I don't know what -- what they're referring to there.

MR. JASO: Well, were you aware of any statistics unrelated -- or I should say, not originating with the *Soto* case -- that the State Police had -- Internal Affairs Bureau or any other arm of the State Police -- had prepared? Statistics of arrest or stop data that were kept confidential?

COMMISSIONER HESPE: In terms of my recollection, I believe that all of the data that I was aware of flowed from that *Soto* case. I just don't know enough about that issue to be able to say whether there -- there were subsets of that data that-- I just-- I can't recall.

The only data I was-- The couple of conversations that I had on this -- the data, I think flowed from the *Soto* case. That's how I remember it, only because of the conversations that I had appeared to be about the time of the *Soto* appeal.

But I just-- I can't -- I can't recall if there is any other subsets of data

that were out there that were unrelated to *Soto*. At least I -- I was--

MR. JASO: Well, let me ask you this: Were you ever aware of any statistics or data or information with regard to stops and/or arrests and/or searches that, to your understanding, were confidential -- not to be shared outside of the State officials or State troopers area?

COMMISSIONER HESPE: Again, I didn't know enough about the data that I had seen to be able to draw any of those conclusions. My exposure to this issue of the data was very much a -- a -- a fleeting involvement. It would come in at various meetings, but I had really no operational involvement with it.

I might have sat in a couple of meetings where the issue of data was raised, and I did. But I don't recall beyond that whether or not it was *Soto* or there was a confidentiality issue. I just wasn't involved operationally enough in -- in -- in *Soto* or-- I guess it was -- *Soto* would be the main case at the time. But whether or not there were other -- other litigation going on at that point, that data was being collected or involved, then I would not normally have been a part of that.

MS. GLADING: Wouldn't have been a part of it and wouldn't have asked for it?

COMMISSIONER HESPE: If it extended beyond my involvement with internal affairs, that's right. I would not have been involved in that and would not have asked for that data.

MS. GLADING: Okay.

But presumably on February 2nd, you became aware that there was data available.

The last paragraph of that “past initiatives include” list and also, the third item on it, that there is a continuing initiative involving the monitoring and evaluation of stop data.

COMMISSIONER HESPE: Yeah, but at this point -- on February 2nd -- I think the answer to that is, yes. Although my understanding of what was behind those points, I would have had no information beyond the words that you’re seeing there, and this preceded by a week our calling for the investigation.

MS. GLADING: But if you’d needed additional information, you would have asked Paul Zoubek. Right? He sent you this memo.

COMMISSIONER HESPE: I would have-- Given that Paul was also the -- had the primary responsibility for the report, I probably -- that loop would have self-closed. I did not need this information for anything I was doing, and everything I was doing, I turned over to Paul as part of his report, as well.

This was just a week before my nomination, as well.

MR. HOLDEN: And in the fall of ’98, you had uncovered or had access to some data that was troubling you, and in the October law-enforcement summit meeting, there were speeches and/or you were again conscientiously addressing this concern for data.

Is that correct?

COMMISSIONER HESPE: No, I don’t think the law-enforcement summit had any -- had any focus on data as much as it was on addressing a -- a -- a minority confidence issue with law-enforcement practices and procedures, and having a dialogue on that issue where members of the minority community, members of law enforcement, community groups could come

together and discuss this issue. And discuss possible strategies in terms of addressing that confidence issue, was the purpose of the summit.

The summit had no involvement with the data that I was aware of at least.

MS. GLADING: If the data that you saw in the fall of '98 was troubling and it was the *Soto* data -- and the State had maintained the appeal on the *Soto* case at that point for more than two years -- would that have troubled you -- that the State was maintaining an appeal on a case where there was troubling data to begin with?

COMMISSIONER HESPE: Well, I think, again the data was troubling, but also the explanation for the data -- in my mind -- was the most important part. What did the data actually say?

Data on its face can be troubling, but when explained might not be, and I think that's the -- the two-part issue that -- that was in my mind looking at that -- looking at that data, or at least being briefed on that data.

MS. GLADING: But as far as you knew, no violator survey had been done that might better define who the violators were. It hadn't been explained to you.

COMMISSIONER HESPE: Not -- not -- not to my recollection.

MS. GLADING: Okay.

COMMISSIONER HESPE: I don't remember any violator surveys being done.

MR. HOLDEN: So your -- so your criticism was of the quality of the analysis of the data, rather than the existence of data in -- in the fall of '98.

Is that correct?

COMMISSIONER HESPE: No, actually, I think my-- I didn't have a criticism. My concern was that the data on its face indicated that there -- there -- there was an issue. Why was these percentages where they were? And the need was for an explanation, and that was what other entities in the Department were working on -- at least to my recollection of those meetings.

MS. GLADING: And those entities were?

COMMISSIONER HESPE: Division of Law, Division of Criminal Justice, and the State Police.

MR. HOLDEN: Which were not the entities under your direct supervision?

COMMISSIONER HESPE: Although I was involved with them on certain of the issues here, that's right. That's right.

MR. JASO: I've handed you -- to have a look at -- this memorandum with attachments. It is dated February 9th, 1999. It is from Lieutenant Colonel Fedorko to you, bearing Bates numbers OAG-4902 through 4906.

Take a look at that, if you would, and tell me if you recognize it.

COMMISSIONER HESPE: Yeah, this was I think a follow-up. I do not remember when I requested this memo -- what period of time transpired between the time I requested and received it. I do remember requesting it.

In my involvement with the State Police on internal affairs investigations and Morton, I asked them for other complaints that had been filed during the past year, which had -- had some involvement with trooper misconduct of racial discrimination, and this was the response that I received to that.

There are one, two, three, four, five, six, seven cases. The first one is official misconduct -- bribery. The second is official misconduct -- falsification

of records, to indicate that white males were pulled over when, in fact, the occupants were minorities.

Next is, misleading official report; next is an improper attitude/demeanor, and I believe a discrimination complaint. Next, racially profiling, it says; and the next one after that, racially motivated stop, and same with the last one.

MR. JASO: Do you recall what specific directive you gave to Mr. -- to Lieutenant Colonel Fedorko in preparing this?

