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1 MR. CHERTOFF: All right. Let me administer  
2 the oath.

3 G E O R G E R O V E R, SWORN

4 MR. CHERTOFF: All right. Deputy Attorney  
5 General Rover, as we know, you're here testifying in a  
6 deposition pursuant to the Senate Judiciary Committee  
7 inquiry regarding racial profiling and I think you're  
8 represented by counsel here?

9 THE WITNESS: Correct.

10 MR. CHERTOFF: And that's Assistant Attorney  
11 General Accurso, right?

12 THE WITNESS: Yes.

13 MR. CHERTOFF: And I believe your counsel has  
14 seen a copy of the resolution empowering us to take  
15 this deposition.

16 MS. ACCURSO: Yes, we have.

17 THE WITNESS: Yeah, I trust her.

18 MR. CHERTOFF: All right. And present  
19 besides myself, and Scott Weber, my associate, will be  
20 here shortly. And there's Jo Glading is present from  
21 -- representing the Democratic Senators. Also Senator  
22 Gormley will be back, probably periodically at some  
23 point in time.

24 MR. WHEELER: Doug Wheeler, I'm also with the  
25 Senate Democratic.

1 MR. CHERTOFF: Okay. All right.  
2 Are you currently still employed by the  
3 Department of Law and Public Safety?

4 THE WITNESS: Yes.

5 MR. CHERTOFF: What's your title?

6 THE WITNESS: Assistant Attorney General.

7 MR. CHERTOFF: And what division are you in?

8 THE WITNESS: The Division of Gaming  
9 Enforcement.

10 MR. CHERTOFF: And to whom do you report?

11 THE WITNESS: The Director, J. P. Suarez.

12 MR. CHERTOFF: And how long have you been at  
13 Gaming Enforcement?

14 THE WITNESS: January of 1999; late January  
15 1999.

16 MR. CHERTOFF: When did you graduate from law  
17 school?

18 THE WITNESS: 1986.

19 MR. CHERTOFF: And when did you come to work  
20 in the Department of Law and Public Safety?

21 THE WITNESS: I think it was July of 1992.

22 MR. CHERTOFF: What position did you have  
23 when you first came in 1992?

24 THE WITNESS: I was a Deputy Attorney General  
25 and I was in the Legal Affairs Division in the Office

1 of the Attorney General.

2 MR. CHERTOFF: And how long were you in Legal  
3 Affairs?

4 THE WITNESS: I left Legal Affairs in  
5 September of 1995.

6 MR. CHERTOFF: And then where did you go?

7 THE WITNESS: I went to the Division of  
8 Alcoholic Beverage Control.

9 MR. CHERTOFF: And how long did you stay  
10 there?

11 THE WITNESS: Until I went to Gaming  
12 Enforcement in January of 1999.

13 MR. CHERTOFF: Now, directing your attention  
14 to the period that you were at Legal Affairs from 1992  
15 to 1995, to whom did you report?

16 THE WITNESS: The Director at that time was  
17 Alex Waugh.

18 MR. CHERTOFF: And in that capacity, what  
19 were your specific duties?

20 THE WITNESS: Well, my duties varied. I did  
21 a lot of projects. So, for example, the first thing --  
22 I mean I -- you had work where you had legal opinions  
23 to write, but my first project was there was a riot  
24 down in Belmar I think in the summer of '92 and the  
25 Governor asked for a report to be done and

1 investigators investigated it and we wrote a report  
2 which I think Attorney General Del Tufo presented to  
3 Attorney General -- to Governor Florio.

4 In other matters there, I worked as the  
5 coordinator for the World Cup games and dealt with  
6 administrative financial, working with federal and  
7 state agencies so everyone got along to make sure the  
8 World Cup games proceeded properly. I also was in  
9 charge of the transition of the DMV to the DOT. And  
10 that involved personnel matters, financial matters and  
11 a lot of negotiation between the Department of Law and  
12 Public Safety and the Department of Transportation  
13 about layoffs and things of that nature. I worked on a  
14 lot of Emergency Management issues where I interfaced  
15 with other departments, including the State Police,  
16 because they have the Office of Emergency Management.  
17 And started to put together a statewide plan where  
18 every department had a responsibility so if something  
19 happened, people would step in. I did a number of  
20 legal opinions, particularly for the research and  
21 identification section of State Police dealing with the  
22 computer data base and fingerprinting and who can  
23 access computers, et cetera. I did legislation.

24 MR. CHERTOFF: Now, during that period of  
25 time, from 1992 until you left Legal Affairs in 1995,

1 did you have any involvement in the issue of racial  
2 profiling?

3 THE WITNESS: I didn't do anything on racial  
4 profiling. I do have to say one thing. Allison showed  
5 me a memo which I was copied on. Apparently at some  
6 point during the Soto case Jack Fahy was on trial and  
7 there was a discovery issue involving something and he  
8 called up to Legal Affairs and needed someone to make  
9 sure that documents got out to a lawyer. But I was  
10 never in any meetings on any racial profiling matter at  
11 all. I knew nothing about the topic.

12 MR. CHERTOFF: Okay. Now, let me direct your  
13 attention to 1996, particularly the latter part of the  
14 year, November and December. Actually, let me withdraw  
15 that.

16 Did there ever come a point in time until  
17 January 1, 1997, before January 1997, that other than  
18 what you've described, you had any involvement in the  
19 Soto matter?

20 THE WITNESS: Any involvement in Soto? No.

21 MR. CHERTOFF: All right. Now, let me direct  
22 your attention go 1996, November and December. Did  
23 there come a point in time during those two months that  
24 you became involved in an investigation or an inquiry  
25 that was being started by the United States Department

1 of Justice, Civil Rights Division, regarding the issue  
2 of racial profiling?

3 THE WITNESS: Yes. I don't know if it was  
4 November, December or if it might even have been  
5 January, but at some point at the tail-end of '96 or  
6 the first month of '97, yes.

7 MR. CHERTOFF: How did you first become  
8 involved in that?

9 THE WITNESS: Alex Waugh approached me. I  
10 think I was in the building because at ABC I worked in  
11 another building on Front Street and I was in the  
12 building, I don't know if I was having lunch with  
13 somebody, and I saw Alex and he asked me would I be  
14 available to assist him in a matter. And I said, you  
15 know, depending on what it is. If you need help, you  
16 know, I'm always willing to help. And he said he would  
17 get back to me. And at some point he got back to me  
18 and indicated that he would like if I could help  
19 produce documents to the United States Department of  
20 Justice and that it would be a very limited affair for  
21 me because it was important, I was very busy at the  
22 Division of ABC, I was Special Assistant to the  
23 Director. And he said that it would be limited in time  
24 and scope. And that's how it came about.

25 MR. CHERTOFF: How did he approach you when

1 he got back to you? How did he communicate with you  
2 about the scope of this assignment you just described?  
3 Was it by telephone? Was it in person?

4 THE WITNESS: I can't remember how that  
5 happened. All I can -- the only thing I can remember  
6 is I know he's like, you're just going to be producing  
7 some limited documents to the Justice Department and  
8 that's what you're going to be doing.

9 MR. CHERTOFF: I'm going to show you what I  
10 guess I'm going to mark as exhibit R-1 for  
11 identification and also what I think has previously  
12 been marked as G-9 for identification.

13 (Pause)

14 Here's R-1. I'm going to put before you what  
15 we've marked as R-1 for identification and also what  
16 was previously marked as G-9 for identification. And  
17 R-1 is a fax cover sheet dated January 10th, 1997 to  
18 you from Patty Harvey. And then -- I'm going to make a  
19 change. What I've given you is R-1. Let me substitute  
20 something else for R-1. It's a 15-page document -- 14-  
21 page document. And a cover sheet January 10, 1997,  
22 it's addressed to you. I'd like you to take a look at  
23 that. And I want to ask you whether this document was,  
24 in fact, the document that Alex Waugh sent you that  
25 essentially began your involvement in this matter?

1 (Pause)

2 THE WITNESS: I recall receiving the cover  
3 sheet and I'm assuming that these documents came along  
4 with it. I know the memo from Fahy to Alex Waugh, I  
5 know that I have seen that before on the profiling  
6 involving Dr. Susskind and that. And I do not recall  
7 seeing the January 9, 1997 letter from Alex to Peter  
8 Verniero. And I don't recall seeing a draft of the  
9 January 7, 1997 letter. I know I saw a final of that  
10 letter. That's what I recall.

11 MR. CHERTOFF: Do you remember -- do you see  
12 this message here? "Do not talk to anyone before you  
13 talk to me. No freelancing."

14 THE WITNESS: Yes.

15 MR. CHERTOFF: What did you understand that  
16 to mean?

17 THE WITNESS: Well, I think I understood that  
18 to mean that just deal with Alex on this matter. I  
19 mean I think Alex said it was going to be limited and  
20 that I should deal with him directly on this matter and  
21 that's it.

22 MR. CHERTOFF: And did you, in fact, from the  
23 time you got assigned to work on this, deal directly  
24 with him?

25 THE WITNESS: I really dealt with no one -- I

1 mean I had some discussions in a meeting with Jack  
2 Fahy. I obviously had a few discussions, some  
3 discussions, with Tom Gilbert, but generally the only  
4 person I dealt with was Alex.

5 MR. CHERTOFF: Let me put it this way, did  
6 you report to Alex Waugh?

7 THE WITNESS: Oh, absolutely, yes.

8 MR. CHERTOFF: Did there come a point in time  
9 within a matter of a day or so after receiving this fax  
10 that you, in fact, learned that there was a request by  
11 the U.S. Department of Justice for certain categories  
12 of information as indicated in the attachment to  
13 exhibit R-1, starting at Bates number 08G601?

14 THE WITNESS: Exactly when I don't know but  
15 yes, I did become aware of this information request.

16 MR. CHERTOFF: Now, once you got assigned to  
17 this matter, were you told who you would be dealing  
18 with at the State Police?

19 THE WITNESS: Yes.

20 MR. CHERTOFF: And who was that?

21 THE WITNESS: Tom Gilbert.

22 MR. CHERTOFF: Tom Gilbert?

23 THE WITNESS: Tom Gilbert.

24 MR. CHERTOFF: And who is Tom Gilbert?

25 THE WITNESS: Sergeant Gilbert, I don't know.

1 I didn't know him before. I didn't know what section  
2 he was in, but I met him.

3 MR. CHERTOFF: Did you know what his  
4 assignment was as it relates to racial profiling?

5 THE WITNESS: His assignment to me was that  
6 he was the guy who was going to get me the documents  
7 necessary to respond to the request.

8 MR. CHERTOFF: Now, were you familiar with  
9 the fact that there was a meeting on January 10th, 1997  
10 with the Attorney General in his office, including  
11 Colonel Williams and Alex Waugh?

12 THE WITNESS: No.

13 MR. CHERTOFF: Did you attend that meeting?

14 THE WITNESS: No.

15 MR. CHERTOFF: What did you do after you got  
16 assigned to this thing on or around January 10th, 1997  
17 to carry out your assignment?

18 THE WITNESS: I believe I had some  
19 discussions with Alex, probably Jack Fahy and Tom  
20 Gilbert, about how we would go about providing  
21 information and what information we were going to be  
22 providing to the Department of Justice.

23 MR. CHERTOFF: And what were the discussions?

24 THE WITNESS: I can't specifically recall. I  
25 can't specifically recall the discussions. I know we

1 had discussions about, you know, we're going to get  
2 these SOP's, et cetera.

3 MR. CHERTOFF: Well, were there requests from  
4 the Department of Justice in Washington for specific  
5 information concerning things like stops; the racial  
6 and ethnic origin of people stopped; searches,  
7 seizures, arrests and information, statistical  
8 information of that sort?

9 THE WITNESS: I believe -- my recollection is  
10 that early on there were certain materials such as  
11 SOP's and that that we were going to try and get  
12 together to send to the Department of Justice and that  
13 thereafter, the Department of Justice was going to  
14 select some dates and that we would provide information  
15 to them I think on tickets and warnings for those dates  
16 and that Tom Gilbert would be the person who would get  
17 that information.

18 MR. CHERTOFF: Well, you're telling me that  
19 when you started this out in January, your  
20 understanding was they only wanted SOP's?

21 THE WITNESS: Oh, no. I mean I think it was  
22 open-ended, but I remember initially that there was  
23 SOP's and then I remember the next thing, at least from  
24 my recall, was that Justice was going to get us some  
25 dates because they wanted ticket and warning

1 information.

2 MR. CHERTOFF: Let me direct your attention,  
3 let's go back to R-1. Look at OAG601, which is  
4 attached to R-1. Do you see where it says information  
5 request here?

6 THE WITNESS: Yes.

7 MR. CHERTOFF: And to refresh your memory, if  
8 you look at Arabic numeral 2. Does it indicate in this  
9 draft that there are documents and data requested  
10 showing the racial and ethnic origin of people who were  
11 stopped? People who were also the subject of post-  
12 traffic stop; law enforcement activity, including  
13 warnings, citations, searches, seizures and arrests?  
14 Do you see that?

15 THE WITNESS: Yes, I do, sir.

16 MR. CHERTOFF: Did you begin the process in  
17 January of 1997 of seeing how that information could be  
18 accumulated?

19 THE WITNESS: Yes. I know there were  
20 discussions with Tom Gilbert about getting tickets,  
21 warnings and how that would proceed. I mean I do  
22 remember that.

23 MR. CHERTOFF: Did you have any discussions  
24 with Tom Gilbert?

25 THE WITNESS: I'm sure I did. I'm sure.

1 MR. CHERTOFF: I mean you were the person who  
2 was assigned to do that, right?

3 THE WITNESS: Yes, yes. I'm not trying, you  
4 know, I just want to be accurate so I want to tell you  
5 what I really recall but, yes, I obviously did have  
6 discussions with Tom Gilbert.

7 MR. CHERTOFF: And just to be clear about it,  
8 at this time you're working in the Alcohol and Beverage  
9 Control Division?

10 THE WITNESS: Yes, sir.

11 MR. CHERTOFF: So this was the only  
12 assignment at this point in time you were undertaking  
13 for the Office of the Attorney General?

14 THE WITNESS: Yes.

15 MR. CHERTOFF: So obviously this was an  
16 important matter to you at this time because you're  
17 dealing with a very senior member of the Department of  
18 Law and Public Safety, correct?

