

**CONFIDENTIAL**

**INTERVIEW**  
of  
**Jeffrey J. Miller, Esq.**

for the  
**SENATE JUDICIARY COMMITTEE**

February 6, 2001  
10:00 a.m.  
Committee Room 2  
State House Annex  
Trenton, New Jersey

**PRESENT AT INTERVIEW:**

Scott Louis Weber, Esq. (Special Counsel to the Committee)  
Jo Astrid Glading, Esq. (Democratic Counsel to the Committee)  
Mark Howard Goldberg, Esq. (Assisting Special Counsel)

\* \* \* \* \*

**CONFIDENTIAL**

**CONFIDENTIAL**

**TABLE OF CONTENTS**

**Page**

Jeffrey J. Miller, Esq.  
Assistant Attorney General

1

Allison Accurso, Esq.  
Assistant Attorney General

1

lmb: 1-48  
hw: 49-73

**SCOTT LOUIS WEBER, ESQ.:** Before we swear the witness in, I'd just like everyone to identify themselves for record.

My name is Scott Louis Weber. I'm an attorney at Latham and Watkins. We've been retained by the Senate Judiciary Committee as special counsel in connection with the Senate Judiciary Committee's investigation into alleged racial profiling conducted by the New Jersey State Police.

Why don't we start, to my left, with Jo Glading.

MS. GLADING: I'm Jo Astrid Glading. I'm staff counsel to the Senate Democratic Office.

MR. WEBER: Ms. Accurso.

**ASST. ATTORNEY GENERAL ALLISON ACCURSO:**  
Allison Accurso, Assistant Attorney General from the Division of Law.

MR. WEBER: Mr. Miller.

**ASST. ATTORNEY GENERAL JEFFREY J. MILLER:**  
Jeffrey Miller, Assistant Attorney General, Director of the Division of Law.

MR. WEBER: The hearing reporter could identify herself, please.

HEARING REPORTER: Linda Brokaw, hearing reporter.

MR. WEBER: And her supervisor is present.

HEARING REPORTER: Harry White, hearing reporter.

MR. WEBER: Okay. And to my right.

MR. GOLDBERG: Mark Howard Goldberg, attorney at Latham and Watkins.

MR. WEBER: Mr. Miller, by motion dated January 29, 2001, the Senate Judiciary Committee authorizes special counsel -- Michael Chertoff and such of his aides and associates -- to take testimony, interview such persons,

and gather such documents in further of this Committee's investigation and inquiry into the issue of racial profiling and the circumstances pertaining thereto. It is further resolved that the Committee delegates to Mr. Chertoff and his aides and associates the authority to administer oaths on behalf of the Committee to obtain sworn testimony as he shall deem advisable and to do every other act and thing necessary to fulfill their responsibility of the Committee's charge. This is approved January 29, 2001. With that authority, I'd ask you to take the following oath and repeat after me.

(Oath administered)

Mr. Miller, thank you for appearing voluntarily this morning. And on behalf of the Committee, I just want to say that we appreciate your cooperation in helping us put the schedule together of all the interviews and coordinating getting the documents and the certifications to us.

Before I begin with a set of documents that have been provided to us by the Attorney General's Office and the Office of the Governor, I'd just like for you to detail for the Committee your job history, starting from when you graduated law school, and then just take us up through the present.

MR. MILLER: I graduated from Fordham Law School in 1984. I then clerked for Judge John Bissell in the U.S. District Court here in the district of New Jersey for two years, from '84 to '86. In August or September of 1986, I began work as an associate at Riker Danzig in Morristown and became a partner there in January of 1995. In August, or thereabouts, of 1995, Jaynee LaVecchia, the then director of the Division of Law, through her husband, Mike Cole, asked me if I would be interested in coming down to Trenton to be in charge of the State's civil litigation. After thinking about it, I accepted

and was sworn in, in September of 1995.

MR. WEBER: What was the position you were sworn into?

MR. MILLER: The Assistant Attorney General in charge of litigation. I held that position until August of 1998, when Jaynee LaVecchia became the Commissioner of Banking and Insurance, and then I became the Director of the Division of Law.

MR. WEBER: And you've been the Director of the Division of Law ever since?

MR. MILLER: Yes.

MR. WEBER: Let's start with a series of documents I'd like to take you through. You stated that you started at the Attorney General's Office in 1995?

MR. MILLER: Correct.

MR. WEBER: Prior to starting at the Attorney General's Office in 1995, were you aware of the issue of racial profiling as it pertained to the New Jersey State Police?

MR. MILLER: As a citizen, yes. I mean, I think that most people were somewhat familiar with the concept. I know that-- I don't know if I actually saw it when it ran at first, or eventually I became aware of it, but I know that there was a news article or a TV segment on WOR that Joe Callum (phonetic spelling), I believe, ran in '89. So, you know, I think, as just a general citizen and someone who reads newspapers and the like, I was somewhat familiar with the controversy.

MR. WEBER: Okay. When did you first deal with the issue of racial profiling in your capacity as a lawyer at the Attorney General's Office?

MR. MILLER: I think it was probably when I was appointed to the

State Police Review Team. Now I have to just caution, because there may have been litigations that the Division of Law was handling where the issue of racial profiling was raised. I honestly can't remember the timing of some of those issues. But certainly in terms of the issue being an assigned responsibility, it would have been when the State Police Review Team was created.

MR. WEBER: And that was created when, approximately?

MR. MILLER: February of '99. I'm always amazed at witnesses who can recall dates and months. (laughter) I can't, but I believe it was February of '99.

MR. WEBER: Okay. Let me just take you back for a moment in your capacity as Assistant Attorney General in charge of litigation. I would take it that was just civil litigation?

MR. MILLER: Civil litigation.

MR. WEBER: So you had no interaction then with any criminal litigation or criminal prosecutions in your capacity as Assistant AG in charge of litigation?

MR. MILLER: That's correct.

MR. WEBER: And then in August of 1998, you became the Director of the Division of Law. I assume that that greatly expanded your responsibilities?

MR. MILLER: Expanded the responsibilities, but still limited it to the civil area.

MR. WEBER: Okay. All right. Let me show you a document that has been produced. The Bates numbers are OAG-005245 through OAG-005248. To identify it for the record, it is a memo from the desk of Attorney General Deborah Poritz, dated March 20, 1996, to Jim Ciancia, Alex Waugh, Jeff

Miller, and John Fahy. And there is some handwritten notation on here that says, "Jaynee, here are my minor editorial comments, Jeff." If you could please review that document and let us know whether the Jeff Miller identified in the memo is you?

MR. MILLER: It is.

MR. WEBER: It is. Have you had a chance to read the document?

MR. MILLER: I have, and I've reviewed it before today, as well.

MR. WEBER: Mr. Miller, why would you have been included in the list of individuals mentioned on the memo from Attorney General Poritz for this particular communication, which is a draft press release, I guess, from -- or a draft statement from Colonel Williams to troopers?

MR. MILLER: I don't recall is the answer. I can speculate that it was probably the Attorney General looking for people to provide their judgment as to the statement, but I don't recall, specifically now, why I was on that list, as opposed to, in fact, why Jaynee LaVecchia wasn't on the list.

MR. WEBER: That's my next question.

MR. MILLER: Right. I don't recall.

MR. WEBER: Were you at all involved up to that point, which is March of 1996, in the Attorney General Office's involvement in the *Soto* case?

MR. MILLER: No, not that I can recall.

MR. WEBER: As of, from that date going forward, March 20th, '96, going forward, did you then become involved in the Attorney General Office's involvement in the *State v. Soto* case?

MR. MILLER: No, not-- No.

MR. WEBER: Were any of the lawyers that you were responsible for

supervising involved at all in the briefing on the *Soto* matter or in conducting any research in connection with the State's appeal of Judge Francis's decision?

MR. MILLER: Not the lawyers that I was responsible for supervising, as the AAG in charge of litigation. My understanding is that because Judge Francis used the McDonnell Douglas burden-shifting test in his opinion, that the decision was made that Division of Law lawyers should review any briefs that were going to be submitted by the Division of Criminal Justice on that point. And I believe that Mary Jacobson, who was the AAG in our appellate area, looked at that.

MR. WEBER: She was the AAG in charge of the Appellate Division?

MR. MILLER: She wasn't in charge of-- Joe Yannotti was the AAG in charge of appeals, but she was an Assistant Attorney General in the appellate area.

MR. WEBER: Did Jaynee LaVecchia have any involvement in either the drafting, the research, or the review of the State's brief in the *Soto* matter?

MR. MILLER: I didn't know it at the time, but in producing the documents that we've produced to the Committee, I know that there is a memo out there that talks about a meeting that Jaynee attended with Mary Jacobson. And, in fact, that's how I know Mary was involved, as well. I didn't understand that at the time. I wasn't aware of it at the time.

MR. WEBER: At the time, why did you forward your comments to Jaynee LaVecchia instead of forwarding them directly, or responding directly, to the Attorney General?

MR. MILLER: Chain of command.

MR. WEBER: Okay. Did you have any discussions with anyone

concerning Colonel Williams's draft statement other than relaying your comments, your minor editorial comments, in writing on the statement itself?

MR. MILLER: Not that I can recall. But again, I don't remember why I was on that list, so it may have been that there had been a conversation that caused me to be put on that list, but I don't have any recollection of that happening.

MR. WEBER: Did you think it was somewhat out of the ordinary for the Attorney General to send this to you directly?

MR. MILLER: I honestly don't have any recollection of what I thought when I got it at the time. I don't remember receiving that document, so I don't have any recollection of what my thought process was.

MR. WEBER: Okay. After you provided your comments to Jaynee LaVecchia, did you hear anything else about this draft statement, as far as-- Did anyone respond to your comments, say they were acceptable, say they didn't agree with them?

MR. MILLER: Not that I can recall.

MR. WEBER: Aside from this -- the editorial comments that you provided in connection with Colonel Williams's draft statement, did you have any other involvement in the *Soto* case between this period of time, which is March 20th, 1996, and when you were placed on the State Police Review Team?

MR. MILLER: Not that I can recall.

MR. WEBER: Were you involved in any discussions at all, formally or informally, with other members at the Attorney General's Office concerning the *Soto* appeal or how to proceed as a result of Judge Francis's decision?

MR. MILLER: Not that I can recall, no.

MR. WEBER: I'm going to show you a document, Bates stamped GC-002356. It is a memo from Thomas O'Reilly to you, Jeffrey Miller. Thomas O'Reilly is listed here as an administrator. Who is Thomas O'Reilly?

MR. MILLER: Tom O'Reilly is the administrator of the Department of Law and Public Safety. He is the head manager, if you will, of the Department. He is not a lawyer, but he's rather legendary in his abilities.

MR. WEBER: The date of the interoffice memo is August 28th, 1998, and the subject is State Police selection. And the memo states, "Attached is a copy of my memorandum to Dave Hespe concerning a training program to be offered by the IACP. I'd like to meet with you to discuss the idea of creating a training team that includes the Deputy Attorneys General representing State Police, the Department of Corrections, and the Office of Employee Relations, as well as someone from the Office of the Attorney General, for future discussions as it relates to recruitment, selection, and promotion of State Police enlisted personnel. I'd like to discuss this further with you at your convenience." And First Assistant Attorney General Hespe is CC'd, and Operations Audit Director Caccese is CC'd. My question is, do you know why this memo was sent to you from Mr. O'Reilly?