COMMISSIONER HESPE: Yeah. My recollection was that I had asked for a list of complaints involving trooper misconduct, potentially bearing on the race of the driver, during 1998.

MR. JASO: Why did you ask for this information?

COMMISSIONER HESPE: Again, coming out of my engagement with the State Police on internal affairs, I wanted to have a better handle on what other investigations are out there -- other than Morton -- and what stage of the review they were in.

MR. JASO: I see that the subject is described as "review of 1998 internal investigations," and then, "(potential negative impact upon the division)."

Do you have any understanding of why Colonel Fedorko described this as cases with potential negative impact upon the division?

COMMISSIONER HESPE: Yeah, I don't know they--

MR. JASO: And by division, I believe he's--

COMMISSIONER HESPE: State Police.

MR. JASO: I assume he's talking about the State Police.

COMMISSIONER HESPE: Not knowing the lexicon of how they

categorized trooper misconduct issues, I don't -- I don't have any insight as to how -- why they labeled it the way they did. It just might be how they -- or how he asked for trooper misconduct cases from his subordinates. That's -- that's just my guess, however.

MR. JASO: Did you ask him to give you cases that were going to be problematic to the State Police from the point of view of publicity?

COMMISSIONER HESPE: No. I asked him for cases involving trooper misconduct.

MR. JASO: I note that the memorandum with the descriptions of the cases from Captain Van Tassel to Fedorko, is dated January 20th, '99.

Does that refresh your recollection as to when you made this request of Colonel Fedorko?

COMMISSIONER HESPE: It could have-- I could have asked for this before January 20th. I don't know how long it took them to compile it.

MR. JASO: You don't know how long before--

COMMISSIONER HESPE: It took them--

MR. JASO: --January 20th it might have been?

COMMISSIONER HESPE: Yeah, that I requested it. I just don't know.

MR. JASO: Did you discuss this memorandum?

Well, let me ask you this first: Did you discuss with anyone else besides Colonel Fedorko, your request to Colonel Fedorko for this information?

COMMISSIONER HESPE: No. I don't even remember how that request was made. It could very well have been during the course of a meeting on the internal affairs-- I asked him for a catalogue of the trooper miscon -- any other trooper misconduct complaints that might be out there that were

working their way through the system.

MR. JASO: And then if you look at Page 2, there's a--

COMMISSIONER HESPE: Of? Page 2 of what?

MR. JASO: I'm sorry. The second page of the packet.

COMMISSIONER HESPE: Okay.

MR. JASO: It's a transmittal memorandum from you to Paul Zoubek, restating the topic and attaching this.

Do you recall having any conversations with Mr. Zoubek with regard to the contents of this memorandum?

COMMISSIONER HESPE: Yeah, I believe that this was part of the briefing of Paul that I referred to when I discussed the question about the ultimate disposition of my work on the Morton case and the internal affairs -- this was part of that briefing.

MR. JASO: Any questions? (negative response)

I've handed you a three-page document that is from you to Jeff Miller, Mr. Fahy, and Roger Shatzkin, dated 2/16/99, bearing the Bates numbers OAG-4907 through 4909.

Do you recall this document?

COMMISSIONER HESPE: Yes.

MR. JASO: And what were the circumstances under which--

COMMISSIONER HESPE: I believe it was a response to--

MR. JASO: Well, let me just finish the question.

COMMISSIONER HESPE: Okay. Sorry.

MR. JASO: Let me just first ask: Who prepared the draft letter?

COMMISSIONER HESPE: I believe this was probably Peter and Paul

Zoubek prepared this -- Peter Verniero and Paul Zoubek probably prepared this.

MR. JASO: And do you recall the circumstances under which this letter was prepared?

COMMISSIONER HESPE: I believe it was probably in response to an editorial in *The Record*.

MR. JASO: Do you recall that to be the case, or is this--

COMMISSIONER HESPE: No, I don't recall. I'm just trying to read the letter for-- You know, I don't have any independent recollection of the reason for the letter. I'm just assuming that it was in response to an editorial, but then the title of the letter seems to indicate that the -- it says, "second-draft letter to be sent to numerous papers."

So, this was about the time of the announcement of the investigation -- was made -- and this could very well be a follow-up to that -- that the Attorney General wants to notify the media of his rationale for making that decision -- is probably the best insight I can give to you as to the purpose of this letter.

MR. JASO: Did you-- Do you recall discussing the contents of this letter or the contents of the editorial with the Attorney General?

COMMISSIONER HESPE: No, I don't recall specifically having that conversation.

MR. JASO: Did the Attorney General ask you to review the letter?

COMMISSIONER HESPE: Normally, I would review letters of this type. So, I would assume that based upon that -- that routine, that he probably did ask me to review this letter, but I do not recall it specifically.

MR. JASO: I note that if you look at Page-- The first page of the draft

letter, in the first paragraph, it says that, "I have recently restated my commitment to addressing allegations of uneven enforcement of law based on racial considerations by the State Police.

"Specifically, I have announced that my new First Assistant, Paul Zoubek, who joined my office in 1997 following a tenure in the United States Attorney's Office, has been designated by me to be the lead attorney heading a comprehensive review of State Police operations.

"The review will include an evaluation of procedures for processing complaints from members of the public and internal complaints from troopers, training programs for supervisors, and the current system of internal discipline."

Now with particular regard to the last sentence, does it not appear that some of those -- if not all of them -- were items that you were already tackling?

COMMISSIONER HESPE: Yeah, or already looking at. And I think what Peter wanted to do was to put this into a formal investigation headed by Paul Zoubek.

MR. JASO: What was your understanding of what Mr. Zoubek was going to do at that time?

COMMISSIONER HESPE: I think he was going to conduct a formal investigation and make recommendations on strategies to address these issues -- looking at everything that was involved in the racial profiling issue.

MR. JASO: And do you recall getting any feedback from any of the recipients of your forwarding memorandum on -- on the letter?

COMMISSIONER HESPE: No. No. They very likely -- probably came directly back to -- to the Attorney General.