19 THE WITNESS: Correct.

20 MR. CHERTOFF: And as far as you know, you  
21 were the person who was principally carrying out the  
22 assignment from the Department of Law and Public Safety  
23 to deal with pulling together this information,  
24 correct?

25 THE WITNESS: Well, I was taking guidance

1 from Alex Waugh and I took direction from him on how I  
2 was going to proceed. And again, not -- not  
3 understanding all the background to what was going on  
4 here, not really knowing much about the area of the  
5 law, Alex would kind of run a meeting and say okay,  
6 Tom's going to get these kind of documents, let's pull  
7 them together.

8 So I'm not trying to, you know, act like I  
9 didn't have any influence over this, but at the same  
10 time I don't remember like saying that now, George,  
11 this is discovery, come back in three weeks and get all  
12 these documents, we want them all loaded up. That  
13 isn't how it went.

14 MR. CHERTOFF: Do you remember any -- you say  
15 you talked about a meeting with Alex Waugh and Tom  
16 Gilbert and yourself. I mean tell me the first such  
17 meeting you had with Alex Waugh and Sergeant Gilbert  
18 and yourself relating to the issue of discovery.  
19 Approximately when, what the subject was.

20 THE WITNESS: I can guess. I mean I don't  
21 want to guess. It must have been the latter part of  
22 January, early February, and I think it was either  
23 right before or right after a phone call with Mark  
24 Posner from U.S. DOJ.

25 MR. CHERTOFF: And do you remember what the

1 phone call was?

2 THE WITNESS: I just think there was some  
3 general discussion and I think I summarized it in a  
4 memo in early February, but a general discussion about  
5 what Justice was looking for in particular with respect  
6 to documents.

7 MR. CHERTOFF: Let me show you an exhibit  
8 that's marked as -- I guess we'll mark it as R-2 for  
9 identification. It's again a fax cover sheet to  
10 Sergeant Gilbert from you with an attachment. Do you  
11 recognize your handwriting on the front page of this?

12 THE WITNESS: Yes, that's my handwriting.

13 MR. CHERTOFF: And the message says "Page 1.  
14 Thanks."

15 THE WITNESS: Right.

16 MR. CHERTOFF: Okay. Now, take a look at  
17 this and remind yourself of what it is. And then tell  
18 me why you sent this.

19 (Pause)

20 THE WITNESS: That's my handwriting, sir. I  
21 can't recall.

22 MR. CHERTOFF: Well, what does "Page 1!  
23 Thanks" mean as it relates to what's attached?

24 THE WITNESS: Sir, I can't recall.

25 MR. CHERTOFF: Well, why did you send this?

1 THE WITNESS: I'm trying to think of where I  
2 got it.

3 (Pause)

4 MR. CHERTOFF: Does it help you if you look  
5 at the fax tag line at the top of Page 1 and it says it  
6 was sent from the AG Press Office?

7 THE WITNESS: Yeah. The only persons I would  
8 have obtained this from would either be Jack Fahy or  
9 Alex Waugh and, sir, I just -- I have no recollection  
10 of this at all.

11 MR. CHERTOFF: And you sent it to Sergeant  
12 Gilbert, right?

13 THE WITNESS: Yes.

14 MR. CHERTOFF: And he was the person you were  
15 dealing with and in contact with on the State Police  
16 side of this issue with respect to profiling, right?

17 THE WITNESS: With respect to the documents,  
18 correct.

19 MR. CHERTOFF: But you didn't -- you don't  
20 remember why you sent this, right?

21 THE WITNESS: I don't.

22 MR. CHERTOFF: But you sent it.

23 THE WITNESS: That's my handwriting.

24 MR. CHERTOFF: And you don't know what Page 1  
25 -- is there anything on Page 1 that tells you why you

1 would have written "Page 1!" on the fax cover sheet?

2 MS. GLADING: Does that say "Page 1" or "Page  
3 me"?

4 MR. CHERTOFF: Oh, maybe it does say that,  
5 right. Good point.

6 What does it say, "Page 1" or "Page me"?

7 THE WITNESS: I think it's -- it looks to me  
8 like "Page me."

9 MR. CHERTOFF: Oh. Okay, better yet.

10 MS. GLADING: Thank you, Doug.

11 MR. CHERTOFF: Thank you.

12 THE WITNESS: Right.

13 MR. CHERTOFF: I appreciate that.

14 All right. "Page me," that's even -- with an  
15 exclamation point. So what was so urgent that you  
16 needed to be paged about?

17 THE WITNESS: At the same time, I mean to be  
18 fair, I don't think just because I put an exclamation  
19 point it means it's urgent. I mean --

20 MR. CHERTOFF: All right. Why did you want  
21 to be paged on this?

22 THE WITNESS: I see nothing -- nothing jogs  
23 my mind with this document where at that time that it  
24 was critical -- I am at a complete loss. I'm telling  
25 you, I just don't know.

1 MR. CHERTOFF: Had you given Sergeant Gilbert  
2 your pager number as of January 17th, 1997?

3 THE WITNESS: Had I given him mine?

4 MR. CHERTOFF: Yeah.

5 THE WITNESS: I don't recall giving it to  
6 him, but if I said page me...

7 MR. CHERTOFF: Does it help you -- or let me  
8 ask this question.

9 Do you note that the date on the fax cover  
10 sheet and the tag line on the fax page being sent is  
11 January 17th and the attachment is dated January 31?

12 THE WITNESS: No. I don't know how that  
13 could be.

14 MR. CHERTOFF: It doesn't help you?

15 THE WITNESS: I'm sorry, it doesn't.

16 MR. CHERTOFF: All right. Now, so what did  
17 you do to go about carrying out your task with Sergeant  
18 Gibert of ascertaining the universe of documents to be  
19 produced to the Civil Rights Division?

20 THE WITNESS: I believe after we located or  
21 attempted to locate SOP's and documents or that nature,  
22 we were waiting to hear from U.S. DOJ and I think they  
23 called shortly thereafter, meaning Mark Posner, as to  
24 what in particular he was looking at.

25 MR. CHERTOFF: Okay.

1 THE WITNESS: That's my recollection. In  
2 other words, it wasn't like -- it wasn't like an  
3 information request where here, go at it and start  
4 digging through everything to get it. It was like  
5 okay, we have this, this is kind of like a guide. Now  
6 we're going to wait and hear from U.S. DOJ to see where  
7 they want to go.

8 MR. CHERTOFF: All right. And then there  
9 came a time when you heard from Mr. Posner, correct?

10 THE WITNESS: Yes, sir.

11 MR. CHERTOFF: In fact, there was a January  
12 30th telephone conference with the Department of  
13 Justice that talked about these issues, right?

14 THE WITNESS: I think I wrote a memo. I will  
15 take your representation as true, but I summarized it.

16 MR. CHERTOFF: Let's mark as R-3 the  
17 following document. I want you to make sure you have  
18 R-1 still in front of you.

19 THE WITNESS: Okay.

20 (Pause)

21 MR. CHERTOFF: Did you recognize this  
22 document, R-3?

23 THE WITNESS: Yes, sir.

24 MR. CHERTOFF: You prepared this, right?

25 THE WITNESS: Yes, sir.

1 MR. CHERTOFF: And this was designed to  
2 summarize the content of the January 30th call with the  
3 Department of Justice, right?

4 THE WITNESS: Yes.

5 MR. CHERTOFF: Who participated in the call  
6 besides yourself from the State of New Jersey?

7 THE WITNESS: I believe Alex Waugh and Jack  
8 Fahy.

9 MR. CHERTOFF: And who assigned you to  
10 prepare this memo?

11 THE WITNESS: Alex asked me to prepare the  
12 memo.

13 MR. CHERTOFF: Now, going through this, I  
14 want to focus your attention on -- first of all, do you  
15 see the handwritten note at the top which we've been  
16 told is from Alex Waugh, which is FYI. "I have asked  
17 DAG Rover to prepare an options memo for our review and  
18 discussion." Do you remember getting that assignment?

19 THE WITNESS: Yes, I do.

20 MR. CHERTOFF: And you ultimately did that?

21 THE WITNESS: Yes.

22 MR. CHERTOFF: Let's go through this memo  
23 here on February the 5th, particularly on Page 2. You  
24 see it says, "DOJ's question in this regard may have  
25 been related to one of its other state inquiries. I've

1 been advised by Sergeant Tom Gilbert that he spoke with  
2 the Illinois State Police last week and DOJ was giving  
3 that organization a difficult time." Now, you had  
4 conversations as of the time you prepared this memo  
5 with Sergeant Gilbert concerning his contacts with  
6 other police organizations in other states that were  
7 dealing with the Department of Justice on this issue?

8 THE WITNESS: I know he spoke of Illinois and  
9 he may have spoken of Maryland. I can't recall if he  
10 spoke about any others.

11 MR. CHERTOFF: Okay. With respect to  
12 Maryland and Illinois, was it your understanding that  
13 they were themselves having issues with the Department  
14 of Justice in Washington concerning profiling?

15 THE WITNESS: Well, based upon what Tom said,  
16 I don't know if he was saying that the Department of  
17 Justice was having a problem with Maryland, but he said  
18 that there was an issue going on in Maryland.

19 MR. CHERTOFF: What did he tell you about  
20 that issue in Maryland?

21 THE WITNESS: He told me that a consent order  
22 was signed in Maryland.

23 MR. CHERTOFF: Did he say what the  
24 statistical basis was that led to that consent order  
25 being signed?

1 THE WITNESS: No. He told me that it was  
2 based upon a percentage -- it was based upon consent-  
3 to-search data.

4 MR. CHERTOFF: Now, at this point in time,  
5 did you understand the difference between data related  
6 to traffic stops and data related to consents to  
7 search?

8 THE WITNESS: At this time -- it's hard for  
9 me to tell if it was at this time. I mean I was  
10 educated shortly. I don't know if it was then or now,  
11 and obviously the issue was -- I don't know if it was  
12 then or like a week or two later or a month later that  
13 the Department's characterization of consent to  
14 searches to me was new to me.

15 MR. CHERTOFF: Anyway, there came a point in  
16 time you understood the difference between focusing on  
17 initial stops and focusing on consents to search,  
18 correct?

19 THE WITNESS: That's correct.

20 MR. CHERTOFF: And you'd agree with me the  
21 difference is that the stop data focuses upon who the  
22 State Police choose to stop on the highway initially,  
23 whereas the consent-to-search data focuses on which  
24 people who have already been stopped are requested to  
25 make consent to search?

1 THE WITNESS: Right. They're asked to give  
2 consent to search, yes.

3 MR. CHERTOFF: Now, let me focus your  
4 attention on what I'm going to now mark as R-4 for  
5 identification.

6 (Pause)

7 Do you see that?

8 THE WITNESS: Yes, sir.

9 MR. CHERTOFF: That's a letter you prepared  
10 and sent to Mr. Posner on February 6, 1997?

11 THE WITNESS: Yes, sir.

12 MR. CHERTOFF: Now, at this point did you  
13 take over basically being the principal point of  
14 contact with the Civil Rights Division for the State of  
15 New Jersey on this issue?

16 THE WITNESS: Principal -- I was the person  
17 dealing with Mark Posner, that's correct.

18 MR. CHERTOFF: And did there come a point in  
19 time that you were no longer simply involved in being a  
20 conduit for directions from Alexander Waugh to the  
21 State Police about gathering documents, but you  
22 actually became involved in offering advice and having  
23 discussion with your superiors and with the State  
24 Police concerning the appropriate way to respond to  
25 these requests?

1 THE WITNESS: I don't think that's an  
2 accurate characterization. I always reported to Alex  
3 Waugh. Certain issues were raised by Sergeant Gilbert  
4 on a couple of matters which are included in a memo  
5 that I wrote, this "Options" memo, I think it was an  
6 April 22nd memo, which involved me in learning  
7 something about those issues and discussing them with  
8 Alex Waugh.

9 MR. CHERTOFF: I'm going to show you what  
10 we're going to mark as R-4 --

11 THE WITNESS: I think this was --

12 MR. CHERTOFF: -- R-5 for identification,  
13 which is again a sheet of paper dated 7 February 1997  
14 to Alex Waugh. And actually it may be helpful to look  
15 at that in connection with R-6.

16 (Pause)

17 Now, R-5, is that your handwriting?

18 THE WITNESS: Yes.

19 MR. CHERTOFF: Or portions of it. Okay.  
20 Which portions are your handwriting?

21 THE WITNESS: I think all of it, sir.

22 MR. CHERTOFF: Okay. And looking at R-6,  
23 there's a reference in R-5 to inquiry to New Jersey  
24 Turnpike. R-6 is a fax to you from Mark Posner of the  
25 U.S. Department of Justice which attaches a copy of a

1 letter to the Turnpike Authority, correct?

2 THE WITNESS: Correct.

3 MR. CHERTOFF: And the letter to the Turnpike  
4 Authority talks about trying to get figures on daily  
5 traffic volume, correct?

6 THE WITNESS: Yes.

7 MR. CHERTOFF: Now, what was the reason you  
8 sent this to Alex Waugh? And let me ask you, when I  
9 say this, I mean R-5. And did you send a copy of R-6  
10 as well?

11 THE WITNESS: Yes. The reason is because  
12 I sent Alex everything. I reported to Alex and when  
13 you work with Alex, you tell him everything.

14 MR. CHERTOFF: So basically your practice  
15 throughout this entire assignment was if you got a  
16 piece of information, you transmitted it up the line to  
17 Alex Waugh.

18 THE WITNESS: Generally. I mean that is  
19 normally the way I operate and I want to say generally  
20 yes.

21 MR. CHERTOFF: Certainly anything of  
22 significance or materiality you would report, correct?

23 THE WITNESS: I would think so.

24 MR. CHERTOFF: You would not keep it to  
25 yourself?

1 THE WITNESS: No. No.

2 MR. CHERTOFF: Was there an issue that you  
3 had or Mr. Waugh had with respect to the fact that the  
4 Department of Justice had focused or had communicated  
5 directly with the Turnpike?

6 THE WITNESS: Not with me. I mean I think --  
7 my recollection is in speaking with Mark that --

8 MR. CHERTOFF: Mark Posner.

9 THE WITNESS: Mark Posner, I'm sorry.  
10 -- that he asked for this -- where could he  
11 get this information. I believe I gave him the address  
12 to the Turnpike Authority and I don't know, I didn't  
13 see a problem with it. And, you know, my name is in  
14 the letter and where I work. I mean I just -- I didn't  
15 see a problem with it.