MR. MILLER: Again, I don't have a specific recollection of receipt of this memo, but I have seen this memo in the production of documents. I was involved with the State Police as a result of the NAACP litigation where they challenged the four-year college degree, as well as the hiring practices of the State Police. And Tom O'Reilly was not a formal chair, but he was certainly the -- kind of the head person in trying to get some of the hiring and

recruitment practices of the State Police changed. And I believe that this would have been part of that process.

MR. WEBER: Do you know how it came to be that Mr. O'Reilly was sort of the point man on this?

MR. MILLER: OAG, and Tom is the head administrator for OAG, the Office of the Attorney General -- is really the conduit through which the Attorney General deals with the State Police. And Tom has a lot of daily interaction with the State Police, whether it be getting enough troop cars on the road-- If there are problems as there were recently with their handguns, that's what Tom would be involved in, as well as things like recruitment and the test that the State Police would be involved in. So he has fairly extensive involvement with the State Police.

MR. WEBER: And how did it come to pass that you became involved in the NAACP case?

MR. MILLER: It was one of the 14 or 13,000 litigations that the Division of Law is handling, and it was a significant piece of litigation, so the Assistant Attorney General in charge of litigation would be actively involved.

MR. WEBER: When that litigation was, let's say, at its peak, for lack of a better phrase, how much of your time was taken by attention to the NAACP matter?

MR. MILLER: Oh, I don't know that I could even venture a guess on that, quite frankly. It was never-- I don't think it was ever a quarter of my time, but again, with 13,000 litigations going on, it was one of the larger pieces of litigation that we had, and it was a significant piece of litigation. Quite frankly, at the time it started, the four-year college degree issue was the big

factor, and then recruitment in hiring became important as well. But originally, it was the four-year college degree.

MR. WEBER: When was the NAACP suit filed, as best you can recall? Even month and year would suffice, or year.

MR. MILLER: I was going to say-- I would guess it was '96 or '97. I-- I--

MR. WEBER: Well, you came on board in--

MR. MILLER: September of '95.

MR. WEBER: Right. Okay. I was thinking about your promotion to director of the Division of Law. That was '98. So the case was filed in either '96 or '97, and when was it ultimately resolved?

MR. MILLER: Oh, I'm not sure it still has been ultimately resolved. We've got agreements and we are working with them, but it's an ongoing process.

MR. WEBER: Have you entered into more than one agreement in connection with that case, or is there one agreement that sort of prevails as far as how the State Police will proceed in its hiring practices?

MR. MILLER: Umm. I don't think there's-- This is not as like we entered into a consent decree and that is what controls-- There have been ongoing negotiations, and we've been working cooperatively with the NAACP to change the way the State Police recruit and hire and test for new troopers.

MR. WEBER: Was the NAACP case a case that you would provide sort of status updates to Attorney General Poritz?

MR. MILLER: If she was there at the time. I don't recall whether or not she was the Attorney General when that suit was filed or whether or not Peter

Verniero had been. But if your question is would I provide periodic updates to the Attorney General, whoever it was, yes.

MR. WEBER: During any of your updates or discussions with Attorney General Verniero, or anyone on his behalf, about the NAACP case, was there ever a connection made between that case and the issue of racial profiling? Were they ever discussed together?

MR. MILLER: I honestly can't say. That's a pretty broad question in terms of were they ever discussed together. I don't recall every conversation, so I don't know. Clearly, the NAACP case had race as one of the issues, because we were trying to increase the number of minority troopers. It was not, however, a racial profiling case, so I don't think that the issue of racial profiling ever came up in the NAACP case -- is probably the way I would answer your question.

MR. WEBER: Well, I-- Let me try and narrow the focus of the question then. Both racial profiling and the NAACP, as you properly mentioned, have a race component, and indeed it's one of the larger components to both of those issues. Was there any discussion given to there possibly being a systemic problem or a cultural problem at the State Police that allowed for these problems concerning race to manifest themselves both in the way that would force the NAACP to file its lawsuit and for people to make complaints about racial profiling?

MR. MILLER: Let me answer it this way, because it was a long question.

MR. WEBER: Sure.

MR. MILLER: Clearly, there was a thought process in our office that there were problems within the State Police. And if we increased the numbers

of minorities and women in the State Police, that the culture of the State Police should thereby change to be more accommodating. So yes, there was clearly that thought process.

MR. WEBER: As best as you can recall, was the NAACP case filed after Peter Verniero became the Attorney General or just shortly before?

MR. MILLER: I don't have any recollection, quite frankly.

MS. GLADING: Actually, I have June 24th, '96.

MR. WEBER: June 24th, '96.

MS. GLADING: Does that sound right to you?

MR. WEBER: Yeah, that's what I was looking for.

MR. MILLER: Ninety-six or ninety-seven was my guess, yeah.

MS. GLADING: Initial discrimination charges had been September '93, of the EEOC, and a right-to-sue letter on the 16th of March '96.

MR. WEBER: And Peter Verniero was appointed AG June 27th, '96. I'm sorry. He was confirmed June 27, 1996, with his appointment to begin formally on July 10th, 1996. So it was right around the time that the lawsuit was filed.

In light of the *Soto* decision, which was in April to March of '96, and then the filing of the NAACP case in June of '96, were there any discussion at that time with the Attorney General or any members of his executive staff concerning, again, the issue of race as it pertained to the State Police, both in recruiting and hiring, as well as law enforcement practices and racial profiling?

MR. MILLER: I don't recall any conversations that I had with anyone about law enforcement. That would have been outside of my area of expertise. But as I said, we were clearly looking at the State Police in terms of their hiring

practices, and it was a concern.

MR. WEBER: Was there any coordination of efforts between those who were looking at the State Police in connection with their hiring practices and those who were addressing the issue of racial profiling and/or the *Soto* decision?

MR. MILLER: No. Not that I'm aware of. I-- Not that I'm aware of. And just so you understand, there are separate divisions in the Division of Criminal Justice -- is the criminal side of the house, and we're the civil side of the house. And for the most part, they are kept apart for good reason.

MR. WEBER: Well, is there, aside from the Attorney General, is there someone who is responsible for dealing with both of those divisions and then funneling information up to the Attorney General about what's going on in the civil side of the house and what's going on in the criminal side of the house?

MR. MILLER: You're asking for reporting?

MR. WEBER: Yeah.

MR. MILLER: The directors of both divisions would report primarily to the Attorney General.

MR. WEBER: Would they also report to the First Assistant Attorney General?

MR. MILLER: They could if there was a particular issue or-- Obviously, in the chain of command, the first assistant is above a division director. So, if the first assistant asked you to do something, there would be that-- You would respond to that request.

MR. WEBER: All right. So just so I understand the chain of command--

MR. MILLER: Sure.

MR. WEBER: --for lack of a better phrase, you have the division director. You're the Division Director on the civil side of the house. There is then the division director on the criminal side of the house.

MR. MILLER: Correct.

MR. WEBER: And both directors independently report to the Attorney General?

MR. MILLER: Correct.

MR. WEBER: So, for instance, you would report to the Attorney General about, among other things, the NAACP case and developments in that. The head of the criminal division would report to the Attorney General on developments in the *Soto* case and racial profiling and the other criminal law enforcement matters?

MR. MILLER: Presumably, yes.

MR. WEBER: And do you have reason to believe that that chain of command differed at all under Attorney General Verniero versus under Attorney General Poritz or now under Attorney General Farmer?

MR. MILLER: Well, my experience with the three Attorneys General, they all differ slightly, but not-- If you were looking at an organizational chart, it would be the same.

MR. WEBER: Okay.

I'm going to show you a series of press releases. The first one is dated February 10, the second one is dated February 16th, and the third one is dated February 28th. Let me give you the Bates numbers.

MS. GLADING: Is that all 1999?

MR. WEBER: Nineteen-ninety-nine, yes.

OAG-001108 through OAG-001111. The first two pages are actually duplicate copies of the same press release. It's a February 10 press release, statement of Attorney General Peter Verniero, re: State Police Review, and in relevant part, the press release states today, "have asked the incoming First Assistant Attorney General, Paul H. Zoubek, to head a review team which will study certain procedures and protocols of the New Jersey State Police. The team will include representatives of the Divisions of State Police, Criminal Justice, Law, and the Office of Attorney General. Mr. Zoubek will be working closely with the superintendent, Colonel Carl Williams, to ensure a complete and comprehensive review. The review shall focus on procedures for processing complaints from members of the public and internal complaints from troopers, training programs of supervisors, and the current system of internal discipline."

"Already underway is the review of existing promotional policies, which shall continue as part of this broader study. Recently completed was a review of the agency's recruitment practices, and a new process is now being implemented. The purpose of this additional review is to ensure that all policies promote fairness and serve the various purposes for which they are entitled. I expect the review team to complete this initial work in four months." I skipped a paragraph there about Colonel Williams. "I expect the review team to complete its initial work in four months and to make a public accounting of the results."

Let me ask you to take a look at that press release and first ask if you had any involvement in providing information that then found itself into the press release?

MR. MILLER: Not that I'm aware of.

MR. WEBER: I take it you're familiar with that press release?

MR. MILLER: Yes.

MR. WEBER: What prompted the Attorney General on February 10th to announce that he was putting together a review team?

MR. MILLER: I don't know exactly. I can surmise there was a growing feeling that the State Police were not responding to his inquiries. I know that he was having problems getting a promotional list from them that had minorities on it, and I know that that was a source of frustration for him, but I don't know what was the straw that broke the camel's back.

MR. WEBER: Were you at all involved in the Attorney General's Office's response to the United States Department of Justice's inquiry into racial profiling by the State Police?

MR. MILLER: No.

MR. WEBER: Were you aware that there was such an inquiry that was going on for the Department of Justice?

MR. MILLER: Obviously, I'm aware now. I don't recall when I first became aware.

MR. WEBER: When were you asked to be a member of the review team, prior to the press release or after?

MR. MILLER: No. My recollection is that the Attorney General told me he was thinking about doing this, and a day or two later I read it in the newspaper that it was actually being done. And that was when I became aware that it was a done deal.

MR. WEBER: So the-- Let me just-- The Attorney General told you

that he was thinking of doing this?

MR. MILLER: Yes.

MR. WEBER: Was it in a meeting with other people?

MR. MILLER: I don't recall. So I believe I was up there to talk about some other matter, and he said that he was contemplating doing this.

MR. WEBER: Did he express why he was contemplating doing it?

MR. MILLER: Not that I can recall. Again, it was general frustration with the Division of State Police, and I think he may have mentioned the recruitment -- I'm sorry, not the recruitment -- the promotional list. And that sticks in my mind as one thing that I recall.

MR. WEBER: Was the promotional list also an aspect of the NAACP case? I don't mean the promotional list per se, I mean the issue of promotions within the State Police and minority promotions within the State Police? Was that an aspect of the NAACP case?

MR. MILLER: No, it was not. To the best of my recollection, the NAACP case dealt with the four-year college degree and then the hiring -- initial hiring of sufficient numbers of minorities.

MR. WEBER: Mark, if I could have that back, please, for a moment. Thanks.

Do you know how long Paul Zoubek had been at the Attorney General's Office when this press release was released on February 10, 1999? Had he already started?

MR. MILLER: Yes.

MR. WEBER: Do you know for how long he had been at the Attorney General's Office?