MR. JASO: Just for clarification, it is-- Looking at the front page, the “to” is to Jeff-- Is the “to” to all three or are those two -- Mr. Fahy and Mr. Shatzkin -- all CCs?

COMMISSIONER HESPE: No. They directly went to those three.

MR. JASO: Okay.

MS. GLADING: Done with that document?

MR. JASO: Yes.

MS. GLADING: I just wanted to ask a quick question about the final version of that letter.

If you look at the draft that we were just discussing -- the third paragraph, last sentence, reads, “Moreover, as officers of the court, attorneys in my office would turn over relevant information that might result from such a review, even if that information were adverse to the State’s legal position in any given case.”

That sentence is deleted from the final draft. Can you explain why that might have been deleted?

COMMISSIONER HESPE: No. I have no knowledge of why it was deleted. Perhaps to keep the letter tight -- didn’t want to expand upon the issue that he states in that last sentence of the final version, that the case on appeal would not hamper the ability of his new First Assistant to conduct that review, and didn’t see the need to elaborate on that for editorial purposes.

This is going into a newspaper as a general editorial and perhaps the response of the Public Information Officer was you don’t -- you should not be overly detailed in an editorial for the general public. And that might have been a response that that was overly detailed.

But I have no specific information to back that up, just conjecture on my part.

MS. GLADING: And you had no role in it?

COMMISSIONER HESPE: Not that I can remember.

MS. GLADING: Was that a topic of discussion within the Department -- whether the State had an ethical obligation as officers of the court to turn over any information it might have?

COMMISSIONER HESPE: No.

MS. GLADING: Never heard that discussed?

COMMISSIONER HESPE: That-- I don't-- I don't think that would ever be contested. No. I think that's an absolute.

MS. GLADING: Okay. Thanks.

MR. JASO: Can we just clarify that this is a letter from Peter Verniero to the editor of the *Bergen Record*, dated February 16th, 1999, bearing Bates numbers OAG-1215 and 1216.

'Cause we're not making these exhibits, so we'll want to make sure we can retrieve them.

The record should also reflect that Mr. Holden has left the room.

This is a memorandum of no date, from Jack to Peter, Dave, and Paul, bearing -- one page -- bearing the Bates number OAG-6462.

Do you recognize this?

COMMISSIONER HESPE: No.

MR. JASO: Do you know who the Peter, Dave, and Paul are?

COMMISSIONER HESPE: I would assume it's Peter Verniero, Dave Hespe, and Paul Zoubek.

MR. JASO: And who's Jack?

COMMISSIONER HESPE: I would assume that's Jack Fahy.

MR. JASO: But you don't have any recollection of seeing this document previously?

COMMISSIONER HESPE: No. A lot of these issues were occurring as I was transitioning out. My last day in the OAG was March 20th, and my transition began March 9th -- I mean February 9th.

So a lot of these issues -- if they were occurring in that period of time, I might have just discussed with Paul-- And since Paul was not only the Director of CJ, but my successor, the transition on this issue is very simple.

MR. JASO: I note that this is not on any letterhead form, and obviously, does not include anyone's last name.

Was this a-- Assuming that we're talking about Jack being Jack Fahy, was this a type of form that Mr. Fahy used to communicate with you and others?

COMMISSIONER HESPE: No, it's a very informal way of communicating. I don't ever remember seeing something like this before. And I'm not really sure what -- what engendered this memo or what follow-up occurred on this memo.

MR. JASO: Reading through--

I'm sorry?

COMMISSIONER HESPE: I was just gonna add that the fact that Jack sent this to the three of us is unusual, too.

MR. JASO: Why is that?

COMMISSIONER HESPE: 'Cause he would normally communi --

communicate it up through -- through Paul. And then Paul would normally forward that on.

MR. JASO: Did you ever have a meeting with the four of you to discuss the issue of racial profiling?

COMMISSIONER HESPE: Certainly, during this period of time. Yes.

MR. JASO: What period of time is this, if you can tell?

COMMISSIONER HESPE: I have no way of knowing, but I believe that January -- going back to earlier comments that we had discussed this substantially in January and February of 1999 -- that was probably a likely time for this memo to have been sent.

MR. JASO: Now, looking at the--

COMMISSIONER HESPE: Especially since some of these ideas, I think were -- were carried forward into the interim report or the final report. I think some of these ideas were carried forward or acted upon.

MR. JASO: And that final report being the what?

COMMISSIONER HESPE: The racial profiling final report.

MR. JASO: And that was in April.

Is that correct?

COMMISSIONER HESPE: I think the interim report was in April, and the final report was a number of months thereafter.

MR. JASO: Okay.

I note that Fahy describes the two categories of possible responses as "most dramatic and less dramatic."

Do you have any knowledge of why those terms would have been used?

COMMISSIONER HESPE: No.

MR. JASO: Did anyone ever discuss with you the need to have some sort of a dramatic action at that time?

COMMISSIONER HESPE: No.

MR. JASO: I note that number two -- under most dramatic -- indicates, "withdrawal of State against *Soto* appeal as a sign of good faith."

Do you recall discussing that as a possibility with anyone?

COMMISSIONER HESPE: Withdrawing the *Soto* appeal? Yes, I remember discussions regarding withdrawal of the *Soto* appeal -- again, in that time period of January/February. I can't be more specific.

MR. JASO: Who did you discuss it with?

COMMISSIONER HESPE: OAG staff. My guess is it occurred at meet -- at briefing meetings that were going on regarding the appeal. It could even have been -- January, February, March, could have been the window for those discussions, I just can't be more specific as to when they occurred. But I do remember conversations regarding how to -- how to -- strategies regarding the *Soto* case.

MR. JASO: How would withdrawal of the State against *Soto* appeal be taken as a sign of good faith, if you know?

COMMISSIONER HESPE: I can't -- I can't explain the use of those words.

MS. GLADING: What were the-- In the discussions that you were part of or heard, what were the reasons for the withdrawal of the *Soto* appeal that were discussed?

COMMISSIONER HESPE: Mostly, I think they revolved around litigation strategies, appealing; trial courts; verdict; what's the prospects of

winning; and prospect of additional litigation, things of that nature.