16 MR. CHERTOFF: Why did you send this up to  
17 Alex Waugh after you got the letter?

18 THE WITNESS: Just to let him know what was  
19 going on.

20 MR. CHERTOFF: Did he express a position with  
21 respect to the appropriateness of having the Civil  
22 Rights Division communicating directly with the  
23 Turnpike?

24 THE WITNESS: Not to me.

25 MR. CHERTOFF: By the way, let me ask you

1 this. You reported to Alex Waugh. Did he inform you  
2 who he was reporting to with respect to profiling?

3 THE WITNESS: I don't know if he reported --  
4 he told me. I was under the impression it was to the  
5 Attorney General.

6 MR. CHERTOFF: That would be Peter Verniero.

7 THE WITNESS: Yeah. I can't -- I mean he may  
8 have been talking to some other people in the  
9 Department, but I mean I don't think there was anyone  
10 else he could be reporting to. So that was my  
11 understanding.

12 MR. CHERTOFF: All right. Let me show you  
13 now R-7 for identification, which is a letter or  
14 memorandum dated March 3rd, 1997 to Alex Waugh from  
15 you. Do you recognize this?

16 THE WITNESS: Yes, it's my memo.

17 MR. CHERTOFF: Are those your initials next  
18 to your name?

19 THE WITNESS: I don't think they are, but  
20 it's my memo. It might have been my secretary sending  
21 it out, but it is my memo.

22 MR. CHERTOFF: And again, this is part of  
23 your practice of letting Alexander Waugh know  
24 everything material that was going on in the matter,  
25 correct?

1 THE WITNESS: I generally tried to keep Alex  
2 aware of what was going on.

3 MR. CHERTOFF: Now, there's a little notation  
4 to PV, FYI. Were you aware of the fact that your memos  
5 were often passed up to Attorney General Verniero?

6 THE WITNESS: No.

7 MR. CHERTOFF: And you didn't actually get a  
8 copy of this with that notation --

9 THE WITNESS: Oh, no.

10 MR. CHERTOFF: -- on it?

11 Now, let me turn your attention again to Page  
12 2. It says here, "Mr. Posner also requested samples of  
13 the various forms and records used in State Police  
14 traffic enforcement activity. I advised him that in  
15 the Attorney General's January 17th letter and  
16 addendum, a copy of a consent to search, traffic  
17 summons and warning were provided."

18 And again, that consent to search is the form  
19 that would relate to the consent-to-search data that  
20 you had learned -- you learned at a point in time was  
21 the subject of the Maryland case, correct?

22 THE WITNESS: Yes.

23 MR. CHERTOFF: Now, I want to show you next  
24 what I will mark as R-8 for identification. And then I  
25 want to show you F-21.

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(Pause)

Do you recognize these documents?

THE WITNESS: I recognize S-8, but I didn't get it.

MR. WEBER: R-8.

THE WITNESS: I'm sorry, R-8. Alex did ask me to look at the brief, but I never received this memo, I just saw it through my counsel when I was preparing for the dep.

MR. CHERTOFF: And F-21 is your -- let me step back. In March of 1997 Alex asked you to take a look at the brief to be filed in the Soto case, correct?

THE WITNESS: Yes, sir.

MR. CHERTOFF: So at that point you did become involved to some degree in the Soto appeal, correct?

THE WITNESS: Yes.

MR. CHERTOFF: And you actually wrote a memo back with your comments, correct?

THE WITNESS: That's correct.

MR. CHERTOFF: And that's F-21, correct?

THE WITNESS: Yes.

MR. CHERTOFF: Now, were you aware at this point about whether there was any debate in the

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Department of Law and Public Safety concerning whether to continue to pursue the appeal and what the consequences of pursuing the appeal would be?

THE WITNESS: No. I was always under the impression that the decision below was wrongly decided and that we would be successful on appeal. I mean I was always under the impression that we felt very, very comfortable on appeal.

MR. CHERTOFF: And focusing again on this particular memo, F-21, I want to take you through certain portions of it. If you look at Page 2 where it says Paragraph 3. "Another point you may want to work into the introduction summary is that the court's ruling, if left intact, will require that State Police officers ignore potential criminal activity simply because of the race of the suspect."

Where did you draw that conclusion?

THE WITNESS: Sir, it's hard for me to pass on that. I mean I remember I read the brief. I didn't know the area of the law and I just did a memo for, you know, accept it, reject it. And there was obviously something in that brief that made me feel that that was an appropriate, at least opinion, from my standpoint.

MR. CHERTOFF: If you didn't know the area of law, why did you express opinions about it?

1 THE WITNESS: I think Alex asked me to look  
2 at it and I think there are a number of times where I'm  
3 asked to express opinions on things where I don't know  
4 the area of law and it was an internal memo where  
5 people could accept or reject it and say hey, he's all  
6 wet. I mean I've done it in other matters. I mean  
7 people have always asked me, hey, take a look at this  
8 and tell me what you think. I may not have any idea.  
9 In Gaming Enforcement now sometimes something comes on  
10 and they're like, hey, what do you think of that? You  
11 know, just give me your general impressions. And I  
12 did.

13 MR. CHERTOFF: All right. Look at Paragraph  
14 4 where it says, "Does your reference to the fact that  
15 the decision has encouraged many of the defendants to  
16 pursue similar motions hurt us in dealing with the  
17 Department of Justice inquiry?"

18 What did you mean by that?

19 THE WITNESS: My only recollection from those  
20 words would be, DOJ is doing an inquiry of us and would  
21 that reference in any way hurt us in dealing with DOJ?  
22 I mean for what it stands for. This was just -- I'm  
23 telling you, and, you know, you're an attorney also,  
24 many times I'm asked to hey, take a look at something  
25 and give me your thoughts and I do and it's an internal

1 memo. It's not that I go out publicly and state them.  
2 It's not that people have to accept them. They're like  
3 just take a look at this and give me your thoughts.  
4 And it just jumped out at like hey, you know, does this  
5 create any of a DOJ issue? I mean that's it.

6 MR. CHERTOFF: What was your thinking about  
7 this particular suggestion? How would it hurt you in  
8 dealing with the Department of Justice?

9 THE WITNESS: Sir, I can't go back to tell  
10 you what I'm thinking at that time. I was giving -- I  
11 was going through a brief and I was giving my thoughts.  
12 And some thoughts in here may be all wet as far as  
13 strategy or whatever, but Alex asked me to do it. I  
14 knew nothing about the law, but he asked me to review  
15 the brief. And I did it.

16 MR. CHERTOFF: Looking at the next page which  
17 is Paragraph 10. You say, "I would also note that a  
18 part of a recently-enacted federal law would allow  
19 airline security officials to use certain profiles to  
20 identify security threats. It's my understanding this  
21 profile would include physical characteristics of  
22 individuals, not just other circumstantial information.  
23 While I certainly understand that there is a difference  
24 between profiling in general and profiling based upon  
25 the race, ethnic, origin or sex of any individual, the

1 line is often very vague."

2 What did you mean by that?

3 THE WITNESS: I think that was at the  
4 beginning of the point where I had discussions with --  
5 it might have been with Jack, it might have been with  
6 Tom Gilbert, that it was a feeling that the way the DEA  
7 worked with the State Police at times could send the  
8 wrong message. It could be misinterpreted. And I  
9 think in that same view when I saw this FAA thing, it  
10 just seemed to strike the same type of thing that I had  
11 just recently been hearing from Tom like in essence,  
12 you know, this isn't fair. You know, this one agency  
13 in DOJ is telling us to do all these things and giving  
14 us all these materials, not to say that those materials  
15 are telling you to do -- engage in unconstitutional  
16 behavior. They clearly don't. But that it could be  
17 misinterpreted by the way they categorize people.

18 MR. CHERTOFF: In your mind at this point was  
19 there a difference between profiling based on  
20 characteristics like destination, length of trip,  
21 things of that sort, and racial profiling?

22 THE WITNESS: Oh, yeah. One is absolutely  
23 unconstitutional.

24 MR. CHERTOFF: At this point in time was it  
25 your understanding that -- what was your understanding

1 of what racial profiling, illegal racial profiling was?  
2 Relying exclusively or predominantly on the race to  
3 profile or using race as one of a number of factors?

4 THE WITNESS: My lay opinion, and I don't  
5 think it's changed, is you are not permitted to use  
6 race in determining whether to stop somebody.

7 MR. CHERTOFF: At all?

8 THE WITNESS: I don't think you can. I don't  
9 know if that's correct legally, but at all.

10 MR. CHERTOFF: And when you say here, again,  
11 on the last page of the close of that first paragraph,  
12 "Similar to the narcotics training provided by the DEA,  
13 categorizing certain groups as being more likely to be  
14 involved in certain illegal behavior is routinely done  
15 by law enforcement agencies nationwide."

16 What did you mean by that?

17 THE WITNESS: I think again I was referring  
18 to DEA materials and a description by Tom Gilbert that  
19 they always tell us that this group engages in this  
20 type of conduct and that they get intelligence reports  
21 and training materials that do that all the time. And  
22 the view is is that it's not telling people to engage  
23 in unconstitutional conduct, but it can be  
24 misinterpreted. You're categorizing people. And it's  
25 not -- it's not fair that you're asking us to engage in

1 a law enforcement activity and yet you're working with  
2 us and you keep giving us this information.

3 MR. CHERTOFF: Now, as to this point in time,  
4 you were having discussions with Sergeant Gilbert on a  
5 regular basis in connection with your duties?

6 THE WITNESS: Yeah, I was having discussions  
7 with Sergeant Gilbert.

8 MR. CHERTOFF: And he was engaged for the  
9 State Police in the process of starting to assemble the  
10 data that the Department of Justice in Washington was  
11 requesting, correct?

12 THE WITNESS: Yes.

13 MR. CHERTOFF: And he was -- and was it your  
14 understanding that you were his principal contact at  
15 the Department of Law and Public Safety in terms of the  
16 profiling matter?

17 THE WITNESS: Well, no.

18 MR. CHERTOFF: Who was he talking to besides  
19 you?

20 THE WITNESS: I have no idea. My  
21 understanding was with respect to documents --

22 MR. CHERTOFF: Well, do you have knowledge  
23 that he was talking to somebody else in the Office of  
24 the Attorney General or the Department of Law and  
25 Public Safety besides yourself about something related

1 to profiling?

2 THE WITNESS: No, but I didn't know if he was  
3 talking to anyone in Criminal Justice or otherwise in  
4 the Attorney General's Office. I didn't know. I  
5 didn't think that I was the person, the only person he  
6 was talking to.

7 MR. CHERTOFF: Well, who did you think in the  
8 Department of Law and Public Safety, what other lawyers  
9 did you think he was talking to?

10 THE WITNESS: Well, I don't know if he might  
11 have been talking to Jack Fahy. I don't know if there  
12 were other people involved in this matter.

13 MR. CHERTOFF: Well, was Jack Fahy involved  
14 in this matter in March of 1997?

15 THE WITNESS: He was involved in the Soto  
16 brief.

17 MR. CHERTOFF: But in --

18 THE WITNESS: In the appeal.

19 MR. CHERTOFF: -- dealing with the Department  
20 of Justice and the profiling inquiry by the Department  
21 of Justice --

22 THE WITNESS: Well, with respect to the  
23 document production, Jack did not have much involvement  
24 in that particular matter, the production of documents.

25 MR. CHERTOFF: I mean you'd agree with me

1 that the production of documents issue involved to a  
2 large extent the scope of the Department of -- Federal  
3 Department of Justice inquiry, correct?

4 THE WITNESS: It dealt with what documents  
5 did the Department of Justice want.

6 MR. CHERTOFF: And did it also deal with the  
7 position that the State of New Jersey was going to take  
8 in dealing with the Federal Department of Justice about  
9 what the scope of the inquiry should be?

10 THE WITNESS: Well, I would imagine so. For  
11 example, two issues that I did not anticipate dealing  
12 with in working on this matter were the training, the  
13 DEA issue as far as the training and the consent to  
14 search issue on how that should be characterized. That  
15 I assume I became involved in because Tom Gilbert saw  
16 both of those as being related to dealing with Mark  
17 Posner on the production of documents. That's why -- I  
18 believe that's why I was involved in those. Not the  
19 general racial profiling issue. Those two dealt with  
20 certain issues that we're going to deal with dealing  
21 with Mark Posner and documents. And I'm not trying to,  
22 you know, I want to be careful. I'm not trying to  
23 mince words here, but I really got a sense that my  
24 involvement was in that ambit.

25 SENATOR GORMLEY: If I may. You saw your

1 role as serving as a contact person with Sergeant  
2 Gilbert. Not saying you're the exclusive contact  
3 person, but you knew you were a contact person?

4 THE WITNESS: Yes, I did.

5 SENATOR GORMLEY: Okay. And you saw your  
6 role as focusing with him on the information he was  
7 providing as information interfaced with the Justice  
8 Department's review?

9 THE WITNESS: Yes, sir.

10 SENATOR GORMLEY: Okay. During this period  
11 of time, let's say January 1st -- the first few months  
12 of 1997, as a result of that relationship with Sergeant  
13 Gilbert, you were having conversations with Sergeant  
14 Gilbert?

15 THE WITNESS: That's correct.

16 SENATOR GORMLEY: Okay. During that period  
17 of time, did Sergeant Gilbert relate to you based upon  
18 the reviews that he had done that he had concern  
19 regarding the vulnerability of New Jersey once the  
20 information related to New Jersey, in terms of the  
21 reviews that he's done, was compared to Maryland's?  
22 Did he express concern saying, given the statistics  
23 that I have and given the statistics of what caused the  
24 action in Maryland, we have a problem?

25 THE WITNESS: No. I will tell you --

1 SENATOR GORMLEY: He never said that?

2 THE WITNESS: What Tom Gilbert said to me was  
3 at some point "That our consent numbers are in the ball  
4 park with Maryland and there is an appearance there."  
5 Now, maybe I'm just saying what you said differently,  
6 but there's an appearance there that I want you to make  
7 sure you tell Alex. Alex Waugh.

8 SENATOR GORMLEY: Okay. Well, now -- because  
9 I don't want to put words in your mouth, it sounded  
10 like a problem to him, didn't it?