MR. MILLER: I believe recently I saw something where he came to the Attorney General's Office in 1997, so this is '99, so approximately two years.

MR. WEBER: And how-- Well, reference is made that I've asked the incoming First Assistant Attorney General Paul Zoubek. Do you know when the announcement that Paul Zoubek would be the First Assistant Attorney General, I guess, replacing Dave Hesse?

MR. MILLER: Not specifically. I assume it was sometime just before that.

MR. WEBER: The second press release, dated February 16th of 1999, concerns Reverend Jackson of the Black Ministers Council of New Jersey, and I'm going to ask you to review this press release. In here, there is reference made to, "It is true that one division of my office is appealing a trial court judgment adverse to State Police that pertains to the issue of racial profiling, the *Soto* decision," although it's not identified by name. "Whoever the defense in that case focuses on, narrow legal questions regarding burdens of proof is limited to certain individuals and to the time period of 1988 through 1991." And then it goes on to say he's restricted what he could say about grand jury matters. Let me ask you to take a look at this press release, which is six days after the first press release that we've discussed, which is the announcement of the State Police Review Team.

MR. MILLER: Okay, I've skimmed it.

MR. WEBER: And let me also show you a two-page document, OAG-004907 through 004908. The first page is a memo from the desk of David C. Hesse, First Assistant Attorney General, to you, John Fahy, and Roger Shatzkin. It is also dated February 16th, 1999, and it concerns a draft

letter to *The Record* of Bergen, or if you're from Bergen County, like me, *The Bergen Record*, and it contains much of the same language that is in the press release that I just showed you. I'd ask you to take a quick look at that, please.

MR. MILLER: I'm familiar with this.

MR. WEBER: Okay. I take it by February 16th, 1999, you already knew that you were going to be on this review team, correct?

MR. MILLER: The first press release is dated earlier than--

MR. WEBER: February 10th.

MR. MILLER: Right. Yes.

MR. WEBER: Okay.

MR. MILLER: I'm sure I did.

MR. WEBER: Did you know who else was going to be on the review team?

MR. MILLER: I don't remember when we had the first organizational meeting. I think I understood that Zoubek was going to be the lead of the committee and that there were going to be other senior staffers of OAG on the committee as well. In fact, I think that's what the press release indicated. So yes, I'm sure I had some general knowledge of who was going to be on the committee.

MR. WEBER: Were you being sent a draft of the letter to *The Bergen Record* in your capacity as a -- in your capacity of being a member of the review team?

MR. MILLER: I don't know. It wouldn't be unusual for the Attorney General to run a letter to the editor or a response to a newspaper by me, but I don't recall, specifically, why this one was sent to me.

MR. WEBER: The second press release in the packet, which is the one that addresses Reverend Jackson, with the exception of really the first paragraph that's almost identical to the letter to *The Bergen Record*, do you know why there is reference made to Reverend Jackson and the Black Ministers Council in the press release? Was there some issue involving the Black Ministers Council that the Attorney General's Office needed to address?

MR. MILLER: I don't know why that reference is in this press release. I know that very early on in the review team we had a meeting with Reverend Jackson and other members of the Black Ministers Council where, I believe, the Governor arrived and sat in. And we basically went around the room and identified ourselves to Reverend Jackson and the other ministers there to tell them who we were. I don't remember if that occurred prior to this or not -- this being the press release.

MR. WEBER: Let me just skip to another issue for a moment.

MS. GLADING: Scott, can I just -- on *The Bergen Record* letter.

MR. WEBER: Yeah.

MS. GLADING: I don't-- The final draft of that letter that went out, as you know, excluded a sentence that reads, "moreover, as officers of the court, attorneys in my office would turn over relevant information that might result from such review even if that information were adverse to the State's legal position in any given legal case." The final draft of that letter can be found in OAG-1215. Did you have any input into the decision to include or exclude that language?

MR. MILLER: Not that I can recall.

MS. GLADING: Do you remember having any concerns concerning this

letter or the meetings that were being held or the work that was being undertaken by the review team concerning potential civil liability by the State pending cases?

MR. MILLER: I always have concern if it's about civil liability. It's my job. There was an issue very early on. I don't know if-- I don't believe it had any relationship to this sentence, but the Division of Law represents the Division of State Police. And so, there was a concern about whether or not there was a conflict for me, as the director of the Division of Law, to be on the review team. So yes, that issue was out there, and it was discussed.

MS. GLADING: Beyond the conflict issue in terms of the State's civil exposure in civil cases, as a result of the work that the review team might undertake -- in the early stages of the review team, was that a topic of discussion?

MR. MILLER: It was addressed in the sense that we realized that if -- whatever we found could and would be used against us. But nevertheless, the decision was made to go ahead.

MS. GLADING: And in that excluded sentence, do you think at the time that was accurate? I mean, had the State met its discovery obligations?

MR. MILLER: In *Soto*, in the criminal cases?

MS. GLADING: To your knowledge, in civil cases that were pending?

MR. MILLER: In civil cases? I would certainly hope we had, yeah.

MS. GLADING: Okay. That's all I have.

MR. WEBER: February, 1999, appears to be a very busy month. Aside from then Attorney General Verniero announcing the review team, we also have the issue of Colonel Carl Williams being fired. And then within the legal

community, there was also a major happening, which was Justice Pollock announced that he was going to resign or that he was going to retire. Do you remember when you first heard that Justice Pollock was even considering early retirement?

MR. MILLER: I don't know that I ever heard that he was considering early retirement. As far as I know, I heard he had retired or he had submitted his resignation. I don't believe that I had any early warning of that.

MR. WEBER: There wasn't any gossip or grumblings within the office that Justice Pollock was considering retiring in early February '99?

MR. MILLER: Not that I can recall, no. I mean, it's-- There have been times where the office talks about Supreme Court justices retiring, because you know they're getting close to the age of retirement, but I don't recall any advanced warning that Justice Pollock was going to retire.

MR. WEBER: After Justice Pollock announced his resignation, one day after-- It was on February 25th he announced his resignation, although there was an article in the *New Jersey Lawyer* on February 22nd stating that Justice Pollock was considering early retirement. On the 25th, he announces his resignation. On the 26th, then Attorney General Verniero was nominated to the Supreme Court to fill Justice Pollock's vacancy. Did you have any discussions with Attorney General Verniero about his being nominated to the State Supreme Court at the time that the announcement was made or shortly thereafter?

MR. MILLER: I'm sure I did, you know, to congratulate him or something like that. I don't recall any specific conversation that we had, but obviously, it's a big deal when someone gets nominated to the State Supreme

Court.

MR. WEBER: Did you have any concerns about how that would affect the State Police Review Team's ability to conduct and complete its review?

MR. MILLER: I don't know that I thought about it in those terms. We were going to go through another transition with another Attorney General. That was probably what I was more concerned about rather than how it was going to affect just the State Police Review Team.

MR. WEBER: How many transitions have you been through with--

MR. MILLER: Now?

MR. WEBER: Yes.

MR. MILLER: Three. Well, when Debbie Poritz left, when Peter Verniero-- Well, I guess three is actually accurate, because for a while there Paul Zoubek was the Acting Attorney General and then to John Farmer.

MR. WEBER: Okay. But when you came on board, Debbie Poritz was already the Attorney General?

MR. MILLER: Yes.

MR. WEBER: Okay. When Debbie Poritz left to become the Chief Justice of the Supreme Court, were you involved in any way in the transition from Debbie Poritz leaving to Peter Verneiro coming on board as AG?

MR. MILLER: I don't have any specific recollection, but it would be standard practice, I believe, that we would do a transition memo. And as the Assistant Attorney General in charge of litigation at that time, I would have provided information on our civil litigations that would have been relevant to put in that transition memo.

MR. WEBER: Okay. Would you have been provided with a copy of the

entire transition review memo or would you only be knowledgeable of the part of the memo that you prepared or that you were responsible for?

MR. MILLER: The latter. We would-- I would not get a copy of the full transition report.

MR. WEBER: When the transition--

MR. MILLER: And again, I don't remember if there was one, because of the way they changed. It wasn't a normal, you know-- All of a sudden, Debbie Poritz was going to become the Chief Justice, and Peter Verniero was going to become the Attorney General. You didn't have the same type of lead time that you normally would, say, with a change of administrations.

MR. WEBER: Were you involved in any discussions with Peter Verniero when he became Attorney General or anyone on his behalf -- part of his executive office -- during the transition to advise them of prominent cases in the office, areas of concern in the office, things to that effect?

MR. MILLER: That probably would have done -- have been done by Jaynee LaVecchia, who was then the Director. At some point in time, I would have started to have dealings with him as Attorney General as important cases would come up, you know, about that time in late '97. Well, actually, we started in the summer of '97 preparing for the *Abbott* trial, and I tried that case. And so, obviously, I would have had discussions with him about things like that. I don't remember any specific transition meetings.

MR. WEBER: Let's go back to the formation of the State Police Review Team in February of 1999. Excuse me. (coughs) Then Attorney General Verniero announces on February 10th that he is forming this review team, and you were told around that time that you were going to be a member of the

review team. Did you ever have a meeting with Attorney General Verniero other than when he told you that he was thinking of forming this review team? Did you ever have a meeting with Attorney General Verniero to discuss the purpose of the review team, what the ultimate goal of the review team was, what your charge was?

MR. MILLER: Well, the one that I can remember, specifically, is, as I said earlier, the meeting with the Black Ministers Council where the Attorney General and the Governor laid out what their plans were, and it was really the Attorney General more than the Governor that laid out what their plans were for this review team. I don't remember any other specific meeting where Peter Verniero sat in. At that point in time, he had basically turned it over to Paul Zoubek, and we began to have, as I recall, weekly kind of organizational meetings to try and figure out how you go about doing this.

MR. WEBER: And based upon that February 16th, 1999 press release, does that indicate to you that it was somewhere around that time that this meeting with the Black Ministers Council occurred?

MR. MILLER: My recollection is, it was early in the process, very early in the process.

MR. WEBER: During the meeting with the Black Ministers Council, did then Attorney General Verniero at all discuss the issue of the Department of Justice investigation into the New Jersey State Police?

MR. MILLER: I don't have any recollection of that, but I don't have any specific recollections of exactly what it was he said. I-- Just-- I don't remember that being discussed.

MR. WEBER: Did anyone at that meeting have -- bring up for

discussion the DOJ review of the New Jersey State Police?

MR. MILLER: Not that I recall.

MR. WEBER: When did you first become aware of the DOJ review or the DOJ's request for information concerning the New Jersey State Police?

MR. MILLER: You asked me that earlier. I don't recall. I mean, at some point in time, certainly, as a member of the review team, I knew that the Department of Justice was now, at that point in time, making inquiries, and that was part of what Paul Zoubek was involved with -- was dealing with the Department of Justice. And so certainly, at that point in time, I would have become aware that there had been earlier requests. I just don't remember if I knew prior to that time.

MR. WEBER: Okay. You become a member of the review team. At that point in time, you then become aware of more information or maybe for the first time information about the DOJ review and what had happened prior to the formation of the review team in connection with the DOJ's request for information, because you said Paul Zoubek had been, I guess, had been dealing with that for a while, correct?

MR. MILLER: No. No. I don't want to-- As-- My understanding is that at around the time the review team was created, the Department of Justice became reinvigorated in their interest in the State Police. And so Paul had to deal with them, and he was dealing with them on a one-on-one basis. And in learning of that fact, I learned that there had been earlier contact with -- by the Department of Justice.