I really can't recall much other than those issues were discussed.

MS. GLADING: Were the records of the individual troopers in *Soto* discussed in those discussions?

COMMISSIONER HESPE: Not that I can recall.

MS. GLADING: In the prospects of winning, were the -- were issues of statistics for State Police stops discussed?

COMMISSIONER HESPE: Perhaps. I don't have any specific recollection of the context in which those -- that issue was addressed.

MR. JASO: Excuse me.

Is that someone from your office?

MS. GLADING: Oh, yes.

DOUGLAS WHEELER, ESQ.: Oh, I'm sorry.

MS. GLADING: Doug Wheeler. He's bringing me a message, I think.

MR. WHEELER: Bringing her a message.

MR. JASO: That's fine.

MS. GLADING: Don't lock the office.

MR. WHEELER: No.

MR. JASO: Doug Wheeler, is it?

MS. GLADING: Yes.

MR. JASO: Okay.

ASSISTANT ATTORNEY GENERAL MILLER: Doug has had as long a day as I've had.

MR. WHEELER: I was with Jeff this morning.

MR. JASO: Our day's gonna get a lot longer when we try to drive home,

I'm afraid.

ASSISTANT ATTORNEY GENERAL MILLER: Well, I'm sure the Legislature and the Senate Judiciary Committee will provide us all with shovels to dig our cars out.

MS. GLADING: No, shelter. You're looking at it. (laughter)

MR. JASO: I'm sorry. You were questioning?

MS. GLADING: He answered it.

MR. JASO: Number five indicates eliminating the Trooper of the Year Award.

Do you recall discussing the Trooper of the Year Award? Well, what was your understanding of the problems -- if there were any -- with regard to the Trooper of the Year Award?

COMMISSIONER HESPE: My recollection is not very good on this issue. I believe that one of the recent -- recent at that time -- trooper of the year's had -- had some trouble, I just can't remember what the trouble was or anything like that. All I remember was there was an issue regarding it. I just don't know what the issue was. Other than I remember one of the troopers of the year was in trouble for something at the time. I just don't know what it was.

MR. JASO: Was the trouble with regard to profiling?

COMMISSIONER HESPE: I can't be certain of that.

MS. GLADING: You had some expertise in the State Police IAB procedures at this point. What did you-- Do you remember what you thought of incorporating some nonpolice -- State Police -- component into a review of State Police IAB procedures?

COMMISSIONER HESPE: No, I think that -- that was an excellent idea.

MR. JASO: Did you ever have any discussions with anyone within the Attorney General's Office -- or elsewhere within the State government -- with regard to a Department of Justice investigation of racial profiling or issues regarding racial profiling? And I mean the Federal Department of Justice.

COMMISSIONER HESPE: Yes.

I think there was a-- Are you referring to the consent decree -- regarding selection and recruitment, diversity on the force? 'Cause definitely I had conversations regarding the Justice -- the consent decree on State Police. And that had a lot -- lot to do with my work in the recruitment-selection area.

I'm not sure if that's what you're referring to.

MR. JASO: Do you recall any DOJ inquiry with regard to traffic-stop selective enforcement?

COMMISSIONER HESPE: Traffic-stop selective enforcement?

MR. JASO: Right.

That is, police officers--

COMMISSIONER HESPE: Arising out of the *Soto* case?

MR. JASO: In any circumstance.

COMMISSIONER HESPE: If it wasn't arising out of the *Soto* case, the answer would be -- would be, no. And I don't recall anything specifically regarding the *Soto* case, but I can't rule that out either -- that something arose out of the *Soto* case.

MR. JASO: Well, do you recall any DOJ interest in the *Soto* case?

COMMISSIONER HESPE: No. But that's the only area where I could

possibly have -- have any -- have any -- anything to do with that. It would be something arising out of the *Soto* case, and I just don't -- don't recall if there was or wasn't.

MS. GLADING: So there-- You're saying you don't recall any discussion of an ongoing Department of Justice investigation into racial profiling by the New Jersey State Police? And that you never discussed that with anyone?

COMMISSIONER HESPE: Outside of selection and recruitment -- outside of that consent decree--

MS. GLADING: The 1970s consent decree, do you mean?

COMMISSIONER HESPE: I don't know when the-- I don't recall when the consent-- There was a consent decree regarding the State Police and it involved discriminatory patterns, but I believe it was related to recruitment and selection issues.

And that was the only thing that I-- That's the only Department of Justice issue that I can recall.

MS. GLADING: And that was a live sent consent decree, what you're referring to?

COMMISSIONER HESPE: It was a what?

MS. GLADING: It was an in-effect consent decree?

COMMISSIONER HESPE: I think it was a real consent decree.

MS. GLADING: That was still in effect?

COMMISSIONER HESPE: Oh, no. I don't think it was in effect. It might have expired. It expired somewhere along those lines. I'm not really sure what the dates on that were, however.

MS. GLADING: Okay.

Nobody else ever mentioned anything to you about a Department of Justice inquiry or investigation, aside from that 19--

COMMISSIONER HESPE: Outside of that?

MS. GLADING: --the 20-year-old consent decree?

COMMISSIONER HESPE: It's possible, I just don't -- don't recall.

MS. GLADING: You probably would recall, right, if the Federal government was investigating the agency you worked for? That would be something you'd probably remember, right?

COMMISSIONER HESPE: Well, it depends on where the involvement was, because-- For example: In an area that I was actively engaged in, like selection and recruitment -- I remember about that Justice Department involvement. If it was an area that I wasn't actively engaged in, probably not.

MS. GLADING: Do you recall the NAACP lawsuit?

COMMISSIONER HESPE: Was that from-- Was that involving the *Soto* case?

MS. GLADING: No, it was involving selection and recruitment.

COMMISSIONER HESPE: Wasn't that-- I believe-- Wasn't that part of the reason for the consent decree? Again, I'm reaching here.

MS. GLADING: You were involved in selection and recruitment.

COMMISSIONER HESPE: Yes, that's right.

MS. GLADING: But you don't recall the NAACP was a separate lawsuit?