11 THE WITNESS: No.

12 SENATOR GORMLEY: It didn't sound like a  
13 problem?

14 THE WITNESS: I didn't perceive it that way,  
15 sir. It did not. Well, hold it. When I say problem,  
16 here we go. Maybe I'm not disagreeing with you. The  
17 appearance that our numbers were in the same ball park  
18 as Maryland, that appearance concerned him.

19 SENATOR GORMLEY: Let me ask a question. Do  
20 you think it was appearance or fact? I mean I'm  
21 curious, because he's done a survey and put raw data  
22 together. There is a question of appearance, but when  
23 there's an appearance that's when you go out and you  
24 garner facts. Didn't he go out and garner facts and  
25 present them to you?

1 THE WITNESS: No, he did not. He told me on  
2 two occasions, the first time he said, "George, here's  
3 the Maryland case, our numbers are in the same ball  
4 park." I said -- he goes, "Could you make sure you let  
5 Alex Waugh know?" I said, Tom, I'll do that. This is  
6 the first I'm like hearing about this. I don't even --

7 SENATOR GORMLEY: Did he go over the numbers  
8 with you?

9 THE WITNESS: No, he did not. Then --

10 SENATOR GORMLEY: Can I ask a question? Did  
11 you ask for the numbers?

12 THE WITNESS: No, I did not.

13 SENATOR GORMLEY: Why not?

14 THE WITNESS: I went to Alex, I told him this  
15 -- because as far as I understood in my -- I don't want  
16 to seem like a dummy, in my limited knowledge, the  
17 appearance issue is what he was concerned about. I  
18 also had been told that -- can I?

19 SENATOR GORMLEY: Okay.

20 THE WITNESS: -- that consent to search  
21 numbers, the position of the State Police and Criminal  
22 Justice were that they are not relevant to stop issues,  
23 that they're post-stop issues.

24 SENATOR GORMLEY: Well, you just said the  
25 concern was appearance, okay. That was what they were

1 worried about.

2 THE WITNESS: Yes.

3 SENATOR GORMLEY: Appearance. And prior to  
4 that you said that in talking with Sergeant Gilbert  
5 there was an appearance problem.

6 THE WITNESS: Yes, that's correct.

7 SENATOR GORMLEY: So consequently based on  
8 what they thought was a problem, that criteria had been  
9 met in your mind because it was an appearance problem.

10 THE WITNESS: Yeah.

11 SENATOR GORMLEY: So they had a problem.

12 THE WITNESS: I don't know how you're  
13 defining a problem. The problem was --

14 SENATOR GORMLEY: I used your definition.

15 THE WITNESS: Well, as I understood it, the  
16 problem was is that you have a Maryland case where a  
17 result happened based on consent-to-search data. He  
18 then says our numbers are in the same ball park, he  
19 goes. But it wasn't like he was concerned, he was  
20 concerned that -- he wasn't concerned that there was  
21 any type of improper conduct at State Police, I never  
22 got that sense, but he was concerned that there was an  
23 appearance that we have two cases that could look the  
24 same. He said, "Could you talk to Alex?" I said yes.  
25 I then saw him again, I don't know if it was a week or

1 two later, he said, "Did you tell Alex?" I said yes.  
2 He goes, "All right. Make sure you let him know." And  
3 I told Alex again. And that's what I did.

4 SENATOR GORMLEY: So he gathered these  
5 statistics. You didn't ask for him to send the  
6 statistics over to you?

7 THE WITNESS: No, I did not.

8 SENATOR GORMLEY: Okay. Did Alex ask you for  
9 the statistics?

10 THE WITNESS: No, he did not.

11 SENATOR GORMLEY: So you were the conduit to  
12 the State Police on the matters related to the Justice  
13 Department review. You've stated that. There was an  
14 appearance problem and it was -- and once this report  
15 was made -- or he gathered this data and no one -- you  
16 or to your knowledge Alex Waugh did not request the  
17 information be sent over so you could study it?

18 THE WITNESS: I can't speak about what Alex  
19 did or did not do. All I can tell you is my job was to  
20 get documents related to specific requests made by the  
21 DOJ. In the course of doing that, Tom Gilbert tells me  
22 that our consent numbers are in the same ball park as  
23 Maryland. I'm like well what's Maryland? And he  
24 explains. He had explained what the Maryland case was  
25 about and he said, "I want you to tell -- make sure

1 Alex knows about this." And that's what I did.

2 SENATOR GORMLEY: And when you told Alex,  
3 what was his reaction?

4 THE WITNESS: I can't recall specifically  
5 what his reaction was. I have no recall of that. And  
6 I know though, like a week later or so because I talked  
7 to Tom again, I told Alex a second time because Tom  
8 wanted me to make sure that Alex knew.

9 SENATOR GORMLEY: Okay.

10 MR. CHERTOFF: And what was his reaction  
11 after the second time?

12 THE WITNESS: I don't recall. And I really  
13 didn't put any significance on this and I think the  
14 reason was is because the position that I had heard  
15 from people was consent-to-search information is post-  
16 stop and that that was the position of the Department.

17 MR. CHERTOFF: But actually, isn't what  
18 really happened that because you came to understand  
19 that the consent-to-search data was a problem that you,  
20 in fact, advocated that the Department not turn over  
21 consent-to-search data and hold the line on restricting  
22 the scope of the federal investigation?

23 THE WITNESS: That's not true.

24 MR. CHERTOFF: All right. Is it your  
25 position that you were merely a message carrier back

1 and forth between Sergeant Gilbert and Executive  
2 Assistant Attorney General Waugh and you never actually  
3 substantively recommended him taking a position on  
4 this?

5 THE WITNESS: No, I'm not saying that. But  
6 as this thing progressed and I became to understand a  
7 little bit more about the position of the Department, I  
8 was asked by Alex to do an option memo. And part of  
9 that memo, and there were discussions before I wrote  
10 the memo amongst Alex and Jack, it wasn't like I just  
11 penned that thing off, they knew generally what my  
12 arguments would be and I happened, from what I  
13 understood the Department's position, I thought that  
14 there was a logic to the fact that this is post-stop.  
15 It's the position of the Department and it logically,  
16 for someone in my position coming into this matter, I'm  
17 like yeah, that makes sense.

18 MR. CHERTOFF: Was that option memo written  
19 after you had had these conversations with Sergeant  
20 Gilbert about the consent-to-search statistics?

21 THE WITNESS: I would say yes.

22 MR. CHERTOFF: All right. Let me come to  
23 that. I was going to build up to that. Let me just --  
24 before we get to the option memo, let me just take you  
25 through a couple of other --

1 MS. GLADING: I wonder if I can just cover a  
2 couple of quick things on the documents before you move  
3 too far off?

4 MR. CHERTOFF: Um-hmm.

5 MS. GLADING: On R-7.

6 THE WITNESS: Hold on one second.

7 Yes.

8 MS. GLADING: On the second page.

9 THE WITNESS: Yes.

10 MS. GLADING: Last paragraph. Toward the  
11 end. You're discussing the issue of beginning a  
12 traffic violator survey, that Mr. Posner raised that  
13 issue. And that Mr. Posner said he'd like to send a  
14 letter detailing the methodology which DOJ would be  
15 interested in utilizing to evaluate State Police  
16 enforcement data. And as part of this letter DOJ would  
17 include the specific dates which it would like to  
18 examine as part of its study. And then you write,  
19 "After some discussion, Mr. Posner agreed that he would  
20 not object to orally advising us of DOJ's proposed  
21 methodology and dates if we wish to proceed in that  
22 fashion."

23 THE WITNESS: Yes.

24 MS. GLADING: "He indicated that he was  
25 comfortable with our working relationship and would be

1 amenable to proceeding in that manner."

2 Can you tell me why you engaged in some  
3 discussion with Mr. Posner about not sending a letter  
4 and instead being advised orally?

5 THE WITNESS: It's my recollection that Mark  
6 Posner said that he was going to select 30 dates at  
7 random and I think I went back and forth with him  
8 saying how are you going to select these at random?  
9 And what if your random takes 15 or 20 Sundays or 15 or  
10 20 Saturdays, how are you going to do all this? And he  
11 went -- he really didn't explain how he was going to do  
12 it by random as opposed to are they going to be  
13 weighted to certain days of the week. And I said to  
14 him, I was concerned that if he put dates in writing,  
15 we were going to be stuck with them. So what I said to  
16 him is, would you -- would you have a problem telling  
17 me orally what the dates would be and we can evaluate  
18 whether they're by random or not? But I'll get back to  
19 you.

20 I then went back to Alex Waugh and told him  
21 our discussion and Alex was, "No, tell him put them in  
22 writing. That's no big deal." And he subsequently  
23 sent the dates in writing to us.

24 MS. GLADING: Actually, this discussion is  
25 about a traffic violators survey and not about --

1 THE WITNESS: No, I --

2 MS. GLADING: -- the overall analysis. This  
3 is Paragraph 3. So I wonder if you could clarify --

4 THE WITNESS: No, I'm just -- honestly, I  
5 think with respect to the proposed methodology, I had  
6 two or three conversations with Mark Posner in 1997,  
7 every one of them I said, Mark, send whatever you want.  
8 If you have an idea on how to do this violators survey  
9 or the methodology, I always said, send it to me.  
10 We're open to anything. And then I would pass it along  
11 to our expert and to other people, primarily Jack Fahy  
12 and Alex Waugh in the Department, to evaluate. You  
13 couldn't do a methodology orally. It's just  
14 impossible. I believe this --

15 MS. GLADING: Well then why did you write  
16 that?

17 THE WITNESS: This had to do with the dates.  
18 It had to do with the dates. I was worried that we  
19 were going to be locked in and then people would say,  
20 oh, now we're stuck with these dates, George. We  
21 wanted a chance to take a look at them.

22 MS. GLADING: Okay. If you could look at  
23 F-21 for a moment.

24 THE WITNESS: Yes.

25 MS. GLADING: Page 2, the last paragraph. In

1 your discussion of the brief and the reference in the  
2 brief to studies showing that a large percentage of  
3 arrests for methamphetamine are Caucasian. And then  
4 you say, "Also, you may want to make the point here  
5 that there's no selective prosecution charge  
6 sustainable by males, although they receive a  
7 disproportionate number of domestic violence sanctions.  
8 These two examples show that minority males are not  
9 always on the wrong side of this issue."

10 Can you explain how that's analogous to  
11 racial profiling, what you wrote there?

12 THE WITNESS: Well, the -- I mean it's hard  
13 for me to say stepping back, and as I said before, how  
14 I reviewed the brief. The domestic violence sanction  
15 was contained in the brief, in the appeal brief that  
16 went. And I think it was just like there's a  
17 disproportionate number of males who were subject to  
18 that and with my limited knowledge of the issue, I said  
19 it shows that it's not -- arguably not always  
20 minorities or in the case with methamphetamine, which  
21 again was something that I think was in the brief.  
22 Sometimes the numbers show one group is receiving a lot  
23 more of the prosecution and that you just don't know  
24 based upon numbers all the time. I mean I just was --

25 MS. GLADING: Don't know based --

1 THE WITNESS: -- I just went through this  
2 brief and I just, you know, Alex told me to look at it  
3 and I just gave my opinions and some of them may have  
4 been off the mark and I don't know if any of them even  
5 made it into the brief.

6 MS. GLADING: Thanks.

7 MR. CHERTOFF: All right. I'm going to put  
8 before you what I've marked as R-9, R-10, R-11, R-12,  
9 R-13 and R-14 for identification. It's a series of  
10 correspondence which we're going to give to you.

11 Okay. It relates to the issue of patrol  
12 logs. Now, R-9 is a memo to Alex Waugh and Jack Fahy  
13 from you regarding U.S. DOJ requests for copies of  
14 patrol logs for certain days, correct?

15 THE WITNESS: Yes.

16 MR. CHERTOFF: You say at the bottom, "I  
17 would like to start setting the precedent that we are  
18 not going to provide any names if we start producing  
19 consent-to-search and arrest report documents."

20 What was your reason for that?

21 THE WITNESS: I think I was just being a  
22 litigator. It's as simple as that and I think that's  
23 why I put "Give me your thoughts."

24 MR. CHERTOFF: And when you say you were just  
25 being a litigator, what was the reason you didn't want

1 to provide the names if you started producing consent-  
2 to-search reports?

3 THE WITNESS: Well, I guess -- I would think  
4 that my thinking at the time was if DOJ was looking to  
5 evaluate the stop data, that they were talking about  
6 the overall stop data as opposed to they said they  
7 weren't looking at individual troopers. And DOJ were  
8 like fine, yeah, that's -- we have no problem with  
9 this. DOJ had no problem with this at all. I mean  
10 Mark Posner is like fine, we're looking at the big  
11 picture here. And that's my explanation.

12 MR. CHERTOFF: So why did you not want to  
13 give them names? That's an affirmative suggestion on  
14 your part.

15 THE WITNESS: I was just being a litigator.  
16 It's -- I don't want to give them anymore than we have  
17 to and that's why I said, what are your thoughts? You  
18 know, if I'm wrong, tell me.

19 MR. CHERTOFF: And what were their thought?  
20 What was Mr. Waugh's thought, did he agree?

21 THE WITNESS: Yeah, he agreed, but he also  
22 was noted and I said, DOJ has no problem with this.  
23 They had no problem with that at all.

24 MR. CHERTOFF: Now, then on April 2nd they  
25 sent you R-10 which was proposed dates for obtaining

1 State Police stop records, correct?

2 THE WITNESS: Yes.

3 MR. CHERTOFF: And you sent that on to  
4 Alexander Waugh by way of a cover memo dated R-11,  
5 correct?

6 THE WITNESS: Yes.

7 MR. CHERTOFF: With a statement, "Let's  
8 discuss," right?

9 THE WITNESS: Yes.

10 MR. CHERTOFF: I'm going to show you R-12.  
11 This is a copy of a memo from Alex Waugh to Peter  
12 Verniero transmitting the information you had passed on  
13 on April 2nd. And this is dated April 7th. Have you  
14 seen this memo before?

15 THE WITNESS: Never. No, I have not.

16 MR. CHERTOFF: Were you familiar with the  
17 fact -- well, let me read you from this sentence here  
18 from R-12. "DAG Rover is working with State Police to  
19 determine whether there is a pattern to these requests,  
20 and if so, whether there is a basis to suggest that  
21 they choose additional or alternate dates."