MR. WEBER: Did you learn who was involved in that earlier contact with the Department of Justice?

MR. MILLER: I think I knew that George Rover had been involved.

MR. WEBER: Okay. Did you know of anyone else being involved?

MR. MILLER: I mean, obviously, now I know Alex Waugh was involved. I don't remember if, at that point in time, I knew that Alex had been involved. Rover was the name that I heard.

MS. GLADING: Can I ask a question on this line?

MR. WEBER: Go ahead.

MS. GLADING: The Department of Justice inquiry, you know, as you know now, went to the question -- went to trying to measure statistically whether or not there was selective enforcement of traffic laws. As this chief civil litigator for the State, would you have expected to have been brought in on something like that, that could have such an impact on the State's civil liability?

MR. MILLER: No, not really, because I don't think you would think of it in that terms. I think that people viewed that as a law enforcement issue, and therefore, it would have been within CJ or OAG.

MS. GLADING: So, if it were an issue of excessive use of force and an investigation into that or some kind of police misconduct, other things that could lead to civil liability, you wouldn't know about it until it was concluded?

MR. MILLER: That's correct.

MR. WEBER: Just following along Jo's line of questioning and just sort of for my own edification, hypothetically, let's say there was some police misconduct.

MR. MILLER: State Police?

MR. WEBER: State Police misconduct. An investigation ensued. It was

determined that there was no State Police misconduct, but it -- would you ever find out about that?

MR. MILLER: When the lawsuit was filed or the notice of claims?

MR. WEBER: Well, no lawsuit being filed.

MR. MILLER: I can't-- It's hard to say we would never find out about it.

MR. WEBER: Well, ordinarily?

MR. MILLER: We wouldn't be in the ordinary process of receiving that information. Let's put it that way,.

MR. WEBER: Okay. If a civil lawsuit was subsequently filed, would you then be aware of that?

MR. MILLER: We'd make ourselves aware of it.

MR. WEBER: Your Division?

MR. MILLER: Right. You know, we would-- We-- If an excessive use of force case was filed against one or two troopers, we'd first make a determination as to whether or not there was any basis for the claim to make our representation decision, because we're not going to represent a trooper who has committed a willful misconduct. So we would make an initial inquiry of the Division of State Police to find out whether or not they had done an internal investigation.

MS. GLADING: At the time that the Justice Department inquiry was undertaken-- I mean, that the State Police review was undertaken, the notice of tort claim by Reas (phonetic spelling) and Grant had been filed about six months earlier, and that was -- seems to me directly relevant to what the Department of Justice was looking at. Do you think you should have been told

about the Department of Justice inquiry?

MR. MILLER: Well, we're talking two different time-- You're talking about the earlier inquiry? Because I knew at the time of the State Police Review Team that Paul Zoubek was dealing with the Department of Justice at some point in that process, so I don't-- No. I guess my answer is, I don't necessarily see the connection between the 7A shooting and the Department of Justice inquiry in terms of our need for information, in order to look at the notice of tort claim.

MS. GLADING: You weren't-- I take it from what you say that you weren't aware that George Rover was, over a period of almost two years, providing Department of Justice with information, and that it was really an ongoing inquiry over a period of a couple of years?

MR. MILLER: At some point, I became aware of that. I don't-- I just don't remember when I first became aware of it. But certainly by the time I was on the review team, I was aware that the Department of Justice had renewed its interest and that there had been earlier contacts with Justice, and I knew that Rover was involved.

MS. GLADING: Were you aware in earlier contacts whether there was any discussion of a consent decree or the possibility of a consent decree in those earlier contacts -- with discussions within the Department, I mean?

MR. MILLER: I can't recall any-- I can't recall whether or not I was aware at that point in time of those types of discussions.

MS. GLADING: Would such discussions, such as a consent decree, be relevant to the State's liability on the civil side?

MR. MILLER: It could be.

MS. GLADING: Would a consent decree-- Is the consent decree that presently exists relevant to the State's liability on the civil side?

MR. MILLER: It could be.

MS. GLADING: Has it been in cases?

MR. MILLER: We haven't had to deal with that yet, but it could be.

MS. GLADING: Okay. Thanks.

MR. WEBER: The Department of Justice reached out to the Attorney General's Office on the issue of racial profiling, initially, in December of 1996, and then you've testified that around the time that Attorney General Verniero announced that he was forming this review team, which was February 9th, or February 10th of 1999, the Department of Justice became reinvigorated in its interest in racial profiling in the State Police. And that through your involvement in the review team, you became aware that George Rover had been previously involved with the Department of Justice's, for lack of a better phrase, initial interest. And when I say initial, I mean starting in December of 1996. Did you become aware of to what extent Attorney General Verniero was involved in the response to the initial Department of Justice inquiry? And again, that is when it started, in December of 1996?

MR. MILLER: No. These were just very generic conversations at these organizational meetings of the State Police Review Team about the Department of Justice inquiry. We didn't get into what was produced, what wasn't produced, what was asked for, what wasn't asked for, things like that.

MR. WEBER: Was there any discussion of the strategies that were employed in connection with the initial inquiry by the DOJ?

MR. MILLER: Not that I can recall, no.

MR. WEBER: Were you aware that Paul Zoubek or to what extent Paul Zoubek had been involved in the response to any initial inquiry?

MR. MILLER: My recollection was that he hadn't been involved. That this-- That he-- His involvement now was something new.

MR. WEBER: How about Ron Susswein?

MR. MILLER: I didn't know then, and I don't know now.

MR. WEBER: I think you said that you thought Alex Waugh had been involved.

MR. MILLER: I know now that Alex was involved. I can't recall whether or not I knew that at the time or whether I knew that it was Rover.

MR. WEBER: How did you find out that Rover was involved in the initial inquiry?

MR. MILLER: I believe that at one of those organizational meetings, Paul Zoubek had indicated that George Rover had been the person dealing with the Department of Justice.

MR. WEBER: Was there any suggestion made that so, as not to reinvent the wheel or so as to profit from work that had previously been done, that the review team contact Rover or other individuals who were involved in the response to the initial inquiry to find out what information they had gathered, if any, to then use to assist you in your review of the State Police?

MR. MILLER: I don't remember that conversation. That, obviously, would make sense, but I don't remember a specific conversation that we should do this. I know that Zoubek was in touch with George Rover, and I know that George Rover was involved in providing information to Zoubek, so I assumed that the act occurred. I just don't remember that conversation occurring.

MR. WEBER: You mentioned that there were weekly or there were attempts to have weekly meetings for the review team. Let me show you a document, Bates stamped OAG-001350 through OAG-001355. The highlighting of your name is my doing, so that was not on the production.

MR. MILLER: Just as long as there isn't a target next to it.

MR. WEBER: There's no target next to it.

MR. MILLER: I'm familiar with this document.

MR. WEBER: Unless I missed it, the only place that you're listed is on the first page that I've highlighted, and I think you are listed under the topic of complaints.

MR. MILLER: Internal complaints/internal affairs, that's correct.

MR. WEBER: Describe for me exactly what is meant by that category, at least as far as the review team is concerned.

MR. MILLER: Well, again, this was the proposed schedule, and what was intended by that -- the complaints/internal affairs -- was that there was going to be a look into how the State Police handle complaints from citizens and then how the Internal Affairs Bureau investigates those complaints.

MR. WEBER: Did that part of the review stay within your purview, or were you at some point in time moved onto another topic or topics to address?

MR. MILLER: Probably the best-- I was moved out.

MR. WEBER: You were moved out.

MR. MILLER: Wayne Fisher, who is listed here on No. 3, is in the Division of Criminal Justice, and my understanding is, is an expert in internal affairs bureaus for various police departments. And he, in effect, took over that issue and ran with it. And to the extent that this issue is dealt with in the

final report of the review team, it was his work product.

MR. WEBER: When you were moved out of that category, were you moved into another category?

MR. MILLER: No.

MR. WEBER: I'll leave that alone. Who decided where people would be assigned?

MR. MILLER: I believe Paul Zoubek.

MR. WEBER: Was there any rhyme to his reasoning?

MR. MILLER: I think there was. And if you look at the profiling, racial profiling sections here, you can see that it's predominantly CJ oriented. And I think that, in fact, that was his thinking, that this was a law enforcement as opposed to a civil matter, and therefore, criminal justice deputies and assistant attorneys general were going to look at it.

MR. WEBER: Was the Internal Affairs and complaints component of the review team viewed as a civil, criminal, or both?

MR. MILLER: I think, as I said before, given the fact that within the Division of Criminal Justice they have an expert who goes into municipal police departments and reviews their internal affairs bureaus, it was viewed as a law enforcement issue.

MR. WEBER: Going back to my--

MR. MILLER: Although there was one aspect of it that was civil, and that was really risk management. There was a feeling that you need to have a good Internal Affairs Bureau to root out problems before they develop into notices of tort claim and the like.

MR. WEBER: Going back to my questioning about not reinventing the

wheel, did you and the members of your team that dealt with internal affairs and complaints, did you request of Paul Zoubek or anyone else that they go back to see what had been done in connection with the response to the initial DOJ inquiry in December of 1996 to see if there is any data that had already been compiled against, so as to not reinvent the wheel?

MR. MILLER: Well, my recollection is that the timing on this was-- Events began to overtake this schedule, and that's why I say this was a proposed schedule. Racial profiling really became the focus of the review team very early on, and so while these first three, I guess, areas eventually were addressed in the final report issued by the review team, the interim report was really all racial profiling. So, in terms of timing, it was -- the racial profiling team was going hot and heavy on the issue of racial profiling. These other issues were really -- took a backseat to the racial profiling.

And in answer to your question, I don't remember that we discussed going back to George Rover to find out what he had given the Department of Justice.

MR. WEBER: Any contemplation or discussion of the Attorney General's desire to have the entire review conducted and completed within four months?

MR. MILLER: The review team-- The issue of racial profiling was speeded up. I recall that.

MR. WEBER: Do you know why?

MR. MILLER: I assume it was because of his confirmation, but I don't know that for a fact.

MR. WEBER: You say that it was speeded up. Initially, on February

10, when the-- February 10, '99, when then Attorney General Verniero announces that he is launching this investigation to form a review team, in that press release he talks about it taking approximately four months.

MR. MILLER: Correct.

MR. WEBER: Was it sometime thereafter then that it was sped up, or did you view that the four month -- the initial four-month call by then Attorney General Verniero to be a pretty quick time frame to begin with?

MR. MILLER: Well, four months to do all of this was a difficult task. It was a big chunk to bite off, although I think we had some head start on some of these areas -- promotions, hiring, recruiting. And with Fisher's involvement in Internal Affairs, we had a lead time there. But it was a-- Four months would have been difficult to do all of this.

MR. WEBER: Did the Attorney General express to you or to anyone else on the team that you then subsequently found out about why he picked four months as the period of time to complete all this?

MR. MILLER: Not that I can recall.

MR. WEBER: Did you have any understanding as to why? It would give you four months to complete this pretty massive endeavor.

MR. MILLER: I may have at the time, but as I sit here today, I don't recall.

MR. WEBER: I take it then that there did come a point in time subsequent to February 10, 1999, in which the review team was notified that, "Look, you really don't have four months." We actually need you to get it done quicker. Is that correct?

MR. MILLER: That's correct.

MR. WEBER: When--

MR. MILLER: And the issue of racial profiling.