COMMISSIONER HESPE: Not particularly. Not particularly, no.

MR. JASO: When were you-- When did you-- I think originally you

had said that your job as First Assistant stopped in March of '99.

Is that correct?

COMMISSIONER HESPE: That's right.

MR. JASO: Do you remember when your last day of work was?

COMMISSIONER HESPE: Around March 20th. If that's a Friday in '99, that would have been it.

MR. JASO: We had talked before about traffic-stop data and information.

Do you recall round about the time that you were about to leave that some new and additional information was produced by the State Police?

COMMISSIONER HESPE: On the very eve of my leaving, I remember Paul Zoubek raising that he received information regarding something Colonel Williams had been looking into. And Paul had asked me if I had known that Colonel Williams had been looking at the issue of racial profiling outside of what discussions we had had with him regarding internal affairs or recruitment and selection.

And I had said no, that I was not aware of any -- anything-- That Carl had never mentioned -- Carl had never indicated in any way that he was looking at racial profiling outside of the IAB process -- at least outside of individual complaints, and I was very surprised at that.

MS. GLADING: Paul Zoubek volunteered that to you, or how did that come up?

COMMISSIONER HESPE: I believe Peter -- Peter Verniero -- mentioned it. I was in the process of moving boxes, and I was in and out of the Department that week. It was-- I believe later in the day -- I was in Law

and Public Safety -- and Peter-- And I met with Peter, and he asked me, “did I” -- “Paul Zoubek has brought this to my attention,” and so I said, “all right, let me go down and talk to Paul about this.”

I went down and spoke to Paul, and Paul indicated that he had just received this information over the weekend, and if Carl had ever mentioned to me that -- Colonel Williams had ever mentioned to me -- that he was doing an investigation.

I indicated, no -- that in none of the conversations that we'd had did Colonel Williams indicate that the division was doing any type of racial profiling investigation outside of these individual complaints that I had been working with them on and they had been working on.

MS. GLADING: Mr. Zoubek said he had received the information over the weekend, huh?

COMMISSIONER HESPE: I believe it was over the weekend or Friday -- or since the last time I had spoken with him, which just over-- I think it was a Monday that this was said. It could have been a Tuesday. So definitely early in the week, and he had just received it.

MR. JASO: And by this time, the Attorney General had been nominated to fill Justice Pollock's seat on the Supreme Court.

Is that correct?

COMMISSIONER HESPE: You-- You'd have to give me those dates for me to be able to say that, 'cause I don't recall what date he was nominated.

MR. JASO: My information is that Mr. Verniero was nominated on February 26th, 1999.

COMMISSIONER HESPE: That would be correct, then, 'cause this

happened much later than that.

MS. GLADING: What information was it that they said they had received?

COMMISSIONER HESPE: I'm not-- I can't really recall anything other than that it was investigatory information. It could have been actual stop information. But I don't recall the specifics of the information at all, other than that it was information that was being done by leadership of the division, that it was internally collected, and that it had not been disclosed up to that point to Paul -- and I indicated to Paul -- had not been disclosed to me.

MR. JASO: Did this conversation with -- between you and Mr. Verniero occur one-on-one or was Mr. Zoubek also involved in that conversation?

COMMISSIONER HESPE: I believe it was-- Paul's office was on -- I think it was third or fifth floor -- fifth floor, I think -- and Peter and I offices are on the eighth floor, and I remember coming into my office and I went into see Peter, and he indicated to me that Paul was very upset, that he had just received this information over the weekend, and would I go downstairs and speak with Paul about -- about this.

MR. JASO: So the first you learned of it was from the Attorney General?

COMMISSIONER HESPE: Yes.

MR. JASO: And then you went to talk to Paul?

COMMISSIONER HESPE: That's right.

MR. JASO: And did the Attorney General go with you to see Paul?

COMMISSIONER HESPE: No, he did not.

MR. JASO: Did you at any time have a discussion with either Mr.

Zoubek or with the Attorney General with regard to whether the issue of racial profiling was going to be brought up in Mr. Verniero's confirmation proceedings?

COMMISSIONER HESPE: I think the answer to that is -- is probably yes, because clearly I had conversations with Peter about his confirmation hearings, and clearly we knew that racial profiling would be a big issue during those hearings. So I think the answer to that is yes.

MR. JASO: Did you help Mr. Verniero prepare for his hearings?

COMMISSIONER HESPE: No, those were after I left.

MR. JASO: What were the-- What was said in those -- in the conversations that you just mentioned, if you can recall?

COMMISSIONER HESPE: I think it was probably more commiserating about bad timing than anything else.

MR. JASO: Bad timing being what?

COMMISSIONER HESPE: That is, the racial profiling issue was happening at the same time as his nomination hearing -- that the two issues were happening at about the same time. I think that was basically the context of the conversation -- was that it was just bad timing. The one issue is going to be-- Even though the two issues are -- should be separate and independent of each other -- they're going to blend together, and it was just a matter of poor timing.

So that's the only thing I can -- I can specifically recollect. Any strategies regarding the nomination hearing would have happened after I had left.

MR. JASO: How about with Mr. Zoubek? Did you discuss that with him?

That is, did you discuss Mr. Verniero's pending nomination hearing with Mr. Zoubek?

COMMISSIONER HESPE: Not that I can recall. It wouldn't be a -- normally a conversation I'd have with Paul.

MR. JASO: During the conversations that you mentioned before when first the Attorney General and then Mr. Zoubek talked about the newly disclosed information from the State Police, did either of them show you any documents that they had received?

COMMISSIONER HESPE: Any documents they had received? No. No.

MR. JASO: Any documents reflecting the data that they had received from Mr. Williams?

COMMISSIONER HESPE: No. No.

MR. JASO: I've handed the witness a memorandum to file from Peter Verniero, dated March 16th, 1999, a one-page memorandum, bearing the Bates number OAG-3450.

Would you take a moment and look at that, and tell me if you recognize the document?

COMMISSIONER HESPE: Yes, I do recognize it.

MR. JASO: Do you recall receiving the document?