22 Did you, in fact, work with the State Police  
23 to determine whether there was a pattern to the  
24 requests?

25 THE WITNESS: I don't recall. I'm sure that

1 we looked at what days of the week they were to see how  
2 they were distributed. I don't know how formal it got.  
3 My recollection of this is we just said -- Mark Posner  
4 said, "George, these are random." And we just said  
5 fine. But I don't recall exactly, but knowing me, I'm  
6 sure I just didn't say, oh, these are great. I must  
7 have liked look at how many were Tuesdays, how many  
8 were Wednesdays, et cetera.

9 MR. CHERTOFF: And I'm showing you R-13. Was  
10 this your response on April 29th to Mr. Posner  
11 indicating you were going to meet with the expert to  
12 discuss the 15 dates?

13 THE WITNESS: That's my -- yes, that's my  
14 letters.

15 MR. CHERTOFF: And then R-14 is your letter  
16 to the expert asking him to do an analysis with respect  
17 to the dates, right?

18 THE WITNESS: Yes. And as I thought, I did  
19 look at the days, the days of the week.

20 MR. CHERTOFF: Now, at the same time in  
21 April, you said you were in the process of preparing an  
22 options memo, right?

23 THE WITNESS: Yes.

24 MR. CHERTOFF: I'm going to show you what  
25 we're going to mark as R-15 for identification -- I'm

1 sorry, what's been marked as W-27 for identification,  
2 which has a cover sheet to PV, Peter Verniero, from  
3 Alex Waugh, but has attached to it a memo dated April  
4 22nd, 1997 to Alex Waugh from you. And let me ask you  
5 whether this is the option memo you're talking about?

6 THE WITNESS: Yes, sir, that's the one.

7 MR. CHERTOFF: Did you know that this was  
8 being transmitted up to Peter Verniero?

9 THE WITNESS: No, sir.

10 MR. CHERTOFF: Was it your general  
11 understanding from Alex Waugh he was transmitting  
12 things up to the Attorney General?

13 THE WITNESS: I had a sense that certain  
14 things might be going to the Attorney General. I don't  
15 know if that sense was because of my prior working  
16 relationship with Alex where he would -- he had a style  
17 of letting people write a memo and then he would put a  
18 cover and forward it up, or if there was something in  
19 this particular relationship. But I had a sense that  
20 some memos were indeed going to the Attorney General.

21 MR. CHERTOFF: Was that Alex Waugh's regular  
22 practice to take a memo someone had prepared, put a  
23 cover sheet with a note on it and transmit it up to his  
24 superior?

25 THE WITNESS: In my prior working with Alex,

1 some supervisors like to take your memo and they add a  
2 little to it and rewrite it and put their name on it.  
3 Alex did that a number of times, but he also had a  
4 habit of putting a cover memo on and forwarding on. I  
5 think the reason why it just came to me, the reason why  
6 I think memos were going -- some memos were going to  
7 the Attorney General is a couple of my memos that we've  
8 covered, Alex asked me to summarize a phone  
9 conversation and that triggered to me that he was  
10 asking me to do that so he could then send it to the  
11 Attorney General. That's my sense.

12 MR. CHERTOFF: Now, this memo, you've  
13 indicated, you told us already, this options memo was  
14 prepared after you had your two conversations with  
15 Sergeant Gilbert concerning the consent-to-search data  
16 in New Jersey, right?

17 THE WITNESS: I would say it would have to  
18 be, yes.

19 MR. CHERTOFF: All right. I'm going to show  
20 you now -- I want you to keep your option memo in front  
21 of you, but I want to show you G-13, which is an  
22 undated memo to Colonel C.A. Williams from Sergeant T.  
23 Gilbert, headed Justice Department Inquiry. And I want  
24 to ask you if you've seen this before?

25 THE WITNESS: I do not recall having seen

1 this before.

2 MR. CHERTOFF: All right. I want to take you  
3 through the content of it and I want you to tell me  
4 whether you agree or disagree that you were told in  
5 substance the content of these various parts of the  
6 memo from Sergeant Gilbert when he discussed the issue  
7 of the consent-to-search data with you.

8 THE WITNESS: Okay. Just so I know, tell me  
9 exactly what you're going to have me do here.

10 MR. CHERTOFF: I'm going to direct your  
11 attention to certain parts of this memo.

12 THE WITNESS: Okay.

13 MR. CHERTOFF: And I want you to tell me  
14 whether you agree or disagree that Sergeant Gilbert  
15 told you about this information when he discussed  
16 consent-to-search data with you in the spring of 1997,  
17 okay?

18 THE WITNESS: We can do that. The thing that  
19 Tom Gilbert said to me was that our consent numbers are  
20 in the ball park. That was in essence the extent of my  
21 discussion with him on this. Now, if that's where you  
22 want to go, we can, but I have no recollection of Tom  
23 talking about any numbers and I suspect, although no  
24 one is ever certain, that if I did, I would have passed  
25 that information along, the specifics, to Alex.

1 MR. CHERTOFF: Well, you'll certainly agree  
2 with me, anything you were told by Sergeant Gilbert you  
3 passed along to Alex Waugh, right?

4 THE WITNESS: Anything of substance was, yes.

5 MR. CHERTOFF: So let's look at Page 1 of  
6 G-13. The first passage says, "In order to get a  
7 handle on what we're facing, I've looked at various  
8 types of reports for 1994 to 1996 from the Pike;  
9 Cranbury, New Brunswick and Moorestown. The numbers  
10 are not good."

11 Do you remember in substance knowing in the  
12 spring of 1997 that Tom Gilbert had actually looked at  
13 the '94 to '96 data from Cranbury and Moorestown?

14 THE WITNESS: No.

15 MR. CHERTOFF: Didn't know that?

16 THE WITNESS: No.

17 MR. CHERTOFF: Absolutely positive you  
18 weren't told that?

19 THE WITNESS: I was not told that.

20 MR. CHERTOFF: "The numbers are not good."  
21 Were you told that?

22 THE WITNESS: No.

23 MR. CHERTOFF: "As a reference point, Dr.  
24 Lamberth's study of Maryland State Police data for  
25 1-95 to 9-96 revealed their searches were 80.3 percent

1 minority and 72.9 percent black. It was on the basis  
2 of Lamberth's analysis that the Maryland State Police  
3 was compelled by the court to enter into the settlement  
4 agreement. Here's a sampling of our numbers concerning  
5 searches."

6 And then you see the memo indicates  
7 Moorestown 89 percent minority; 67 percent black.  
8 Cranbury, January to March '94, 94 percent minority; 69  
9 percent black. And July to December 1996, 79 percent  
10 minority; 55 percent black.

11 Did you get in substance that information  
12 from Tom Gilbert in the spring of '97?

13 THE WITNESS: Sir, I'm telling you, my  
14 recollection is Tom Gilbert said to me that "Our  
15 consent numbers are in the ball park with Maryland.  
16 Could you tell -- pass that along to Alex." And then  
17 again, a week, week and a half later I saw Tom again  
18 and he said the same thing to me, I said I told Alex.  
19 He goes, "Just make sure you tell Alex." And I did.

20 MR. CHERTOFF: Did he tell specifically as to  
21 Moorestown and Cranbury that the numbers were the same?

22 THE WITNESS: He didn't talk about numbers.  
23 He used ball park.

24 MR. CHERTOFF: Did he tell you that he had  
25 also looked at the Newark numbers and the Newark

1 numbers showed very high percentages of minority stops?

2 THE WITNESS: I have no recollection of him  
3 talking about numbers.

4 MR. CHERTOFF: Did he tell you -- let's turn  
5 to the next page. "Probable cause searches documented  
6 by operations reports. Cranbury, total cases: 80  
7 percent minority; 73 percent black. Mirrors Maryland  
8 State Police search stats of 80.3 percent and 72.9  
9 percent black."

10 Did he tell you that Cranbury probable cause  
11 searches mirrored the Maryland searches?

12 THE WITNESS: I have no recollection of that.

13 MR. CHERTOFF: Did he tell you that in  
14 Lamberth's study of Maryland State Police data, he had  
15 looked at the activity of individuals troopers? Did  
16 Gilbert tell you that?

17 THE WITNESS: That he did? No.

18 MR. CHERTOFF: Did Gilbert tell you that he  
19 had done his own analysis of data on individual  
20 troopers and that was not looking very good?

21 THE WITNESS: No, he did not.

22 MR. CHERTOFF: Did he indicate to you that he  
23 had examined the arrest statistics for troopers whose  
24 cases were involved in the Soto case and that they were  
25 very high numbers and that it was obvious that their

1 probable cause and consent-to-search numbers would be  
2 very high as well, on a par with Maryland State Police?

3 THE WITNESS: I have no recollection of that.  
4 I think --

5 MR. CHERTOFF: Did he tell you that he looked  
6 at these statistics for the troopers involved in the  
7 Soto case?

8 THE WITNESS: No, he did not and I think I  
9 would remember.

10 MR. CHERTOFF: Did he say to you in  
11 substance? "At this point we are in a very bad spot.  
12 Through the Gloucester County case, the Illinois State  
13 Police investigation and the Maryland State Police  
14 settlement, the Justice Department has a very good hand  
15 -- very good understanding of how we operate and what  
16 types of numbers they can get their hands on to prove  
17 their position."

18 Did he communicate that to you?

19 THE WITNESS: No, he did not.

20 MR. CHERTOFF: Did he indicate to you? "That  
21 traffic, even if we can get any type of positive  
22 results out of a new traffic study," meaning a stop  
23 study, "the gains we might achieve will still be  
24 overshadowed by the search percentages. Our opponents  
25 already know this. The Maryland agreement skips over

1 initial stop data in favor of focusing on those stops  
2 which evolve as search."

3 Did he communicate in substance that to you?

4 THE WITNESS: No, sir, he did not.

5 MR. CHERTOFF: Did he tell you again in the  
6 spring of 1997, did Sergeant Gibert say to you "That  
7 whatever we might be able to do to defend ourselves on  
8 stop data, if we get into consent-to-search data, we  
9 really don't have a defense?"

10 Did he effectively say that to you?

11 THE WITNESS: He absolutely did not say that  
12 to me, because I wouldn't have written what I wrote in  
13 my April 22 options memo.

14 MR. CHERTOFF: Did he say to you -- I'm going  
15 to turn to Page 3, did he say to you in substance,  
16 "That it is very hard in some cases to get our  
17 personnel to believe a problem won't just go away if we  
18 ignore it. They need to see something that's clear and  
19 convincing. I suggest we distribute the Maryland State  
20 Police study and their settlement agreement in  
21 conjunction with the next Internal Affairs bulletin.  
22 The message in these documents is very clear and will  
23 be obvious to any trooper who reads it."

24 Did he make any suggestion along those lines  
25 to you?

1 THE WITNESS: No, sir.

2 MR. CHERTOFF: Now, I want to read you some  
3 testimony from Sergeant Gilbert and I want you to tell  
4 me whether you agree or disagree with this.

5 Sergeant Gilbert testified with respect to  
6 this very memo which he authored --

7 MS. ACCURSO: Mr. Chertoff, can you give me a  
8 cite if you're going to read from it?

9 MR. CHERTOFF: Yeah, I'm about to. This is  
10 from his testimony on February 14th, 2001 at which --  
11 in fact, you were present representing him.

12 And in reference to this memo at Page 202,  
13 Line 13, the question is to Sergeant Gilbert. Listen  
14 to the questions and I want to know if you agree or  
15 disagree with Sergeant Gilbert's testimony.

16 "MR. WEBER: Did you share the information  
17 contained in this memo with anyone other than Colonel  
18 Williams?

19 THE WITNESS: Yes, sir, I did."

20 "MR. WEBER: Who did you share it with?

21 THE WITNESS: I know I shared it with  
22 Sergeant Blaker, who at the time was my supervisor up  
23 the chain."

24 "SENATOR GORMLEY: How about Mr. Rover?

25 THE WITNESS: With this information?"

1 "SENATOR GORMLEY: Yes.

2 THE WITNESS: Yes, sir, I did."

3 "QUESTION: So you shared it with Mr. Rover?  
4 When did you share it with Mr. Rover?

5 THE WITNESS: I believe after the -- well,  
6 not that I believe, after the report had gone in to the  
7 Colonel. The Colonel directed me to get in touch with  
8 Mr. Rover and let him know basically the information I  
9 had cultivated."

10 MR. CHERTOFF: Now, you hear that testimony,  
11 right?

12 THE WITNESS: Yes, I do.

13 MR. CHERTOFF: Okay.

14 "QUESTION: Did he specifically tell you to  
15 share the information with Mr. Rover?

16 THE WITNESS: Yes, he did."

17 That's over on Page 204.

18 Page 206, Line 11.

19 "QUESTION: How did you report the  
20 information to Mr. Rover?

21 THE WITNESS: I basically had contacted Mr.  
22 Rover. Told him about the analysis that I did. Gave  
23 him some details. Related to him at that point I also  
24 had the report in hand from then Captain Brennan about  
25 the Maryland statistics and indicated that from what I

1 had done up to date, although it was a partial  
2 analysis, it wasn't a full -- full-blown, you know,  
3 scientific analysis, it appeared that we were -- had  
4 search rates commensurate with what the Maryland State  
5 Police were indicated to have had through the report  
6 that Dr. Lamberth did that was put out over the  
7 Internet."

8 Now, do you dispute Sergeant Gilbert's  
9 rendition of what he told you?

10 THE WITNESS: Sir, I have no recollection of  
11 that. I have to dispute it. I respect Tom Gilbert. I  
12 did not have this information.

13 MR. CHERTOFF: He did not tell you that he  
14 had done a partial analysis and that there were search  
15 rates commensurate with the Maryland State Police had  
16 indicated they had in the Lamberth study?

17 THE WITNESS: Sir, I have no recollection of  
18 that and I -- information like that have changed my  
19 thinking on a lot of issues.

20 MR. CHERTOFF: You'd agree with me the  
21 information I've shown you on exhibit G-13 is huge  
22 information?

23 THE WITNESS: Yeah.

24 MR. CHERTOFF: Because you'd agree with me  
25 that if the actual consent-to-search data for a New

1 Jersey barracks were commensurate with what the  
2 information was that led to the consent to search --  
3 led to the settlement in Maryland, that would suggest  
4 there was a very big problem in New Jersey as it  
5 relates to consent to search, correct?