MR. WEBER: When did you learn of the decision to speed up the review on racial profiling?

MR. MILLER: I don't recall the specific day. It was at one of these organizational meetings. We were advised that the report was going to be done earlier.

MR. WEBER: Was there any discussion as to why -- just the racial profiling component of the overall review was going to be completed quicker?

MR. MILLER: Well-- I don't remember if there was a discussion as to why, but you have to remember at this point in time the Department itself and the State Police were in a whirlwind of controversy over the issue of racial profiling. There were newspaper articles talking about the percentages of arrests on the Turnpike and the like. And I would assume that everyone agreed that it made most sense to get this issue resolved as quickly as possible and not let it just continue to linger.

MR. WEBER: Was there any discussion about Peter Verniero being nominated to the State's Supreme Court and that being part of the indicia to speed up the racial profiling component of the review team?

MR. MILLER: That very well might have played a role, yes.

MR. WEBER: Well, it might have--

MS. GLADING: Was there a discussion about that?

MR. WEBER: Yeah, I mean--

MR. MILLER: I don't recall any specific discussion. I mean, I honestly, as I sit here today, can't remember any individual discussion or group

discussion where someone said because of Peter Verniero's pending confirmation, it has to be sped up, but it would make sense that that played a role.

MR. WEBER: Paul Zoubek was the head of the review team, correct?

MR. MILLER: Correct.

MR. WEBER: Was he the individual who spoke for the review team when there were discussions with then Attorney General Peter Verniero about the activities of the review team?

MR. MILLER: Yeah. I mean, Paul was, at this point in time, the first assistant. So he and Peter Verniero would have those discussions. And as I say, other than attending the weekly organizational meetings, I had a very limited role in the actual workings of the review team. So the information that I got would have been at those organizational meetings.

MR. WEBER: Did you attend any meetings-- Well, let me go back. Did then Attorney General Verniero attend any of the organizational meetings?

MR. MILLER: The only meeting that I can remember is the one with the Black Ministers Council, which was really more of an introduction of the review team to the Black Ministers. I don't remember him attending any organizational meetings, but he may have attended the first. I just don't have a recollection of that. It seems likely that he would have just to say, you're my review team, go forth and prosper, but I don't recall that specifically.

MR. WEBER: Okay. Putting the weekly organizational meetings aside, were you at any meetings with then Attorney General Verniero in which there was discussion of the review team, its activities, its findings, the status, and

anything that dealt with the review team and the progress that was or wasn't being made by the review team?

MR. MILLER: I probably was. I mean, this was a big issue in the Department. There were, you know, litigations that were going on right now. We had-- I don't remember the specific timing, but we had a litigation with *The Star-Ledger* over the production of arrest records that I was involved in. I don't remember precisely the time frame of that, but this was all around the same time. So there were a number of things happening. It would be very likely that I would be in a meeting with the Attorney General where we would be discussing the review team and what the review team was going to be doing, as well as other issues.

MR. WEBER: Let me show you another draft of the proposed State Police Review Team's agenda, and it is dated-- It says revised March 2, 1999. It is OAG-001368 through OAG-001373. I'd like to direct your attention to the second page of highlighted -- the handwritten word law. It is under subparagraph D, need for corrective measures. And I just ask if you can identify the handwriting there and what is -- if you know what is meant by the word law? Is it we need law on this, or is it the Division of Law will deal with this?

MR. MILLER: That's my handwriting, and I'm sure I meant that the Division of Law would be responsible for this part of it. And this was the risk management aspect of this that I was talking about.

MR. WEBER: Was there anyone that you had enlisted to assist you in collecting the information needed to address that subpart?

MR. MILLER: Not that I recall. As I recall, this was a proposed agenda,

and to the best of my recollection, it did not come to pass. Or if it did, it wasn't done by me or my Division of Law deputies.

MR. WEBER: Did the review team at any time discuss the possibility of entering into a consent decree or a consent order with DOJ?

MR. MILLER: I know that at some of these weekly meetings Paul Zoubek addressed that issue, yeah. I mean, that was a possibility at that time.

MR. WEBER: During those discussions, was it ever brought to the review team's attention that in connection with the response to the initial DOJ request in December of 1996, that there was a great deal of resistance by then Attorney General Peter Verniero to enter into a consent decree or a consent order?

MR. MILLER: No. Not that I recall.

MR. WEBER: Was there a discussion about a change in strategy or a change in the AG Office's view of whether a consent decree would be an instrument that they would entertain?

MR. MILLER: Well, I think that as we were going down this path of investigating the Division of State Police, at some point in time, the thought came around that actually the Department of Justice could be helpful in this endeavor, because some of the reforms that we wanted to have occur at State Police might actually be easier to do through a consent decree rather than simply having the Attorney General try and get them done without the force of a consent decree.

MR. WEBER: Was there any consideration that then, I guess, yesterday's foe was -- could possibly be today's friend in that, you know, previously-- Now, we would have fought tooth and nail against the DOJ and

a proposed consent decree, but now maybe times have changed, and therefore, they could help us get to where we need to get to.

MR. MILLER: There were no discussions with me that I'm aware of, that I can recall, where we talked about friend versus foe or something like that. As I understand it, it was simply a realization that the Department of Justice could be beneficial in instituting some of the reforms.

MR. WEBER: Was there a sense that, absent engaging the Department of Justice or enlisting the Department of Justice's assistance, there would still be the typical tension -- an historical tension between the AG and the State Police that we've heard about in the various interviews and that DOJ may finally give an opportunity to the AG's Office to get the State Police under control and get them to do what the AG wants them to do?

MR. MILLER: I think that was the theory, yeah. I mean, again, this was -- I was hearing this kind of secondhand at these organizational meetings, but my understanding was that that was the theory, and in fact, that's what has taken place.

MS. GLADING: On the same line of questioning, was there any discussion that you were aware of that characterized what the Department's posture had been in relation to the Department of Justice during the prior two years?

MR. MILLER: Not that I can recall. I mean, obviously, I'm aware now of the allegations about what the Department's posture was. I don't remember when I first heard of those allegations or that posture. So it's difficult for me to say categorically no, I didn't know, or yes, I did know.

MS. GLADING: Do you recall if you learned it from someplace other

than putting together the repository of documents, if you learned it at some point in 1999, for example?

MR. MILLER: I can't pinpoint that. I'm sorry. I just can't.

MR. WEBER: Mr. Miller, let me show you another document, Bates stamped OAG-004535 to OAG-004536. It is a March 9, 1999 memorandum from Paul Zoubek to you, Roger Shatzkin, and Peter Wint, and the subject is data available in CCH and PROMISE/GAVEL. And it talks about, "There are common identifiers contained in CCH and PROMISE, which make it possible to combine information for both sources. In fact, as of January 19, 1993, the CCH database was redesigned to accept the transmission of data directly from PROMISE." And then there is a listing of different data fields that could -- that may be useful, and it says, "for our present purposes." Some of the data fields identified then are date of arrest, municipality in which arrest was made, name of person arrested, race of person arrested, sex of person arrested, and there's other data fields that can be entered into the CCH database.

Let me ask Mark to show that to you. I'd ask you to review it, and then, if you would, tell me why Paul Zoubek was providing this information to you.

MR. MILLER: One of the issues that was percolating around the Department, at this time, as I mentioned earlier, were the various right-to-know requests of a number of newspapers, one in particular was *The Star-Ledger*, for arrest and stop -- I believe stop -- data on the Turnpike. And we had had, I believe, prior to this time-- In fact, I know prior to this time a Deputy Attorney General Bill Flahive (phonetic spelling), who was assigned to provide the information. And he had spent, literally, weeks, if not months, manually going through arrest reports of the State Police in order to compile

the information that we eventually provided to *The Star-Ledger*. And in answer to a question that was posed to another witness, if I could just--

MR. WEBER: Please, one of the benefits.

MR. MILLER: --make a foray here, one of the reasons that the response to *The Star-Ledger* took so long was that when Bill, who represented the Division of State Police at the time, Bill Flahive, went to the State Police to ask them and how they had this information, he was told that they only had it manually. And so he then, as I say, spent weeks, if not months, manually going through the information, redacting the information that was private. And we eventually worked out a consent order with *The Star-Ledger*. There was never an issue of whether or not we would provide them the information. They understood. And Don Robinson (phonetic spelling), their counsel, and I had a good working relationship on that issue. They just wanted it quicker than we could manually produce it, and I haven't looked at that consent order in a while, but I -- my recollection is it still provided that we had a number of months after the consent order was signed to produce the information. And the reason for that was we were lead to believe that you had to do it manually.

MR. WEBER: Could we go off the record for a moment, please?

(Off the record)

HEARING REPORTER: We're on.

MR. WEBER: Okay. Thank you.

Let me show you-- Actually, could I have a couple of documents you have in front of you back, please.

I guess to sum up your -- our last exchange then-- The long and the short of it is the information that was available through PROMISE/GAVEL

and CCH was information that you would be able to assist you in responding to *The Star-Ledger* request for information. And that's why Paul Zoubek advised you that this instrument was available to you.

MR. MILLER: That's right. Except that my recollection is that there was some information that the right-to-know request had asked for -- it wasn't available through PROMISE/GAVEL or the other mechanism that's listed there. And so we still weren't able to do it as quickly as possible.

MR. WEBER: Let me show you a one-page document, OAG-004542. It is an E-mail to Ron Susswein from Thomas O'Reilly and Paul Zoubek, and you are CC'd on the E-mail. And it discusses recommendations for possible experts on law and statistics and forensic applications. And it is dated March 12, 1999. If you could, please take a look at that document for me.

MR. MILLER: I'm ready.

MR. WEBER: Why was there a discussion amongst these individuals concerning possible experts in the areas that are identified in the E-mail?

MR. MILLER: I don't recall, but I would venture a guess that as Susswein was putting together his -- the report, the interim report, the issue of statistical analysis became important, and there may have been a discussion at that -- at one of those organizational meetings about the need for obtaining expert help on making sure that the statistical analysis that was being done in the interim report was valid.

MR. WEBER: The date of that memo was -- again? I'm sorry.

MR. MILLER: Three, twelve, ninety-nine. And again, that's a guess.

MR. WEBER: Right. On March 5th, 1999, then Attorney General Peter Verniero filed a motion to postpone the *State v. Soto* case, which was on

appeal for 120 days in light of the pending review team's review of racial profiling. Were you at all involved in that decision?

MR. MILLER: No.

MR. WEBER: Were you aware that that was being contemplated prior to the decision being made?

MR. MILLER: Probably.

MR. WEBER: Anyone explain to you the reasoning behind the 120-day postponement?

MR. MILLER: Well, and again, actually that maybe another reason why the interim report had to be speeded up. As I said, there were a whole host of things flying around the Department at that point in time. I don't think anyone had to explain to me. Obviously, if the review team found that racial profiling was occurring, regardless of the faults of the statistical analysis that was the basis for Judge Francis's opinion in *Soto*, it wouldn't be an appropriate thing to proceed without appeal.

MR. WEBER: Was there still a question as of March -- let's just say March 1999 -- whether racial profiling was, in fact, occurring on New Jersey's highways? Was there even a question about that?

MR. MILLER: The report was issued April 20th?

MR. WEBER: Right.

MR. MILLER: I'd have to say yes, at least in my mind there was. Not being involved in the investigation of racial profiling, I didn't see any of the statistics that were eventually used in the interim report. So certainly, I had no basis of knowing one way or another that was the reason for the review team, as of March 12th.