COMMISSIONER HESPE: This was just a few days before I left. I remember-- I definitely remember seeing the document. I don't remember if I received it for my files, but I believe the answer to that is -- is -- is, yes.

I don't see a check mark by my name, but I do remember this document, and I remember having-- I remember seeing Peter sign it, actually.

MR. JASO: You were present when he signed the document?

COMMISSIONER HESPE: I believe so. That's right.

MR. JASO: Did you have any discussions with Mr. Verniero or with Mr. Zoubek regarding whether Mr. Verniero should put this information in writing in a memo to file?

COMMISSIONER HESPE: Yes. The three of us discussed how we should memorialize the receipt of this information so late in a number of our different engagements with the State Police -- various investigations ongoing -- and we all just wanted to memorialize this, and Peter did.

MR. JASO: Was it the same day that you had these conversations that we just -- that you just testified to?

COMMISSIONER HESPE: Yes. Yes.

MR. JASO: And you said that that was in the evening? Is that correct?

COMMISSIONER HESPE: No. This was afternoon, I believe.

MR. JASO: The first sentence says, "Today I became aware for the first time of the existence of certain State Police documents containing data and information," etc.

Did you review the documents before this memorandum was prepared?

COMMISSIONER HESPE: No. Paul described them to me, however.

MR. JASO: And what did he say they were?

COMMISSIONER HESPE: They were investigatory materials prepared by the division regarding the issue of racial profiling.

MR. JASO: Did you ask to review the documents?

COMMISSIONER HESPE: Did I ask to review the documents? No.

MR. JASO: Did-- To your knowledge, had Mr. Verniero reviewed the

documents before he prepared this memorandum?

COMMISSIONER HESPE: I have no knowledge on that.

MR. JASO: Had--

MS. GLADING: Did Mr.--

I'm sorry. Go ahead.

MR. JASO: Sorry. I'll just ask one more question.

Had you, to your recollection, ever received a copy of a memo to file from the Attorney General?

COMMISSIONER HESPE: File in his files, or in my files?

MR. JASO: No. A memo that he wrote to file, copied to you.

COMMISSIONER HESPE: I -- I-- It would have been filed by my secretary, 'cause I would have obviously been there and seen the Attorney General. So I probably would not have seen that memo. My secretary probably would have filed it away without -- without me having seen it again, since I was participating in a meeting where it was signed and done. And certainly, if I was at the meeting, the AG's secretary also--

So I don't have any particular recollection of this being filed, but, on the other hand, since I was there when it was signed, I would not have-- Normally, if you see a memo, it's when you're reading it at your desk and here -- since I was there when he signed it -- I probably wouldn't have any of that type of recollection like that, but I would assume that it was filed in my files.

MR. JASO: Well, I'm asking -- actually -- have you ever -- except for this occasion -- received a memo to -- a copy of a memo to file?

COMMISSIONER HESPE: Oh, oh, similar memos.

MR. JASO: Exactly.

COMMISSIONER HESPE: From the Attorney General? 'Cause I had done it. I don't remember anything -- any other issue -- where the Attorney General wrote a memo to file-- But it was a common practice, and you know, attorneys do it. I've done it -- in both my private practice and in my public life -- done memos to files.

I'd never before been copied on a memo from the AG to file.

MR. JASO: Okay.

Whose idea was it -- you said you discussed it, but whose idea was it -- if you can recall -- to prepare this memorandum?

COMMISSIONER HESPE: I think the-- I can't remember if any one of the three of us made the suggestion, but I do think it was something that we all thought was necessary to document the date this information was received. But I don't recall if Paul or the AG or myself had the idea.

MR. JASO: Was there any -- to your knowledge-- Well, to your knowledge, is there anything in this memo that's false?

COMMISSIONER HESPE: From what information I know, I think everything in this letter is accurate.

MR. JASO: And what was the reason that it was necessary, to your mind, to memorialize this information?

COMMISSIONER HESPE: I think the reason was that we were very surprised that after all the time that we had been spending with the State Police on an issue like this, that -- that information would be provided at such a late date.

After so much had happened, that -- the decision was made that we should memorialize the date on which that information was received.

MR. JASO: Had anyone -- either you or Mr. Verniero or Mr. Zoubek or, for that matter, anyone else -- called up Colonel Williams to ask him why this information was being provided at this time?

COMMISSIONER HESPE: I don't -- I don't know. Just a few days after this memo was filed, I was outside of the Office of the Attorney General.

I do note the last sentence does indicate that there would be an effort made to determine why this information was produced. I don't know what -- what the ultimate resolution of that was. I was gone just a few days hereafter.

MR. JASO: But that effort to contact Colonel Williams or someone within the State Police, was not made -- to your knowledge -- prior to this memo being created?

COMMISSIONER HESPE: I do -- I do not know that. I'm not even sure of Colonel Williams's employment status at this point in time.

MS. GLADING: Do you-- Do you recall any discussion around the conversation about writing these memo -- this memo to a file -- that earlier in the day Mr. Zoubek had argued before the Appellate Division -- there was a phone conference -- seeking an extension of the *Soto* deadline?

COMMISSIONER HESPE: I'm not-- I wasn't aware of that.

MS. GLADING: Mr. Zoubek-- Did Mr. Zoubek discuss his concerns about possible ethical obligations in the *Soto* case?

COMMISSIONER HESPE: That was-- I remember that part of the conversation, that representations were being made -- or had been made or were intended to be made -- and the concern was with the credibility of the department.

And I believe that that was one of the motivating factors behind this

letter -- was to memorialize the date that information was received.

MS. GLADING: Do you-- The sentence that references you, "First Assistant Attorney General David Hespe said he, too, was unaware of these documents, and noted to me that he had on several occasions requested State Police for this kind of information to no avail."

You represented that you didn't see this information, but it was described to you as being investigatory information. And earlier tonight, you said that in terms of statistical information -- you can tell me if I'm misrepresenting what you said -- "if it extended beyond the area in which I was involved in -- IAB -- well, Paul had primary responsibility and I didn't need this information for anything I was doing and everything I was doing, I turned over to Paul."