6 THE WITNESS: I want to be careful. I was  
7 operating under the impression, and Tom Gilbert had the  
8 impression, that consent-to-search data by State Police  
9 and Criminal Justice or the Department, was considered  
10 post-stop information. However, with respect to the  
11 appearance issue, which is what Tom indicated to me,  
12 "Our numbers are in the same ball park. You should  
13 tell Alex. You know, make sure you tell Alex." That's  
14 what I did. I didn't look at consent-to-search numbers  
15 as in and of themselves dispositive that there was a  
16 racial profiling issue in New Jersey. Because the  
17 people around me, that wasn't their position. Alex,  
18 Jack, I mean this is -- this is the environment that I  
19 was working in and I didn't have any of my own  
20 independent information in this particular area.

21 MR. CHERTOFF: Here's my question. You would  
22 agree with me that the information in G-13, showing  
23 that the statistical breakdown of percentages of  
24 minority who were asked to consent to search, is  
25 approximately the -- is very high and approximately the

1 same as Maryland was very significant information that  
2 you would certainly have brought to the attention of  
3 Alex Waugh?

4 THE WITNESS: Yes.

5 MR. CHERTOFF: Now, I want to read to you  
6 again from Page 208, Line 2. Senator Gormley. This is  
7 again Sergeant Gilbert.

8 "SENATOR GORMLEY: Your conversation with Mr.  
9 Rover, you told him the basic information in the  
10 report, didn't you?

11 THE WITNESS: Yes, sir, I did."

12 Do you dispute that here?

13 THE WITNESS: I have no recollection of him  
14 giving me this type of information.

15 MR. CHERTOFF: Do you dispute it? I want to  
16 be clear, are you disputing it or are you saying you're  
17 just not sure one way or the other?

18 THE WITNESS: I feel pretty comfortable -- I  
19 would remember this. I would remember hearing this  
20 kind of stuff and it's that kind of information that I  
21 would pass to Alex Waugh.

22 MR. CHERTOFF: Senator Gormley again at Line  
23 6.

24 "SENATOR GORMLEY: Okay. You compared it to  
25 Maryland in terms of what had occurred in Maryland, in

1 terms of what had occurred in Maryland with same or  
2 similar information?

3 THE WITNESS: Yes, sir."

4 Again, do you dispute that, that he made that  
5 explicit comparison?

6 THE WITNESS: If it's different than "Our  
7 numbers are in the same ball park," yes. That was the  
8 term he used. It wasn't a lengthy discussion, it was,  
9 "Hey, we have consent numbers in the same ball park.  
10 Tell Alex."

11 MR. CHERTOFF: Did you know Sergeant Gilbert  
12 had actually written a report about this?

13 THE WITNESS: No, I did not.

14 MR. CHERTOFF: Do you disagree with the  
15 statement by the witness at Line -- Sergeant Gilbert at  
16 Line 22 of Page 208, that he had given you a  
17 comprehensive overview of what was in G-13?

18 THE WITNESS: Yes, I do disagree with that.

19 MR. CHERTOFF: I'm going to go to Page 208,  
20 Line 24, still relating to G-13.

21 "MR. WEBER: How long was the phone  
22 conversation you had with Mr. Rover, as best as you can  
23 recall?

24 THE WITNESS: I don't recall. I had numerous  
25 conversations with him. I don't know. How ever long

1 it would have taken me to describe my findings."

2 Do you disagree that he described his  
3 findings to you?

4 THE WITNESS: I have to say I disagree. I  
5 have no recollection and I believe that this kind of  
6 information I would recall.

7 MR. CHERTOFF: I'm not going to spend too  
8 much time belaboring this, I just want to go to Page  
9 210 at Line 25.

10 "MR. SOKOL: You're saying you weren't  
11 surprised by him not asking you for it, that's the part  
12 that --

13 THE WITNESS: I had felt that I gave him, you  
14 know, a good -- a good taste and a good feel for what  
15 was there and basically, you know, what it meant. I  
16 explained to him how our numbers had basically compared  
17 to the report. I got him the Maryland State Police.  
18 So I guess that I felt I had given him a good overview  
19 on things and basically from the perspective of him  
20 being able to pass that information on, I guess he was  
21 satisfied at that point that I had given him a, you  
22 know, pretty comprehensive packet of information."

23 THE WITNESS: My only comment to that is if I  
24 was given this kind of information and he said he had a  
25 report, knowing me, I just cannot believe that I would

1 say send it to me so I could sent it to somebody else.  
2 That just -- I want to tell you, I like Tom Gilbert, I  
3 mean he's a good man. I don't think it happened. And  
4 I would say give it to me so I can move it along.

5 MR. CHERTOFF: Now, let's go to your options  
6 memo, W-27.

7 MS. GLADING: Before we go there. Do you  
8 recall a meeting on March 6th, 1997 with Mr. Fahy and  
9 Mr. Williams and other State Police officers just right  
10 about the time of this information being available?

11 THE WITNESS: I don't have a specific  
12 recollection. There were -- there were some meetings I  
13 had with Tom Gilbert and the Colonel regarding the  
14 status of the DOJ, but I didn't think there was a  
15 meeting that early on with the Colonel, but I can't be  
16 sure.

17 MR. CHERTOFF: When did you meet with the  
18 Colonel? When do you recall the first time you met  
19 with the Colonel about this?

20 THE WITNESS: I think -- I think there was  
21 one meeting where Tom Gilbert asked me to come up in  
22 late '97 to discuss the status of the DOJ inquiry.

23 MR. CHERTOFF: And where was that?

24 THE WITNESS: I think it was up at Division  
25 headquarters.

1 MS. GLADING: When do you think that was?

2 THE WITNESS: I think it was late '97.

3 MS. GLADING: To discuss the status of DOJ?

4 THE WITNESS: It was five minutes. It was  
5 where are we going? What have they produced? And that  
6 meeting I remember the Colonel complaining again about  
7 the DEA issue, which is something that Tom Gilbert  
8 always said he complained about.

9 MS. GLADING: Is that the first time you were  
10 at a meeting at State Police headquarters?

11 THE WITNESS: I can't be sure. I may have  
12 gone up one time before that. I may have gone up to  
13 see Tom Gilbert.

14 MR. CHERTOFF: Wasn't there a meeting on  
15 March 6th with you and Mr. Fahy and Colonel Williams?

16 THE WITNESS: I think I just --

17 MR. CHERTOFF: That's the one?

18 THE WITNESS: Yeah. I'm saying I think there  
19 was a meeting.

20 MS. GLADING: March 6th, 1997?

21 THE WITNESS: Yes. I said I didn't think we  
22 met that early, but there were a couple meetings with  
23 Jack Fahy and I where they asked the status of the Soto  
24 appeal and the status of the DOJ inquiry. And the  
25 meetings were like five minutes long.

1 MS. GLADING: You would drive there for a  
2 five-minute meeting?

3 THE WITNESS: Yes.

4 MS. GLADING: You testified you thought it  
5 was late '97, you could be mistaken though?

6 THE WITNESS: No, this happened. I think it  
7 happened two or three times.

8 MS. GLADING: Could it have March 6th, 1997?

9 THE WITNESS: No -- I think it could have --  
10 I'm sorry if I'm --

11 MS. GLADING: I'm not following you.

12 THE WITNESS: Maybe I misspoke. I said I  
13 didn't think there was a meeting like that this early,  
14 but there may have been.

15 MS. GLADING: Was there any discussion of  
16 consent-to-search statistics at that meeting?

17 THE WITNESS: It was -- it was -- those  
18 meetings were DOJ only. They were like what's up with  
19 Justice? Where are they going? How many documents are  
20 they asking for? Then they would ask Jack, what's the  
21 status of the Soto appeal? That was it.

22 MS. GLADING: Okay. Was there any discussion  
23 of statistics at that meeting?

24 THE WITNESS: No, there wasn't.

25 MR. CHERTOFF: Now, we've had your testimony

1 about your conversations with Sergeant Gilbert. You'd  
2 agree with me at a minimum Sergeant Gilbert told you  
3 that the statistics with respect to New Jersey were  
4 similar or commensurate with those in Maryland, right?

5 THE WITNESS: Yes, that was -- "in the ball  
6 park," is the term he used.

7 MR. CHERTOFF: Right. And you understood  
8 from that therefore that he had looked at the consent-  
9 to-search statistics in New Jersey, right?

10 THE WITNESS: He must have looked at  
11 something, yes.

12 MR. CHERTOFF: Because otherwise that  
13 statement makes no sense, right?

14 THE WITNESS: No, right and -- yes. I mean I  
15 obviously understood from that --

16 MR. CHERTOFF: Did you ask him to give you a  
17 copy of the statistics he looked at for New Jersey?

18 THE WITNESS: No, I didn't.

19 MR. CHERTOFF: Wasn't that a matter of  
20 importance to you?

21 THE WITNESS: What was important -- the  
22 matter of importance to me from my recollection of that  
23 time period was, I was producing -- I was getting these  
24 documents for DOJ. He then mentions this ball park,  
25 these numbers in the ball park, "Can you make sure you

1 tell Alex?" And I did. It was like, you know, let him  
2 know that our numbers are in the ball park. It then  
3 came up again I think maybe about a week and a half  
4 later and I said I told Alex and I said but, you know,  
5 I'll tell him again.

6 MR. CHERTOFF: So did -- in either  
7 conversation did you say give me the ball park numbers?

8 THE WITNESS: No, I did not.

9 MR. CHERTOFF: Did Alex say to you, what are  
10 these ball park numbers that you've been talking about?

11 THE WITNESS: I don't recall Alex saying  
12 that. In hindsight I'm like at a loss and the only  
13 thing I can say is at that time the people I was  
14 around, Alex and Jack, it just was like clear that  
15 consent-to-search data was post-stop and that in  
16 essence that generally was the position. And I don't  
17 know if that maybe was why I'm like, all right, I'll  
18 tell Alex. But I --

19 MR. CHERTOFF: But you actually recommended  
20 that the State take the position that it didn't want to  
21 get past the stop data precisely because you knew about  
22 the Maryland case, right?

23 THE WITNESS: No.

24 MR. CHERTOFF: You actually made a  
25 recommendation on that point, didn't you?

1 THE WITNESS: Say that again.

2 MR. CHERTOFF: Didn't you actually recommend  
3 that the State resist turning over consent-to-search  
4 data precisely because you knew that that was the basis  
5 of the Maryland consent decree?

6 THE WITNESS: No.

7 MS. ACCURSO: Mr. Chertoff, I think you're  
8 quoting from a memo and it would be fair to allow the  
9 witness to see it.

10 MR. CHERTOFF: I'm not quoting, I'm first  
11 asking him whether, in fact, that's the position he  
12 took.

13 THE WITNESS: No, it's not the position I  
14 took.

15 MR. CHERTOFF: All right. Now, we'll go to  
16 your option memo, which is we previously marked as  
17 W-27. And I want to get you --

18 THE WITNESS: May I just add one thing, sir?

19 MR. CHERTOFF: Yeah.

20 THE WITNESS: Just on Page 8 of my option  
21 memo, I put, "I am not suggesting that we refuse to  
22 provide these documents." To me the whole issue from  
23 working with the people around me, the whole issue was  
24 that consent to search, as I understood from the people  
25 around me, that data was not dispositive. And that we

1 are going to give it to Justice and that down the road  
2 there may be a fight about how people are going to use  
3 it and characterize it, but we're giving it to Justice.  
4 I mean there was never any question that when they  
5 asked for the sample days, that Justice was going to  
6 get the consent-to-search documents. I never heard  
7 anything from anyone that we weren't going to give them  
8 to them. Never.

9 MR. CHERTOFF: Well, you knew that --

10 THE WITNESS: The issue was the  
11 characterization and how they were going to be used.

12 MR. CHERTOFF: You knew, first of all, that  
13 the Department of Justice could subpoena them and force  
14 you to give them over, right?

15 THE WITNESS: Oh, of course.

16 MR. CHERTOFF: But the question was whether  
17 the State was going to resist using consent-to-search  
18 data as a basis for the inquiry, correct?

19 THE WITNESS: Yes.

20 MR. CHERTOFF: And you recommended, and I'll  
21 follow the passage you pointed out on Page 8, that you  
22 would like to articulate -- you said, "Rather I would  
23 like to articulate the State's position that these  
24 documents are not relevant to the U.S. DOJ inquiry of  
25 whether minorities are being stopped based upon their

1 race. I believe it's particularly important to address  
2 U.S. DOJ's expectations, particularly because of the  
3 Maryland case, before it starts analyzing consent-to-  
4 search data."

5 Didn't you say that?

6 THE WITNESS: Oh, absolutely, sir. And at  
7 that -- I absolutely said that. It's here in black and  
8 white and the environment was I'm dealing with an SDAG,  
9 Fahy, who just tried a case and lost, but had dealt  
10 with State Police in this profiling issue. I'm dealing  
11 with an Executive Assistant Attorney General. An  
12 appeal has been authorized like by a prior Attorney  
13 General who's a Chief Justice. And no one around me is  
14 telling me that this position, before I even  
15 articulated it in a memo, no one is telling me that  
16 this isn't post-stop. That, you know, that this is  
17 possibly a wrong characterization. No one came up and  
18 said, George, that's out the window. This memo that I  
19 have here is the product of that environment and  
20 talking with those people. And even after this memo, I  
21 think Alex, Executive Assistant Attorney General, was  
22 still of the position that it's post-stop.

23 MR. CHERTOFF: Well --

24 THE WITNESS: And I just -- but I just want  
25 you to understand the environment and the context.

1 MR. CHERTOFF: Well, let me ask you this  
2 question. When you say post-stop, it's obvious consent  
3 to search is post-stop. The issue was selective  
4 enforcement, correct? Correct?

5 THE WITNESS: Yes.

6 MR. CHERTOFF: You understood the Civil  
7 Rights question was going to be whether the troopers  
8 used selective or racial factors to enforce the law,  
9 right? Correct?

10 THE WITNESS: Yes.

11 MR. CHERTOFF: And there are several stages  
12 at which that can happen, right? Correct?

13 THE WITNESS: At the time --

14 MR. CHERTOFF: Answer my question. Are there  
15 several stages in the process where selective  
16 enforcement can arise, correct?

17 THE WITNESS: Right now I'd say yes. I  
18 understand that now.

19 MR. CHERTOFF: Right. Well, did you not --  
20 well --

21 THE WITNESS: No, I've explained. Sir, with  
22 all due respect, I mean I understand your questions and  
23 they're fair questions, but you have to understand, and  
24 I want to make it clear, that I came into this matter  
25 with no independent knowledge or history and the people

1 around me were saying that this was the Department's  
2 position. This memo at that time was the thinking -- I  
3 mean it was an options memo. It was like this maybe  
4 was going to go on to the Attorney General. It wasn't  
5 just my own original thoughts here.