MR. WEBER: Did the review team consider Judge Francis's decision in the *State v. Soto* case and the statistics that were presented in connection with that case during the course of its review of the New Jersey State Police?

MR. MILLER: I don't know the answer to that. And the reason I don't know the answer to that is I wasn't on the group that was looking at racial profiling. I don't know if they studied the Francis statistics. I'm sure they were aware of those statistics, but whether or not they dissected them, I'm not sure.

MR. WEBER: Well, during your organizational meetings, did each of the many teams that were part of the bigger team update the whole team as to where they were in their analysis of whatever their section of the review was?

MR. MILLER: Not substantively, more procedurally. You know, we're a week away, or two weeks away, we're continuing to do this. Somebody may have mentioned, you know, we're interviewing troopers. That's one of the things that I remember being said. But I don't recall there being a substantive discussion dealing with, you know, this is what we found up to this point in time.

MS. GLADING: Aside from Paul Zoubek, who would you describe, as in those meetings and in the process of creating the interim report, who would you describe as the key point people in terms of actually producing the report?

MR. MILLER: Different issues had different point people. Paul was clearly the racial profiling point person. Debbie Stone was on the committee, and I believe that she was actively involved in the racial profiling issue, up to a point in time.

Although I don't remember him attending the meetings, I know Ron

Susswein's name was mentioned, so I was aware that he was working on it.

MR. WEBBER: How about Alfred Ramey?

MR. MILLER: Al Ramey was -- my understanding, was more involved in other issues, other than racial profiling. Al was more -- Al is an Assistant Attorney General, and is the head of our EEO, Affirmative Action Office in the department, and he was more involved in the promotional and internal affairs and discipline and things like that.

MR. WEBER: What about Rolando Torres?

MR. MILLER: Rolando attended the meetings. I know he was involved in some of the committees. I honestly don't recall what -- I don't believe he had any involvement in the racial profiling. What specific involvement he had in the other areas, I don't recall.

MS. GLADING: Who actually wrote the report?

MR. MILLER: The interim report, because there were two -- my understanding is Ron Susswein did, with Paul Zoubek's assistance.

MS. GLADING: So people would feed him their contributions from their areas, and he was responsible for putting it together and making evaluative decisions about what the--

MR. MILLER: The interim report?

MS. GLADING: Um-hm.

MR. MILLER: I honestly don't know how that was done.

MS. GLADING: I just have another quick question on the -- on the *Soto*, before you leave that topic. Had you reviewed the Judge Francis decision prior to the formation of the review team?

MR. MILLER: Probably. I know I read it some time in there.

MS. GLADING: Did you have concerns that it created potential liability for the State because a trial judge had--

MR. MILLER: Sure.

MS. GLADING: Okay. It must have been -- was it mentioned--

MR. MILLER: Civil liability.

MS. GLADING: Yeah.

MR. MILLER: Right.

MS. GLADING: Was it cited in complaints that had been filed against the State -- civil complaints?

MR. MILLER: I don't recall a specific one, but I'm sure it was. If not in the complaints, in the briefs or elsewhere, yeah.

MS. GLADING: Did you have any input from the civil side, in whether you wanted the appeal of *Soto* to be continued? Did you want the State to continue?

MR. MILLER: No, not that I recall.

MS. GLADING: So you had a decision out there that was an adverse decision that would have an impact on civil litigation.

MR. MILLER: We have a lot of adverse decisions that impact civil litigation, yeah.

MS. GLADING: But as you pointed out, there was a storm of controversy at this point.

MR. MILLER: There was.

MS. GLADING: And you must have been seeing more civil lawsuits at this point.

MR. MILLER: We were. Not so much racial profiling, but at the same

time we were going through this, and really the Division of Law's focus was more on the employment area--

MS. GLADING: Um-hm.

MR. MILLER: --and the minority troopers filing lawsuits. The Bellaran trial had gone -- was a little bit earlier than this, but had just happened, so we had an adverse decision from a District Court judge here in New Jersey that had found the State Police had created a hostile environment for a minority trooper.

We had the Samuel Davis lawsuits, where there are now 13 troopers who have -- minority troopers who have filed suit, so that was what we were looking at and dealing with, primarily.

MS. GLADING: Did you have -- at that point were you dealing with Morka or Baez?

MR. MILLER: I don't believe -- I can't recall specifically when they were addressed. I don't believe either one of them were really active if they had been filed at that point.

MS. GLADING: But you were dealing with the VII(a) civil litigation?

MR. MILLER: If it was in the notice of claim form, we wouldn't have, really. The notice of claim--

MS. GLADING: Six months?

MR. MILLER: Six months, and quite frankly, with a criminal investigation going on, our civil investigators would have not done anything. We would have waited for the criminal investigation to conclude.

MS. GLADING: Okay.

MR. MILLER: Including the criminal trial.

MR. WEBER: Are you done, Jo?

MS. GLADING: Um-hm.

MR. WEBER: I show you two documents, both dated March 16, 1999. The first is Bates stamped GC-002348, and is a memo to file from Paul H. Zoubek, subject, State Police Review. And the second document, OAG-003450, dated March 16, 1999, is to the file from Peter Verniero, re: State Police Data and Information. I'm sure you are familiar with these two documents.

MR. MILLER: I am.

MR. WEBER: Okay. Both of the documents say that for the first time, documents were received from the New Jersey State Police which had been requested previously by the Attorney General's Office. Were you around on March 16th, when these documents -- or March 15th, for that matter, when these documents were provided to the Attorney General's Office and Paul Zoubek, and Attorney General Verniero realized that this is the first time these documents are being provided to the office?

MR. MILLER: I wasn't, no. If you mean by around, was I in the meeting, no.

MR. WEBER: Right, right. Did you subsequently find out, you know, at any time shortly after March 16th that, "Oh, my. We now have these documents that we've been asking for."

MR. MILLER: At some point in time I heard that the State Police had dropped documents on us, and I didn't know what they were. I didn't see them, but I had heard that, yes.

MR. WEBER: Did you come to learn what those documents were?

MR. MILLER: As part of the production for this, I've learned, yes.

MR. WEBER: Okay. And what were those documents?

MR. MILLER: My understanding of it is, it's Sergeant Gilbert has a blue binder that contained statistical data in it. That was what was provided.

MR. WEBER: And I take it that copies of the contents of that blue binder were provided to the Judiciary Committee?

MR. MILLER: Yes, multiple copies, as I recall.

MR. WEBER: Multiple copies.

MS. GLADING: If I can just -- do you recall what OAG numbers that the blue binders were designated?

MR. MILLER: If I may speak to my counsel, she may know that.

MS. GLADING: Feel free.

MS. ACCURSO: I don't, but we can get them for you.

MR. WEBER: Could you, please. Also, do you still have in your possession the original binder?

MR. MILLER: I believe it went back to Sergeant Gilbert, but let me, again, confer with--

MR. WEBER: If you could--

MR. MILLER: I stand corrected, we have it.

MR. WEBER: My understanding is, from reading Sergeant Gilbert's deposition, that there is a large room that contains many, many pages of documents concerning racial profiling, and within that room resides binders that he put together, of his documents. And it may be there or--

MR. MILLER: No. You're talking two different things. My understanding, Sergeant Gilbert has a number of documents that are back over

at State Police. But the blue binder that was provided on the 15th or 16th, my understanding is, is that it's in our possession.

MR. WEBER: Okay. I'd like to make the following requests then, that that blue binder be brought to Sergeant Gilbert's deposition, which is currently scheduled, I believe, for February 14th, so we can have the use of that binder in connection with the deposition.

MR. MILLER: Fine.

MR. WEBER: And actually, to the extent that--

MR. MILLER: Can I?

MR. WEBER: Sure.

MR. MILLER: I don't know if I'm the witness or the lawyer here. If you could just write me a letter making that request. That way we'll have something hard and fast that we can -- remind us.

MR. WEBER: Did you come to learn why Attorney General -- then Attorney General Verniero and Paul Zoubek felt it necessary to compile a memo to the file in connection with those materials?

MR. MILLER: No. I didn't know they had done a memo to the file until we went through the production in this case -- or in this proceeding.

MR. WEBER: I show you a document Bates stamped OAG-00--

MS. GLADING: Just on that issue. Has that memo to the files been used to -- as a defense for the State in any civil litigation that you're aware of?

MR. MILLER: No, not that I'm aware of.

MS. GLADING: As defense against accusations that the State didn't produce documents?

MR. MILLER: Not that I'm aware of, no.

MR. WEBER: OAG-001188 through OAG-001192 is a copy of a letter dated March 22nd, 1999, from then Attorney General Peter Verniero to Robert Reed, Esquire. I will represent to you that you produced to us several copies of this letter, the same letter to different individuals. And my question to you is, did you have any input or involvement in the authoring and subsequent distribution of this letter, not just to Robert Reed, but to all the recipients of the letter.

This is the letter in which then Attorney General Verniero outlines for the recipients the steps he has taken to deal with racial profiling.

MR. MILLER: Not that I recall. But as I said before, it would not be unusual for the Attorney General to run a letter by me. I don't recall seeing this one, though, beforehand.

MR. WEBER: Do you have an understanding as to why that letter went out to the myriad of people who it went out to -- what the purpose was behind the letter?

MR. MILLER: My recollection is that Bob Reed is active in the Hunterdon County Bar Association, so that would be my surmise as to why it went to him.

MR. WEBER: Well, the letter went to more than just Bob Reed. I mean, it went to--

MR. MILLER: Who else did it go to?

MR. WEBER: Many luminaries within the New Jersey legal community.

MR. MILLER: I don't know. I mean, I would assume it went to Bob Reed because of his involvement in the Hunterdon County Bar Association.

MS. GLADING: Do you know if that letter also went to members of the

State Bar Association, Prosecutorial and Judicial Review Committee?

MR. MILLER: I don't.

MR. WEBER: I'll show you a large packet, which will significantly reduce my pile here. It starts at OAG-004911 and goes to OAG-004955. It is a -- the cover memo is dated April 6th, 1999 to Paul Zoubek, among others, from you, concerning Maryland profiling litigation. And then there is attached to that a memo from James Harris to you, again, concerning the Maryland Attorney General's offices' dealing with the issue of racial profiling by the Maryland State Police. And then, a printout from the ACLU Web site, providing an overview of the race profiling litigation in Maryland.

I don't need you to go through the substance of the documents. My question is, what was the purpose of you gathering this information and forwarding it on to Paul Zoubek and others?

MR. MILLER: My recollection is that as they were getting close to working out a consent order with the Department of Justice -- and I don't remember if this was in the early part of that or in the latter part of that -- the issue was raised, "Well, what's happened in Maryland," where there was an NAACP lawsuit -- what was the relief that was requested to try and make sure that the consent order that we entered into at Justice was as comprehensive as possible to cover everyone's concerns.

MR. WEBER: All right. I don't know that--

MS. GLADING: No, you don't need to ask that.

MR. WEBER: Okay.

MS. GLADING: I do have one question on this, though. So this letter is dated the 6th of April, 1999. Was the general understanding at that point,

then, that there would be a consent order?