What would you have requested this information for?

COMMISSIONER HESPE: Well, for my reviewing how the State Police was examining the issue of racial profiling. What investigations were there ongoing? Their principal mechanism, which was indicated to me, was through the internal affairs mechanism, and we had many conversations on the issue of how the State Police were investigating racial profiling complaints.

And it was my feeling that any investigatory material that was being collected by the State Police, would have been turned over to me during the course of my meetings with them on their investigations of racial profiling.

So the two, I think, were very much the same area, and that if investigations were being conducted-- Clearly I had asked for it -- what they were doing many times -- and you've seen that I actually obtained materials regarding their investigations-- And that that would have been turned over to

me -- or at least indicated that they were pursuing alternative investigations or internal avenues to looking at these racial profiling complaints, and that they were not.

MS. GLADING: Did you ever ask Mr. Verniero if there was any effort going on elsewhere in the department to look at racial profiling issues?

COMMISSIONER HESPE: In the department? (affirmative response)
I don't recall an independent question, but it's something that I think Paul--

MS. GLADING: Did the topic-- Was the topic ever discussed?

COMMISSIONER HESPE: Of things occurring elsewhere in the department, outside of the Division of State Police, are you asking?

MS. GLADING: I'm talking about within the Division of State Police.

COMMISSIONER HESPE: Oh, oh, within--

MS. GLADING: Were there other--

COMMISSIONER HESPE: Okay. Within the Division.

MS. GLADING: No. I'm talking about efforts within the department to handle racial profiling issues involving the State Police -- like a Department of Justice Investigation, for example.

COMMISSIONER HESPE: No.

MS. GLADING: No.

COMMISSIONER HESPE: No, I never asked Peter that.

MS. GLADING: And you never heard about it?

COMMISSIONER HESPE: Heard about?

MS. GLADING: The Department of Justice investigation.

COMMISSIONER HESPE: It's possible, I just don't recall having any

real role. If there was one, I don't recall having a role in that. It's possible I was at a meeting where it was referenced, and I might just have mistaken that for my involvement with the Justice Department on the selection and recruitment. But I have no recollection of that at all.

MS. GLADING: Who did you deal with at the Department of Justice on selection and recruitment issues?

COMMISSIONER HESPE: I didn't deal with anyone from the Department of Justice on that. I was-- I'd just known that there was one.

MS. GLADING: If I could just-- I just have a couple of documents, but related to this one -- maybe we can just talk about this for a minute. This is a busy day for the files here and memos.

This is a memo -- similar -- that Mr Zoubek wrote to file. It's OAG-3449.

In this memo, he indicates that on March 15th he received for the first time a packet of documents, and that would be the prior day. And that he received them at a meeting with -- and then he lists a number of people who were at that meeting.

But you made two or three references to Mr. Zoubek having received them over the weekend.

COMMISSIONER HESPE: I didn't know what day. Do you know what day March 15th was?

MS. GLADING: I don't.

Anybody have their calendar with 1999 dates in them? (no response)

COMMISSIONER HESPE: Yeah, I thought it was-- Yeah, I was just back-- I think my last date there was the 20th, so I'm just backing up to the

16th -- was a Monday. And it could have been a Friday he received them. I don't-- I don't really know when March 15th was. I don't have a calendar that goes back to then -- 1999.

MS. GLADING: Do you have a continuous calendar?

COMMISSIONER HESPE: No, I don't. I have a 2001 calendar.

MS. GLADING: Well, presumably he wasn't meeting on a Sunday or a Saturday with all of those people, right? Is that pretty safe to say?

COMMISSIONER HESPE: I can't -- I can't assume. I do know that some meetings did occur on the weekends. I just can't assume that that didn't happen on a weekend.

I'd just -- going back--

MS. GLADING: But your recollection is that he said that he received it over the weekend?

COMMISSIONER HESPE: Well, no, I'm just-- That's just my assumption. If my recollection is on Monday that it was sometime between the last time I saw him -- which is probably like Thursday or so -- I wouldn't-- I can't-- I can't--

MS. GLADING: Okay. Well, you just made two references--

MR. JASO: Well, what's March 15th?

MS. GLADING: --to--

MR. JASO: I'm sorry. What's March 15th of this year? Do you know?

COMMISSIONER HESPE: March 15th of this year -- of 2001 -- is a Thursday. So assuming Leap Year, it might be Monday.

MS. GLADING: In 2000, it was a Wednesday. So, presumably it would have been, what, a Tuesday?

MR. JASO: I would guess so.

MS. GLADING: It just seems kind of inexplicable that you would have heard over the weekend--

MR. JASO: So the 15th could have been a Monday.

MS. GLADING: --and it was the prior day.

COMMISSIONER HESPE: No, actually I'm just assuming --'cause I thought March 16th was a Monday.

Let me get on the record that I thought it was a Monday, and then assuming that, that he would have received that prior to that Monday morning. And that's the only reason I made that statement. I have no recollection that he said he received it over the weekend. I'm just assuming that if it's Monday, that it would happen at some point Friday or the weekend.

MS. GLADING: Do you have anything else on that?

MR. JASO: No.

MS. GLADING: Did you-- Was there anything in the demeanor of Mr. Zoubek or Mr. Verniero that led you to think that they might not be being sincere about seeing these documents for the first time?

COMMISSIONER HESPE: No. They -- they were both very concerned about having received these documents at this point in time. And from their reaction, I thought they were very sincere.

MR. JASO: Was there any discussion of the upcoming nomination hearings at that time?

COMMISSIONER HESPE: No, none whatsoever.

MS. GLADING: How much more do you have?

MR. JASO: None.

MS. GLADING: 'Cause it's getting late and the weather's terrible.

MR. JASO: I don't have anything else.

MS. GLADING: You don't? I have a couple quick things, if you just-- I'll give it to you all at once. Just two things.

The first document looks like an E-mail. And it's copied at the top -- handwritten -- it says, "To AG and FAAG," I'm assuming that would be you at that date. Right?

COMMISSIONER HESPE: Yeah.