6 MR. CHERTOFF: Before we get to the  
7 environment, I just want to make sure we're clear as to  
8 what the facts are. You understood, and from what your  
9 discussions you knew others understood that you were  
10 talking to, that selective enforcement can arise at  
11 different stages in the process, right? Correct? Yes  
12 or no.

13 THE WITNESS: Well, I'm not playing games.  
14 What I understood is the issue with U.S. DOJ was who is  
15 being stopped and in my mind it's --

16 MR. CHERTOFF: Here's my question.

17 THE WITNESS: -- who is being stopped.

18 MR. CHERTOFF: Here's my question. This is  
19 my question, okay. Stay with me. You understood and  
20 from your discussions with people at the Office of the  
21 Attorney General, you believed they understood that the  
22 issue, the legal issue of selective enforcement can  
23 start or can apply at various stages of the process,  
24 correct? Correct?

25 THE WITNESS: I -- I know now that selective

1 enforcement works that way. At that time my  
2 involvement was stops. I am not trying to play games  
3 with you, but you've got to be fair. I'm hearing hey,  
4 consent to searches happen after someone's stopped.  
5 Justice is looking at who's being stopped. So I'm  
6 like, okay, well apparently everyone is like this is  
7 irrelevant.

8 MR. CHERTOFF: You absolutely knew, Deputy  
9 Attorney General Rover, you absolutely knew as of the  
10 time you wrote this memo that selective application of  
11 consent to searches or selective efforts to obtain  
12 consent to searches, could be a constitutional problem.  
13 Because that's exactly what happened in the Maryland  
14 case, right? Correct?

15 THE WITNESS: As a general principle, that  
16 has to be true. You can't use race to engage in any  
17 improper law enforcement activity.

18 MR. CHERTOFF: Okay. Sir, you understood at  
19 the time you wrote the memo that if there was a racial  
20 motive in troopers deciding when to ask for consent to  
21 searches, that would be a big constitutional problem  
22 for the State, correct? You understood that at the  
23 time you wrote this.

24 THE WITNESS: I was told that for purposes of  
25 the U.S. DOJ inquiry as to are people being stopped,

1 that consent to searches happen after the stop. And  
2 maybe I didn't have the depth of understanding that you  
3 would like me to have at the time, but for me to be as  
4 descriptive and as plain in this memo, I think it shows  
5 that my mind-set was initial stop. And the U.S. DOJ  
6 was looking at initial stop. And my mind-set was in  
7 that vein and the people around me --

8 MR. CHERTOFF: Wasn't your mind-set in the  
9 vein that you were afraid that the Department of  
10 Justice would ask for the consent-to-search data so  
11 they could use that as the basis of making a selective  
12 enforcement case?

13 THE WITNESS: No.

14 MR. CHERTOFF: I'm going to read to you from  
15 Page 7 of your own memo. And tell me if these are your  
16 very words. Start at the bottom of Page 6. Tell me if  
17 these are your very words.

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

24 Is that not your own writing?

25 THE WITNESS: It is my own writing. And

1 again --

2 MR. CHERTOFF: Would you now agree with me,  
3 therefore, that you anticipated that the Department of  
4 Justice would use statistical disparities in consent to  
5 search data as a basis to make a case of selective  
6 prosecution, right?

7 THE WITNESS: Not to make a case of selective  
8 prosecution. The viewpoint, the mind-set that I had at  
9 that particular time was that people are saying that  
10 the characterization of consent-to-search data as  
11 relating to whether or not a person got stopped, and  
12 again, you know, this was all about who is getting  
13 stopped. Now --

14 MR. CHERTOFF: Now, that's --

15 THE WITNESS: -- maybe in your mind that's a  
16 simple --

17 MR. CHERTOFF: Let me stop you.

18 THE WITNESS: -- that's too simple a view,  
19 but in my mind at the time they wanted information,  
20 tickets, warnings, who is getting stopped. And I'm  
21 being told that consent-to-search information is  
22 happening after a stop and therefore is not relevant to  
23 who is being stopped.

24 MR. CHERTOFF: All right. Is it still your  
25 position when you wrote this memo you were merely

1 regurgitating back to Alexander Waugh and Jack Fahy  
2 what they were telling you, as kind of, just kind of  
3 recycling it in the blender and sending it back out?

4 THE WITNESS: No. I'm not -- I'm not  
5 distancing myself from my writing and I'm not saying  
6 that and I don't mean to imply that. What I am saying  
7 though is it was reflective of what I was hearing in my  
8 environment and again with my own understanding that  
9 the issue was when people are driving down the road,  
10 how are they being stopped?

11 MR. CHERTOFF: You don't think the Department  
12 of Justice --

13 THE WITNESS: And if you -- and if you -- I'm  
14 sorry to cut you off, sir. If you look in -- the other  
15 part of this was the viewpoint that to do it fairly,  
16 you have to look behind every search, because you need  
17 probable cause. Because a particular officer could, in  
18 fact, stop ten African-Americans and, in fact, have  
19 probable cause, where it could show that ten out of ten  
20 were, in fact, African-Americans where the numbers  
21 alone would say, guy, you're doing something wrong.  
22 But it's possible that a particular trooper who has no  
23 bias at all does, in fact, stop ten out of ten.

24 MR. CHERTOFF: But here's my question. As of  
25 the time you wrote the memo, the legal issue that the

1 Department of Justice was looking at as you understood  
2 it was, is there selective or racially-based  
3 enforcement by troopers, correct?

4 THE WITNESS: It was whether or not persons  
5 were being stopped inappropriately.

6 MR. CHERTOFF: Well, then --

7 THE WITNESS: That was my understanding.

8 MR. CHERTOFF: And you were concerned that  
9 the Department of Justice in Washington would broaden  
10 the focus to look at consent to search, because that  
11 had been used in the Maryland case as the basis to get  
12 the consent decree, right?

13 THE WITNESS: Not that they were broadening  
14 it, it was a given that they were going to get this.  
15 The issue was how are they going to characterize it and  
16 I was being in essence told that our position is it has  
17 nothing to do with the initial stop. You need to look  
18 behind --

19 MR. CHERTOFF: And the reason --

20 THE WITNESS: -- the probable cause behind  
21 all of those.

22 MR. CHERTOFF: And the reason that position  
23 was, you were talking about that position was, because  
24 you understood from your conversations with Sergeant  
25 Gilbert that if they looked at the numbers, the numbers

1 would look very bad for the State of New Jersey.

2 THE WITNESS: That's not true.

3 MR. CHERTOFF: You thought the numbers -- are  
4 you telling us you thought the numbers on consent to  
5 search for the State of New Jersey looked good?

6 THE WITNESS: No, I didn't. Tom Gilbert said  
7 they were in the same ball park, so I assumed that they  
8 were of a certain level that was not good for Maryland.  
9 Not knowing why Maryland entered into that settlement,  
10 I have no idea of what the underlying basis is, but --

11 MR. CHERTOFF: So if you knew the numbers  
12 weren't good for Maryland and led to an adverse  
13 judgment and you knew that the numbers in New Jersey  
14 were commensurate with those in Maryland, you must have  
15 concluded the numbers in New Jersey would be bad for  
16 New Jersey, right?

17 THE WITNESS: That's not true, sir. My  
18 understanding -- my understanding was these documents,  
19 it depends on how they're characterized. Consent-to-  
20 search information should not be dispositive and I'm  
21 telling you, and that's why I put something like this  
22 in writing, I take my professional career very  
23 personally and I take pride in it and I always try and  
24 do the right thing, I'm being told in this environment  
25 that this is what -- how we characterize these. And

1 I'm not hearing anything from anyone else that that's  
2 wrong. And it fits right in with the initial stop.  
3 Why are they initially stopping people? And then you  
4 get down to the race issue. And as a corollary to that  
5 is what is said is, you then would have to look behind  
6 the stops to determine whether or not that person acted  
7 improperly in that particular search. And the example  
8 was, you know, like I said, if a trooper on a  
9 particular day happened to stop, an unbiased person  
10 happened to stop ten vehicles and they had nine out of  
11 ten were African-American, you couldn't automatically  
12 assume that that person was engaged in any improper  
13 conduct because you needed to look behind every one.  
14 So it was the characterization. And I believe, you  
15 know, maybe some of my language was -- is a little not  
16 precise enough, but I think I convey in here what I  
17 believed was that thought and what I believed was the  
18 State Police and CJ position.

19 SENATOR GORMLEY: But weren't the reason for  
20 the memo and your being assigned to prepare the memo  
21 and perform other tasks was because there was a  
22 Department of Justice inquiry, correct?

23 THE WITNESS: This memo I would say was --  
24 yes, related to that. Yes. Yes.

25 SENATOR GORMLEY: That's why you were given

1 that task.

2 THE WITNESS: Yes.

3 SENATOR GORMLEY: Okay. Now, in preparing  
4 for this and any other matter, wouldn't it be fair to  
5 say that you're preparing, whether you agree or  
6 disagree with who's setting the criteria, you are  
7 preparing at least to answer the criteria or the  
8 standards that are going to be set off by the  
9 particular department that's doing the inquiry? In  
10 other words, you are gathering information to answer  
11 the Justice Department inquiry, correct?

12 THE WITNESS: Yes.

13 SENATOR GORMLEY: You know that the Justice  
14 Department used consent searches in Maryland.

15 THE WITNESS: They didn't.

16 SENATOR GORMLEY: All right. The private  
17 plaintiffs used it in Maryland.

18 THE WITNESS: Correct.

19 SENATOR GORMLEY: But it was used as a basis  
20 for the consent decree.

21 THE WITNESS: That was my understanding.

22 SENATOR GORMLEY: Fine. And you knew you  
23 were dealing with the Justice Department. You know,  
24 that's who you're dealing with.

25 THE WITNESS: At that present time, yes.

1 SENATOR GORMLEY: You're dealing with the  
2 Justice Department.

3 THE WITNESS: Yes.

4 SENATOR GORMLEY: You're dealing with what  
5 the Justice Department considers to be important or  
6 considers to be important criteria. Whether or not you  
7 or your office agrees with it, that's what you've got  
8 to deal with that's important, what they're dealing  
9 with. Is that correct? The Justice Department.

10 THE WITNESS: Right. Which is why we never  
11 suggested that we weren't going to give them consent-  
12 to-search information.

13 SENATOR GORMLEY: No, no, I didn't say --  
14 that's not what I meant.

15 THE WITNESS: Okay. But I just wanted --

16 SENATOR GORMLEY: And I understand --

17 THE WITNESS: I didn't want you to imply --

18 SENATOR GORMLEY: -- and I never -- no. But  
19 to them, given the Justice Department, you knew consent  
20 to search was important to them.

21 THE WITNESS: I think it's fair to say, yes.  
22 And I think that is exactly why the whole issue of if  
23 our position was that it should be characterized as  
24 post-stop, this memo says if we're going to take that  
25 position, you people better decide how it's going to be

1 characterized and you better do it soon, because the  
2 Justice Department may view it differently.

3 SENATOR GORMLEY: So the point is, you  
4 characterized it that way in the memo because minimally  
5 you would call it a disagreement with the Justice  
6 Department in terms of what was important.

7 THE WITNESS: Well, it could be. I don't  
8 know if the Justice Department would have used it that  
9 way, but they could have used it that way.

10 SENATOR GORMLEY: Based upon how they used  
11 the information from Maryland --

12 THE WITNESS: But I'm just -- I don't mean to  
13 be a pain. Justice wasn't in Maryland, it was private  
14 parties.

15 SENATOR GORMLEY: I understand.

16 THE WITNESS: I'm not trying to quibble with  
17 you, Senator, I just to make --

18 SENATOR GORMLEY: Based upon the criteria  
19 that was used in Maryland, the criteria that was used  
20 in Maryland that the Justice Department had relied on,  
21 did it look as though there would be a problem based  
22 upon what -- based upon the criteria that was being  
23 used in New Jersey because New Jersey said it's post-  
24 stop? But after Maryland, doesn't post-stop become  
25 important, become a factor?

1 THE WITNESS: I'm going to answer your  
2 question. Justice never talked about Maryland, the  
3 Maryland case to me, ever, through the entire time I  
4 dealt with them. They never mentioned Maryland. It's  
5 neither here nor there, I just want you to understand  
6 that.

7 SENATOR GORMLEY: But Sergeant Gilbert did.

8 THE WITNESS: Oh, yeah.

9 SENATOR GORMLEY: So you had a reason to --

10 THE WITNESS: No, but I just want you to  
11 understand, I'm not quibbling, but I just want to make  
12 it clear it wasn't like Justice was well, we know the  
13 Maryland case. I'm just saying, I anticipated though  
14 and you're correct, I anticipated that Justice knew of  
15 the Maryland case. One other thing is I didn't know  
16 the basis for the Maryland settlement. It said it was  
17 based upon consent to searches. I don't know and no  
18 one in the Department knew if they actually took that  
19 position to challenge that. I'm just telling you in my  
20 -- in my world, I'm not trying to cop out here, but  
21 that's the context that I am in. The context I am in  
22 with these people around me who have litigated cases  
23 and have been in the AG's Office, is consent to  
24 searches are post-stop. And we may take the position  
25 that they're not applicable here. You know, we're

1 going to have to deal with Justice on this. This memo  
2 says well, if that's the case, and again this is a  
3 draft memo, this is the case, let's start talking about  
4 it.

5 MR. CHERTOFF: Where does it say it's a draft  
6 memo?

7 THE WITNESS: This memo, I don't think, was  
8 ever sent.

9 MR. CHERTOFF: Wasn't it sent out to Peter  
10 Verniero?

11 THE WITNESS: What I'm saying is I never  
12 signed a memo. I wrote it and I'm not, you know, I  
13 definitely wrote it and everything, but it may have  
14 been sent but it never went out as a final memo.

15 But all I'm saying to you, Senator, with all  
16 due respect, is that that was what my mind-set was.  
17 And again, I had an attorney who litigated a case for a  
18 year and had dealt with State Police. I had an  
19 Executive Assistant Attorney General and --

20 SENATOR GORMLEY: Now, the first counsel you  
21 talked about was Mr. Fahy.

22 THE WITNESS: Yes. And even after this memo,  
23 I think in subsequent memos approved by other persons  
24 in my office, they still said we characterize these as  
25 post-stop in later memos, which were reviewed by

1 persons above me.