MR. MILLER: I don't know. I don't know that -- I personally can't recall whether or not I had a knowledge, one way or another. It was certainly a possibility. And I think we all recognized that -- and again, I don't remember if the Department of Justice, what stage of the discussions were between Paul Zoubek and the Department of Justice. But it was certainly a possibility. And I don't recall if, at this point in time, we had -- the decision was made that we needed to throw the kitchen sink in there to make sure that the reforms got done.

MR. WEBER: I show you another document, Bates stamped OAG-001915 through OAG-001918. It is to Paul Zoubek, dated April 13, 1999, from you, and the subject is a short outline of privileges: "As we discussed, here is a brief synopsis of the law on the deliberative process privilege and self-critical analysis privilege."

Again, you don't need to argue the substance of the memo or the research that was done in connection with the memo. My question is, what was the purpose of you collecting this information and providing it to Paul Zoubek?

MR. MILLER: My recollection is, again, at one of those weekly meetings, the issue was raised -- and this may help answer the earlier question as to whether or not the decision was made to have a consent decree or not, at that point in time. This is now a week after my earlier memo.

If we come out with the review team -- the interim report on racial profiling, will we be able to protect the findings so that they can't be used against us? And the general conclusion was, no.

MR. WEBER: Be used against you by whom?

MR. MILLER: Certainly my thinking was in civil litigation. They may have -- the thought may have also been the Department of Justice. You know, what's going to happen if the Department of Justice files suit? Can we -- are we admitting liability if they file suit, by issuing the interim report.

MS. GLADING: When the request to prepare that was made to you, do you recall what the thinking was of whoever asked for it, whether it was civil litigation liability or Department of Justice liability?

MR. MILLER: In all likelihood, it was the Department of Justice, but -- because otherwise I wouldn't have had to send it to -- well, to Paul Zoubek. Mike LoGalbo was in CJ, and he was working with the Department of Justice at that time. And I believe Bill Flahive was the person who put this together, and that's why it was sent to him. So it was probably the Department of Justice.

MR. WEBER: I'll show you two very thick documents. The first is OTG-2177 through OTG-2291, and OTG delineates that these documents were received from the Office of the Governor. It is a draft of the interim report, dated April 18, 1999. The second document is the interim report, dated April 20, 1999, the final version, OAG-002235 through OAG-2350. Do you know why the Office of the Governor had a copy of the draft report?

MR. MILLER: I assume that this is a major development in the State of New Jersey involving the State Police, and it would be appropriate to inform the governor of what was going to happen.

MR. WEBER: Was there any response, as far as you know, by the Office of the Governor to the draft interim report?

MR. MILLER: I don't know. I was not involved in providing it to the governor or any discussions with the governor or anyone in the governor's office.

MR. WEBER: Who would have been, as far as you know, the person in the governor's office who would have received and reviewed the report, and if there were any requested edits to the report, would have passed those on to the review team?

MR. MILLER: I don't know. This is such a unique thing that I just don't know.

MR. WEBER: At this time, John Farmer was the Governor's Counsel? Is that correct?

MR. MILLER: Yes. I believe he had been designated to be the next attorney general, but he was still the Governor's Counsel.

MR. WEBER: Are you aware of there being any coordination with the governor's office in connection with the interim report? Did they have a representative that came to any of the review team's meetings?

MR. MILLER: No.

MR. WEBER: Were there any briefings provided to the governor's office as to the status of the review team's efforts?

MR. MILLER: I'm not aware of any. There may have been, but I'm not aware of them.

MR. WEBER: If there would have been briefings provided to the governor's office, is that something that would ordinarily have been done in writing or verbally?

MR. MILLER: Probably verbally. But again, I'm not -- I mean, it's not

the type of thing that you would write a lengthy report to someone about the status of the review team.

MR. WEBER: Again, the primary author of the interim report was Ron Susswein, with input from Paul Zoubek?

MR. MILLER: That's my understanding. It -- yes, that's my understanding.

MR. WEBER: Did you review a draft of the interim report before it was put in final form and provide any comments?

MR. MILLER: Yes.

MR. WEBER: Were there any substantive comments that you provided, or are they more in the form of just routine edits?

MR. MILLER: My recollection is that I got a copy of the report the day before it was released. And I got it late in the afternoon. I took it home with me, read it that night. Paul Zoubek called me the next morning and asked me if I -- actually on my car phone -- and asked me if I had any comments. I had one comment. On Page 30 of the final report, there is a sentence that I thought was slightly equivocal. It says that race may have played a factor, and I think my comment was something like, "We spent all this time and effort, and why are we saying 'may.'"

And I was--

MR. WEBER: Was it changed?

MR. MILLER: No, it was not.

MR. WEBER: It remained as may?

MR. MILLER: Yes.

MR. WEBER: What was Paul Zoubek's response to your suggestion?

MR. MILLER: I honestly don't recall. I think he said he would take a look at it, or something like that.

MS. GLADING: Page 31, where the may appears -- the first word.

MR. WEBER: Was there any discussion in your meetings with the review team, or members of the review -- meetings with members of the review team about treating the stop data separate and apart from the search data?

MR. MILLER: My recollection is that the organizational meetings that I attended, we didn't get into those types of substantive nuances.

MR. WEBER: Did you become aware of there being an important difference between the percentages in the -- for the stops versus the percentages of minorities that were requested to sign a consent to search form?

MR. MILLER: I've since become aware, yeah.

MR. WEBER: In connection with your being involved in the interim report?

MR. MILLER: No.

MR. WEBER: What is your understanding of the important differences between the two?

MR. MILLER: Well, there is an argument that you can never -- you may to have to rephrase that. I mean, I can talk slightly on the issue of whether or not race is ever appropriate for a stop, versus whether race is ever appropriate for a consent to search, if that's what you're talking about?

MR. WEBER: Yeah.

MR. MILLER: There's an argument that race would never be appropriate to use as a factor in a stop. But there is also an argument that it could be a factor to be used by a trooper or other officer in deciding whether

or not to seek to search someone.

MR. WEBER: What is your understanding of -- or what is your definition of racial profiling?

MR. MILLER: Well, my generic definition is pulling over minority motorists because of their race.

MR. WEBER: So it relates specifically to stops and not to searches?

MR. MILLER: Yes, in my lay term, yes.

MR. WEBER: Did the review team consider, during its review, what the definition of racial profiling was, and did they -- was there a discussion, back and forth, about that?

MR. MILLER: I'm sure there was. I know they did consider it, because there is a definition in the final report -- the interim report. What those discussions were and how much give-and-take there was, I wasn't part of those.

MR. WEBER: Could we go off the record for a moment, please?

(Off the record)

HEARING REPORTER: We are on.

MR. WEBER: Thank you.

Mr. Miller, as you know, there have been -- there has been an outstanding request for an identification of the custodian of the records, and we've had several discussions with your office in which ultimately your office advised us that because the document production was of the scale that it was, 95,000-plus pages of documents, there was not one individual solely responsible for the production of documents, and that because part of the identification of documents that were produced in this case actually had been done prior to the Senate Judiciary Committee's request for documents, that

they were done in connection with various lawsuits against the State Police and others, that you would ultimately be providing us with certifications from -- anywhere from three to, I think, six or five at one point in time, individuals. And my understanding is, now it's, I think, four certifications?

MR. MILLER: Four.

MR. WEBER: Okay. It's four certifications.

We were provided today, just before your interview, with your certification. We are still waiting to receive three additional certifications.

MR. MILLER: And they will be sent to you, under cover letter, today.

MR. WEBER: Okay.

MS. ACCURSO: With the caveat that one of us gets back to the office today.

MR. WEBER: Okay. Let me just put the following reservation on the record. And I don't think that this is due to anybody's fault. I understand that there was a massive undertaking to get us documents, and, in fact, we just within the last week received an additional 5,000-plus pages.

Until I have -- or the Senate Judiciary Committee has all the certifications, it will be difficult for me to ascertain whether or not I've asked you all the questions I need to ask you in connection with the AG Offices's document production. It is my sincere hope that I do not have to interview you again in connection with your certification. But in the interest of full disclosure, I won't be able to affirmatively tell you, "Mr. Miller, you're off the hook," until I receive the other certifications.

With that in mind--

MR. MILLER: You know where to find me.

MR. WEBER: I know where to find you. We have become good friends through this process, in a short period of time.

With that in mind, I just have a few questions about your certification. Paragraph 4, you talk about the Division of Law serving as legal counsel to the principal departments of State government, as well as the judiciary. In addition, the Director of the Division of Law and the Assistant Attorneys General and Deputy Attorneys General within the Division provide advice and counsel to the Attorney General on civil matters within his purview.

You then go on, in Paragraph 7, to state: "Because of the Division of Law's role in representing the Division of State Police, almost any document produced in the course of litigation involving the State Police, would have been produced through the Division of Law or through outside counsel, retained by the Division. Those productions form the foundation for a document depository that eventually became the racial profiling archive."

Just so I'm clear, documents that were produced through outside counsel, retained by the Division in connection with other litigations, am I correct to understand that you coordinated or you contacted with that outside counsel to get from them copies of whatever documents had been produced in those other litigations?

MR. MILLER: That's correct. And, in fact, in order to simplify things as much as possible, we actually started a process whereby any document productions would come through us, as well.

The whole idea of the document repository started long before this committee began, or long before even the decision was made to release all of the racial profiling documents. The original concept was, we have a number

of litigations going on, some of them criminal, some of them civil. We can't have the right hand not knowing what the left hand is doing, so let's put all of the documents in one place. Let's centralize it. The decision was made that it would be centralized under the Division of Law's control.

MR. WEBER: When was that decision made?

MR. MILLER: Well, the beginning of the decision really started out of the review team. And I believe that there are some documents that I have seen -- some of those organizational outlines that talk about creating the document depository back then. It wasn't really up and running until last summer, maybe. I'm pretty sure that's -- last summer would be my guess.

MR. WEBER: Paragraph 8--

MS. GLADING: Excuse me.

Up and running? You mean?

MR. MILLER: Well, one of the things that we tried to do was to create some kind of order out of this, as well. So we had to index the documents with our own internal data system. And so we also then had to go through the process of pulling everything together.

MS. GLADING: So up and running, you mean the process of putting together this repository?

MR. MILLER: That's correct. That's correct.

MS. GLADING: Okay.

MR. WEBER: But up and running not in the sense of it being available to the public or outside litigants?

MR. MILLER: It was never intended to be available to the public or outside litigants. That was something that came much later.

MR. WEBER: Paragraph 8, you state: “In addition, Division of Law deputies and paralegals interviewed lawyers, paralegals, and administrative staffers within the Division of Law who had worked on State Police matters during the period in question.”

Did they interview former attorneys general?

MR. MILLER: Not for this certification.

MR. WEBER: Did they interview former attorneys general in connection--

MR. MILLER: The answer is, no. What we did for former attorneys general is, I personally went through all of their prior, closed files. And there is an index, and any documents that were relevant or conceivably relevant -- I'm sorry, any files that were conceivably relevant, we pulled from storage and went through those.

MR. WEBER: Okay. And I know we have received a letter from you dated January -- well, actually from Attorney General Farmer, dated January 31, stating that no document was withheld pursuant to a claim of privilege, including the attorney-client work product or deliberative process privilege.

I take it by deliberative process privilege, you also mean executive privilege?

MR. MILLER: That's correct.

MR. WEBER: Okay. And just to confirm, you didn't hold back any documents from files from any former attorneys general that dealt with the issue of racial profiling?