MS. GLADING: You may want to show this to Mr. Miller before I go any further. I'm not gonna go out of bounds here, I promise.

MR. JASO: Will you just get the Bates number?

MS. GLADING: Yeah. The Bates number is 5341 -- OAG.

My question is very narrow.

COMMISSIONER HESPE: Could you give me two seconds so I can read this?

MS. GLADING: No problem.

COMMISSIONER HESPE: Thank you.

Okay.

MS. GLADING: Okay.

This suggests that you were part of some discussions about how to handle press inquiries surrounding some issues that were related to racial profiling.

Do you recollect if there was -- what those discussions were?

COMMISSIONER HESPE: I think coming out of the Turnpike shooting, there were requests being made for Turnpike arrest data. And this

request, I think, was -- is this something that we -- we can provide? And I think the answer is to that is, yes. We have arrest data fairly readily available from the stations. And could it be provided -- I gather -- within the context of this investigation?

But beyond that, I'm not really familiar with this. This seems more of a Criminal Justice issue as to what should be done during the course of the investigation. But this type of data, is -- you know -- that's something widely available -- arrest data is very widely-- It's easily compiled.

MS. GLADING: Can you think of any reason why it would have taken eight months to fulfill this request?

COMMISSIONER HESPE: The only thing I can think of is the pendency of the investigation.

MS. GLADING: And a consent agreement?

COMMISSIONER HESPE: What consent agreement?

MS. GLADING: Well, apparently some kind of a court consent agreement. I guess the newspaper had to go to court.

Is that correct?

COMMISSIONER HESPE: I'm not sure.

MS. GLADING: Can you give any reason why it would have taken so long and required the newspaper to go to court?

COMMISSIONER HESPE: I'm not sure, other than the -- the criminal investigation -- the ongoing criminal investigation. That's-- I have nothing. I would have no reason.

MS. GLADING: And the other document is a memo from you.

Is that familiar to you?

COMMISSIONER HESPE: Yes. Yes.

MS. GLADING: Okay.

You know, unfortunately, this document -- which is OAG-4882 through 4901 -- we only have the odd-numbered pages. So we don't really-- We don't have a complete document. We've been seeking to get the complete version of this document.

But in the pages that we have, I don't see any specific reference to racial profiling, and I wondered why that was?

COMMISSIONER HESPE: It could be on the even pages. (laughter)

MS. GLADING: Was it in there? This is something you wrote, right?

COMMISSIONER HESPE: I know there -- there were-- The strategic plan was an effort to develop an agenda of what the divisions wanted to do. And then to keep all the divisions on the same page, with 12 divisions -- the goal was to keep everyone on the same page.

MS. GLADING: It was an internal document? Intended to be an internal document?

COMMISSIONER HESPE: It's an internal document to try to keep the various divisions on the same page, and to do that we set out broad categories, some of which are: Public Confidence in Government-- And they were-- This was not an effort to limit the agenda of the department. It was an effort to -- where divisions had initiatives, that they would -- we would put them into the strategic plan and then keep -- try to keep everyone on the same page and combine resources. This was not an effort to limit the agenda.

MS. GLADING: Okay.

I guess-- Is it fair to say that issue -- that an agenda addressing racial

profiling issues was not contained in this document?

COMMISSIONER HESPE: No, I don't think that's fair to say, either.

MS. GLADING: You don't think that's fair to say.

COMMISSIONER HESPE: I think there are -- yeah-- Yeah, if you go to Page 21, there's some of the State Police agendas here, but not -- well, Page 22 is missing.

MS. GLADING: Right.

COMMISSIONER HESPE: But here you have the PERF study referred to; policy and procedures regarding promotion, professional advancement; personnel training; mission--

So you do have some of -- some of those issues.

MS. GLADING: I don't see racial profiling listed there or selective enforcement--

COMMISSIONER HESPE: No, not -- not--

MS. GLADING: --or bias-free law enforcement.

COMMISSIONER HESPE: Yeah, well, I think if you look at-- Well I think that-- I think if you look at the State Police, you see recruitment, training, and selection, and certainly those are all tied directly back to diversity.

And you'll see ELSA as the primary mission in 2 on Page 19, restore and strengthen the trust and confidence of the citizens in evenhanded, effective enforcement. So I would-- So I believe (a) it is encompassed in the strategic plan, and (b) that the strategic plan was intended not to establish a limited agenda, but to keep the department on the same page and to reflect some priorities -- priority goals. And certainly one of those priority goals is public

confidence in law enforcement, which I think is very much racial profiling.

MS. GLADING: And just one last question. At any time before you left the department, did you learn about the Department of Justice investigation?

COMMISSIONER HESPE: Into what? That's the only--

MS. GLADING: Into racial profiling.

COMMISSIONER HESPE: Into racial profiling? You know-- I'm pretty certain from the tone, they think there's something out there exists, but I can't recall being involved in it in any way. You know, very much the Office of the First Assistant, you're focused on projects and you're focused on the nine divisions that -- that are the others.

And my involvement with racial profiling-- Yeah, had some involvement, I just-- But I didn't have that comprehensive view that would allow me to -- to -- to have a real -- that understanding that you're asking about.

MS. GLADING: Okay.

MR. JASO: So as you sit here today, you have no knowledge of any Department of Justice investigation into racial profiling by the New Jersey State troopers?

COMMISSIONER HESPE: Any-- No.

MR. JASO: Is that a no?

COMMISSIONER HESPE: No. No. No. No three times.

MS. GLADING: Have you had any discussions with any of your former colleagues from the AG's Office about appearing here and testifying here, being interviewed here?

COMMISSIONER HESPE: I had a brief--

ASSISTANT ATTORNEY GENERAL MILLER: Other than counsel?

COMMISSIONER HESPE: Other than counsel, no.

MS. GLADING: Other than counsel.

COMMISSIONER HESPE: Other than counsel, no.

MS. GLADING: Okay.

I am done. Are you done?

MR. JASO: Mr. Hesse, thank you very much for your time.

COMMISSIONER HESPE: Thank you. I hope you both have a safe trip.

MS. GLADING: Thanks.

(INTERVIEW CONCLUDED)