MR. MILLER: None that we saw. That's correct. Now the one--

MR. WEBER: You say, none that you saw.

MR. MILLER: Well, the caveat that I have here, and I want the committee to be aware, this was always intended to be a rolling production. The issue of racial profiling is a fairly broad issue, and the period that it covers, originally we went back to 1988, because that was the time frame that the criminal cases, before Judge Barisonek, we're dealing with.

The committee went back to 1985. But regardless of what year you go back to, it covers a huge period of time. It covers a huge number of people who are involved, many people not involved in the sense that they knew that it was racial profiling, but that conceivably the issue of race in law enforcement would be involved.

So, as we find more documents, we are going to be adding them to the production. And as I sit here today, I'm sure somewhere there is a document that we've missed. There's no document that we've intentionally withheld, but it's a massive production, and we've done the best that we can.

As we find more documents, if we find more documents, we will produce them.

MR. WEBER: As it relates, though, specifically to former attorneys general, was there any effort made to contact former attorneys general Edwards, DeVesa, Poritz, or Verniero. If I've missed anyone, I've no disrespect.

MR. MILLER: Right.

MR. WEBER: Was there any effort made to contact them directly and say something to the effect that, "Hey, we're trying to get documents together in connection with various litigations and in connection with the Senate Judiciary Committee's investigation into racial profiling. Did you retain any documents when you left, either in your own personal files, or where would

your documents that relate to this be located?”

MR. MILLER: We did ask Attorney General Verniero. I personally spoke to him, and, in fact, he had documents in his home that he provided to us.

MR. WEBER: Did he indicate to you that he had withheld any documents from you, or did you agree with him not to copy or take any documents that he had at his home?

MR. MILLER: No. My recollection is I asked him for -- again, there were certain files. I forget what they were, but we went through the index, and it was really that index that we used. The index is maintained by the OAG, the Office of Attorney General, and it's kind of a historical archive, if you will, of former attorney general's files. And there was a notation on that index that he had those files at home. I called him, and he then provided them to us.

MR. WEBER: Do you remember specifically what documents he had in that file at home?

MR. MILLER: As I sit here today, I can't recall specifically what they were. But if they are documents that came from him, in all likelihood they were -- they were from those files.

MR. WEBER: Do you remember if the March 16, 1999 memo to the file saying that he just received certain data from the New Jersey State Police was one of the documents that was in that file?

MR. MILLER: It probably was, but I don't -- I can't swear to that, but it probably was.

MR. WEBER: Did you find that document -- excuse me. Was that document located in any other files that you reviewed, other than the file that

Justice Verniero kept at his home?

MR. MILLER: I don't know. We've had a number of lawyers looking at files. I don't know if it was -- if another copy was found somewhere else. I just don't know.

MR. WEBER: Did you ask Justice Verniero whether the documents that he was providing to you were the totality of the documents that he had of racial -- that he had that concerned racial profiling?

MR. MILLER: That was the gist of our conversation, yes, that we were producing documents, and we needed these documents. He understood, I'm sure, that we needed all of his documents, and I have no reason to think he held anything back from us.

MS. GLADING: Did -- can you identify, after this interview, the documents that were in the files that he had at home, or that he had taken with him?

MR. MILLER: We're not sure we can without getting those files back. But we'll look into that and let you know.

MS. GLADING: You didn't keep a record of how documents came into the repository?

MR. MILLER: We produced 91,000 documents in a very short period of time. We were trying to keep as good a track of where documents came from as we could, but it was in a very short period of time.

MR. WEBER: Did you have similar discussions with former attorneys general Poritz, DeVesa, and Edwards about -- or an inquiry about whether they had documents, either at their home or at their office that they retained--

MS. GLADING: Or Perretti?

MR. MILLER: I did not have any conversation with former Attorney General Edwards about the documents. Nor did I have with former Attorney General Perretti.

As to both of those former attorneys general, I went through the indexes of their closed files.

I have subsequently spoken to former Attorney General DeVesa, and he has indicated that he doesn't have any files, other than what we would have, and the same is true of former Attorney General Poritz.

MR. WEBER: Let me--

MS. GLADING: Based on your experience, is it unusual for an attorney general to take files like that with them when they leave, or to not return them when they're leaving?

MR. MILLER: I don't have a basis to say it is or isn't, one way or another.

MR. WEBER: Let me just put a general request on the record, because -- just as sort of a heads up, I think we will probably ask every witness, going forward, whether or not they have documents in their possession that deal with racial profiling.

My request is that, and you are representing the vast majority of the individuals that we are interviewing or deposing -- my request is that you reach out to those individuals in advance of their interviews or depositions to inquire whether they do have documents. If they don't, you can confirm that for us, on the record. If they do, to the extent you can get us those documents in advance of the interview or the deposition, that would be greatly appreciated. But worse case, if you could bring them along to the interview or the

deposition, we would appreciate it.

MR. MILLER: As I sit here today, I'm not aware of any witness who has documents that haven't been produced. All of the witnesses that you've listed -- one exception, Carl Williams is the one wild card in that. But we don't represent him.

MR. WEBER: Right.

MR. MILLER: All of the State Police witnesses have been asked numerous times -- or should have been asked numerous times by the people at State Police to produce all of their relevant documents. Certainly all of the people in the Department of Law and Public Safety have been asked, so I'm not aware of any. But we will certainly make that effort.

MR. WEBER: I appreciate that.

The last issue I wanted to briefly discuss with you is the issue of E-mail. And I understand from your certification that backup tapes are rewritten and new data replaces the old data every four weeks. And I won't hold myself out to be a techie, nor would I ask you to hold yourself out to be a techie--

MR. MILLER: Thank you.

MR. WEBER: --but just so we can all understand, there is not, then, resident within the Attorney General's Office and all the subdivisions, any type of data storage, either on tapes or on the system, for lack of a better phrase, to which you could turn to to say I want to do a search for E-mails going back to, you know, 1996 from person *x* to person *y*?

MR. MILLER: My general understanding is that is correct. My certification is directed specifically to the Division of Law.

MR. WEBER: Okay.

MR. MILLER: And just to show you how we are all different agencies, the Division of Law has a different computer system than the Division of Criminal Justice and different than OAG. We can all communicate, but they are different systems, my understanding is.

In the Division of Law, there is no way to do that. Assuming that a lawyer deletes their E-mail messages, as they are supposed to be doing -- it's not on a hard drive. That was a question that you asked me the other day, and the techies who I talked to explained that to me. And there is no tape. The tape backup is rewritten after a certain period of time.

I think, as I mentioned yesterday, there is the possibility that in OAG and possibly CJ, people did not delete. In which case there may be the ability to go back and find E-mails, and that process is going on right now.

MR. WEBER: Okay. My understanding--

MR. MILLER: But as I also said, to the extent that E-mails were printed out at the time they were made, they have been produced.

MR. WEBER: Okay, my understanding, and this is based on my experience as a civil litigator, depending upon what system you use, when you delete an E-mail, you don't really delete the E-mail. There's a way to recover it. And a lot of times, it is resident on a hard drive.

So I guess my request to you would be to confirm, because you've discussed that there are three different computer systems, either you confirm or whoever the appropriate individuals are that are going to provide us with the other certifications, confirm that for their particular system there is not an ability to recover deleted E-mails.

MR. MILLER: Certainly. Just another thing that you ought to be aware

of. In the Division of Law, we have a three-year turnover cycle of all of our computers, so that every year, one-third of the Division's computers are replaced. Whether or not that affects it or not, I'm not sure.

MR. WEBER: Does that include OAG computers, even if there is a change in who the attorney general is?

MR. MILLER: I don't know if the -- again, it's the Division of Law--

MR. WEBER: Oh, okay.

MR. MILLER: --that has the three-year turnover cycle. I don't know what OAG's is.

MS. GLADING: On the certification, the second paragraph indicates that Attorney General Farmer made the announcement on September 22nd that he would be releasing documents related to racial profiling. The sixth paragraph, at the end of it, indicates that the search for these documents covered the period of 1985 to the publication of the interim report. Are you familiar with Michael Chertoff's letter -- I'm sorry, Senator Gormley's letter to Attorney General Farmer, from October, in which he discussed the original document -- the document request that the Judiciary Committee was making?

MR. MILLER: I don't believe I've seen it. I may have seen it, but I don't know.

MS. GLADING: That letter indicated -- I don't have a copy with me -- but it indicated that the production -- that we were requesting documents up until the present. I believe the letter was dated October 20th. Have you been part of any discussions about what the parameters of the document production to the Judiciary Committee would be?

MR. MILLER: I have been, yes.

MS. GLADING: Un-huh.

MR. MILLER: And the production was up until the date of the interim report, which was April 20th, 1999.

MS. GLADING: And those discussions were held by?

MR. MILLER: With the Attorney General and others.

MS. GLADING: Okay. Was there any discussion with anyone representing the Judiciary Committee about limiting production to the date of the interim report?

MR. MILLER: I don't know. The Attorney General may have spoken to people, but I don't know.

MS. GLADING: Was there a reason why the date of the interim report was selected as the date that you would end document production?

MR. MILLER: There was. We were waiving all privileges. And it seemed that the only way to do that appropriately was to draw a very distinct line that we would waive all privileges up to the point in time of the interim report. And so that's what we did.

We are not waiving privileges for the period of time, post the interim report, involving -- because it involves a whole host of issues. It involves the consent decree with the Department of Justice and other issues that make it very complicated and virtually impossible for us to be able to deal with those issues on a day-to-day basis without having the deliberative process privilege or the attorney-client privilege.

MR. WEBER: Off the record.

(Off the record discussion)

MS. GLADING: The assembling of all of these documents in the

summer of 19 -- of the summer of 2000.

MR. MILLER: It may have been '99, now that I think about it.

MS. GLADING: Attorney General Farmer's announcement was September 22nd, that he'd make this all public--

MR. MILLER: Okay. I'm just trying to--

MS. GLADING: --of 2000.

MR. MILLER: Right. It was an ongoing process to compile all of these documents.

MS. GLADING: Um-hm. I guess my question goes to the discovery motions that were pending at the end of 1999, and the effort to have them consolidated before one judge.

MR. MILLER: The criminal discovery motions, right.

MS. GLADING: The criminal discovery motions. Was there interaction between the -- because I heard what you said to mean that you had these discovery motions that you were dealing with in various cases. It was never an intention to make this repository public.

MR. MILLER: Right.

MS. GLADING: But you were pulling all this together because you needed it -- the State needed it.

MR. MILLER: To produce in the various litigations, right.

MS. GLADING: So there was an intent to make it public to produce in litigation?

MR. MILLER: That's correct.

MS. GLADING: Oh, okay. I interpreted it as meaning that you were not going to produce it in litigation.

MR. MILLER: No, when I meant public, I meant open the doors wide and saying, "Come on in and take a look."

MS. GLADING: Okay. I don't have any other questions.

MR. WEBER: Mr. Miller, we appreciate you voluntarily agreeing to come and be interviewed today. On behalf of the Committee, I want to thank you for your time and for your cooperation, in connection not only with this interview, but also with assisting me, off the record, and again, trying to put all of the witness interviews together and coordinating the document productions.

So, again, I thank you for your time, and certainly we will see each other during the rest of the interviews.

Ms. Accurso, thank you for your time.

MR. MILLER: Thank you.

MS. ACCURSO: Thank you.

MR. WEBER: We can go off the record.

**(INTERVIEW CONCLUDED)**