2 MR. CHERTOFF: Well, there's no question that  
3 consent to search is post-stop. The question we're  
4 having difficulty with here is, do you disagree that  
5 you personally expressed the opinion that you should  
6 try to confine the Department of Justice inquiry to  
7 stops and nothing later, precisely because you knew  
8 that if the Department of Justice got into the consent  
9 to search area, the numbers would be very bad and it  
10 would create a problem for the State of New Jersey?  
11 Didn't you express that opinion?

12 THE WITNESS: There's some things in there  
13 that I have trouble agreeing with. I expressed the  
14 opinion that Justice would probably use consent-to-  
15 search data or they possibly could use -- or I  
16 anticipated they could use consent-to-search data as  
17 evidence of racial profiling. And what I'm saying is,  
18 if the opinion of the people around here is that it's  
19 post-stop, we better like let them know.

20 MR. CHERTOFF: Show me the part in the memo  
21 where you say if it's the opinion of the people around  
22 here that it's post stop.

23 THE WITNESS: Okay.

24 MR. CHERTOFF: Because all I can see is it's  
25 my opinion --

1 THE WITNESS: Okay.

2 MR. CHERTOFF: -- I think and I recommend.

3 THE WITNESS: Well, I'm not -- I'm not  
4 running away from my memo, if that's what you're  
5 asking.

6 MR. CHERTOFF: Because when the word "I"  
7 appears in the memo, are we to read that as really  
8 meaning the word "you"?

9 THE WITNESS: I don't disagree with that.

10 MR. CHERTOFF: So you'd agree that this memo  
11 contains your opinion, right?

12 THE WITNESS: I agree it contains my opinion,  
13 but it was a discussion, it was the product of working  
14 with other people. I mean what's fair is fair. It was  
15 an option memo. This thing I didn't just go and write.  
16 There was some discussions about this with people  
17 beforehand. I didn't just drop this department  
18 position on Alex Waugh.

19 MR. CHERTOFF: Who did -- okay, sir. Who did  
20 you discuss it with beforehand?

21 THE WITNESS: I would have discussed it with  
22 Alex Waugh.

23 MR. CHERTOFF: And in those discussions did  
24 you convey to him your knowledge from Sergeant Gilbert  
25 that the numbers in New Jersey as relates to consent to

1 search, were in the same ball park as the bad numbers  
2 in Maryland?

3 THE WITNESS: That the numbers were the same  
4 as in Maryland. He -- Gilbert -- Tom -- Sergeant  
5 Gilbert said to me that our numbers are in the same  
6 ball park as Maryland's numbers. That's what Tom told  
7 me.

8 MR. CHERTOFF: And then you told that to Alex  
9 Waugh.

10 THE WITNESS: Correct.

11 MR. CHERTOFF: And then in that context you  
12 had discussions about limiting the scope or trying to  
13 limit the scope of the Department of Justice inquiry to  
14 the issue of stops rather than consent to searches,  
15 correct?

16 THE WITNESS: No. I --

17 MS. ACCURSO: Mr. Chertoff, you keep saying  
18 that. The memo I think speaks for itself and says  
19 clearly these documents were indeed turned over.

20 MR. CHERTOFF: Well, I have -- there's no  
21 question -- the question is not whether the documents  
22 have to be turned over, because it says will be forced  
23 to turn them over. The question is whether there's an  
24 effort to limit the scope of the inquiry and say we  
25 want this inquiry limited to stops as opposed to

1 something after stops. And all I'm trying to ascertain  
2 is, what was the basis for the discussion that suggests  
3 we ought to limit, that we ought to work to try to  
4 limit the Department of Justice inquiry to the issue of  
5 stops and nothing later than stops.

6 THE WITNESS: As I understood that to try and  
7 answer your question, is that I was told that the State  
8 Police and the Criminal Justice position about consent  
9 to search were post-stop and that I guess the rationale  
10 underlying that is you would have to look at each  
11 underlying stop before you could make a determination  
12 as to whether or not -- I mean each underlying search,  
13 pardon me, as to whether that's an appropriate search.  
14 And that it has nothing to do with whether that person  
15 has gotten pulled over, which is what the U.S. DOJ  
16 inquiry was about. That was me. That was what I  
17 understood from everyone around me, Jack, Alex, and  
18 that is where this memo came from.

19 MR. CHERTOFF: And you understood from  
20 Sergeant Gilbert that the State Police were very  
21 worried that if there was a focus on the statistical  
22 breakdown of consent to search, that the State Police  
23 would have difficulty defending themselves.

24 THE WITNESS: No. What I understood from Tom  
25 Gilbert is the word he used I think was that there's an

1 appearance here. That if this happened in Maryland,  
2 since we're in the same ball park, who knows about New  
3 Jersey.

4 MR. CHERTOFF: And the appearance in  
5 Maryland, the appearance in Maryland led to a finding  
6 of selective prosecution and a consent order, correct?

7 THE WITNESS: That's correct.

8 MR. CHERTOFF: And you therefore concluded  
9 from that that the same appearance could lead to a  
10 finding of selective prosecution in New Jersey in a  
11 consent order.

12 THE WITNESS: I think -- correct.

13 MR. CHERTOFF: Now, then there was actually a  
14 meeting about this topic, right, the consent to  
15 searches, that you attended after you wrote the options  
16 memo?

17 THE WITNESS: Do you have a date just to help  
18 me?

19 MR. CHERTOFF: Yeah, how about May 20th of  
20 1997.

21 THE WITNESS: Okay. I just -- yes, I  
22 remember that meeting.

23 MR. CHERTOFF: And this is the first time you  
24 met with the Attorney General himself on this issue,  
25 right?

1 THE WITNESS: Correct.

2 MR. CHERTOFF: That was a memorable occasion,  
3 right?

4 THE WITNESS: Yeah.

5 MR. CHERTOFF: How many times were you up  
6 with the Attorney General before May 20th, 1997?

7 THE WITNESS: With Peter Verniero?

8 MR. CHERTOFF: Yeah.

9 THE WITNESS: I believe -- maybe none, I had  
10 one meeting with John Holl, Director ABC, on an ABC  
11 issue for 15 minutes and I think it happened before  
12 this meeting. It's either one or none.

13 MR. CHERTOFF: So you'd agree with me this  
14 was a meeting you wanted to prepare for, right?

15 THE WITNESS: Yeah. I mean I prepare for all  
16 meetings.

17 MR. CHERTOFF: And it was a meeting that  
18 would be memorable because you're not regularly -- you  
19 weren't regularly in and out of Peter Verniero's  
20 office, right?

21 THE WITNESS: Yeah, right. It might have  
22 been the first time ever. I mean I didn't know him  
23 professionally, personally. I didn't know him so,  
24 yeah.

25 MR. CHERTOFF: Did you ever see a copy of the

1 agenda -- actually going into the meeting, first of  
2 all, just to be clear, before the meeting actually  
3 occurred on May 20th. You had received a renewed  
4 request from the Department of Justice for information  
5 for consent-to-search forms for a 30-day period as  
6 identified by the Department of Justice, correct?

7 THE WITNESS: I don't know if you're  
8 referring to a document I should look at, sir.

9 MR. CHERTOFF: What are we up to R -- we're  
10 up to R-15.

11 (Pause)

12 THE WITNESS: That's my memo.

13 MR. CHERTOFF: All right. Now, that memo  
14 indicates that as of May 16th, which is four days  
15 before May 20th, there was a renewed request for  
16 records and from a priority standpoint, among other  
17 things, consent-to-search forms for the 30 days  
18 identified on the attachment, right?

19 THE WITNESS: That's what it says, yes.

20 MR. CHERTOFF: So that was a -- and actually,  
21 was the May 20th meeting in response to this renewed  
22 request?

23 THE WITNESS: I don't know. You may be able  
24 to help me with the documents. I think right around  
25 this time is also when we officially agreed to the

1 dates. I'm not -- if you have a memo --

2 MR. CHERTOFF: I think that's basically  
3 right.

4 THE WITNESS: Well, I just want to --

5 MR. CHERTOFF: I think you were shown it.  
6 It's around May 16th, yes.

7 THE WITNESS: Okay. So the randomness of the  
8 dates apparently were approved and we said they were  
9 okay. And at the same time, knowing that we were going  
10 to accept those dates, it's like okay, guys, these are  
11 the days. We've in essence signed off on them. We  
12 have to start putting these materials together.

13 MR. CHERTOFF: So now you knew the consent-  
14 to-search forms would be pulled for at least a period  
15 of 30 days, for 30 individual days, correct?

16 THE WITNESS: Yes.

17 MR. CHERTOFF: And then you go into this  
18 meeting on May 20th, right?

19 THE WITNESS: Yes.

20 MR. CHERTOFF: With the Attorney General.

21 THE WITNESS: Yes.

22 MR. CHERTOFF: Now, did you get an agenda in  
23 advance?

24 THE WITNESS: Yes, there was an agenda.

25 MR. CHERTOFF: And I'm going to show you what

1 we're marking as R-16 and also G-19 for identification.

2 (Pause)

3 Do you remember receiving the agenda?

4 THE WITNESS: Yes.

5 MR. CHERTOFF: Now, I'm showing the exhibits  
6 you have before you, R-16 and G-19, do you recognize  
7 any of the handwriting?

8 THE WITNESS: No. Aside from Alex's  
9 signature, which is very distinctive, no. I assume the  
10 tickle, I don't recognize and this note on the bottom I  
11 don't recognize.

12 MR. CHERTOFF: I also want to show you one  
13 more version of the agenda with handwriting on it which  
14 we'll mark as R-17 and see if you recognize that  
15 handwriting.

16 (Pause)

17 Do you recognize that handwriting?

18 THE WITNESS: I think it's mine.

19 MR. CHERTOFF: Okay. So yours -- let me --  
20 this is the version of the -- this is R-17 and this is  
21 the version of the memo that has on it SOP's four days;  
22 radio logs; some deposition transcripts.

23 THE WITNESS: Yes, sir.

24 MR. CHERTOFF: That's your handwriting?

25 THE WITNESS: 000974.

1 MR. CHERTOFF: Okay. All right. Let's work  
2 of this one.

3 THE WITNESS: Or R-17 is easier, I'm sorry.

4 MR. CHERTOFF: R-17. Let's work off of R-17.  
5 What did you do to prepare for this when you got this  
6 agenda?

7 MS. ACCURSO: Just to be clear, R-17 is  
8 OAG973 and 974.

9 MR. CHERTOFF: Right. And 974 is the one  
10 with your handwriting, correct?

11 THE WITNESS: Yes. Yes, it is.

12 MR. CHERTOFF: And what did you do to prepare  
13 for this meeting when you got the agenda?

14 THE WITNESS: From my notes I think it looked  
15 -- I noted some of the documents that I may have  
16 already gotten or -- I think in the left-hand column  
17 there were documents that I've sent, that I had already  
18 sent to DOJ and I think on the right-hand side, the  
19 types of documents that DOJ was going to be looking for  
20 with respect to the 30, the new 30-day request. That's  
21 -- so I put that in. With respect to other  
22 preparation, I can't think of any other specific  
23 preparation I did.

24 MR. CHERTOFF: Well, did you understand you  
25 were going to have to make a presentation or talk to

1 the Attorney General about what the status of various  
2 things were?

3 THE WITNESS: Yes.

4 MR. CHERTOFF: And as it relates in  
5 particular to the bullet that says Production of  
6 Consent-to-Search Documents, Maryland Case, what did  
7 you do to prepare to talk about the Maryland case with  
8 the Attorney General?

9 THE WITNESS: My recollection of the meeting  
10 with respect to production of consent-to-search  
11 documents was that Tom Gilbert spoke about the Maryland  
12 case and said that our numbers were in the same ball  
13 park as Maryland.

14 MR. CHERTOFF: What else did he say?

15 THE WITNESS: With respect to --

16 MR. CHERTOFF: No, no, what else did he say  
17 about the numbers with respect to the Maryland case?

18 THE WITNESS: He didn't talk about numbers.  
19 I have no recollection of him talking about any  
20 specific numbers. I know --

21 MR. CHERTOFF: Well, he just said the same  
22 thing over again, "It's in the same ball park?"

23 THE WITNESS: I don't recall -- I don't  
24 recall him talking about any specific numbers.

25 MR. CHERTOFF: How about general numbers?

1 THE WITNESS: I've obviously thought about  
2 this issue and I cannot recall anything specific. I  
3 know the issue came up, but I don't remember any  
4 discussion about any numbers. But the issue of the  
5 consent judgment in the Maryland case was discussed.

6 MR. CHERTOFF: And what was said about it?

7 THE WITNESS: I don't have a specific  
8 recollection of what was said.

9 MR. CHERTOFF: How about a general  
10 recollection?

11 THE WITNESS: I'm giving you my general  
12 recollection.

13 SENATOR GORMLEY: Did you think the State had  
14 a problem?

15 THE WITNESS: I did not think the State had a  
16 problem. It tracks in with my memo. I'm sitting  
17 around people that no one's telling me there's a  
18 problem.

19 SENATOR GORMLEY: So -- well, did you --

20 THE WITNESS: And I'm hearing that our  
21 position --

22 SENATOR GORMLEY: -- disagree with Sergeant  
23 Gilbert? He thought there was a problem, did you  
24 disagree with him?

25 THE WITNESS: Sergeant Gilbert never said to

1 me that there was a problem.

2 MR. CHERTOFF: In the meeting -- I want to  
3 first step back, before we get to the meeting. You're  
4 preparing, right? You have to be prepared, right?  
5 Correct?

6 THE WITNESS: Of course you have to be  
7 prepared. You're making -- this was also a State  
8 Police meeting. It wasn't like -- it wasn't like some  
9 other meetings where you go to where you need to know  
10 cases and that. This was like, hey, we're having like  
11 a status meeting.

12 MR. CHERTOFF: You were -- is it fair to say  
13 that on the law side, you were at the bottom of the  
14 totem pole of people attending the meeting in  
15 seniority?

16 THE WITNESS: Yes.

17 MR. CHERTOFF: And is it fair to say that  
18 going into the meeting you didn't think you were being  
19 invited along just to be a spectator at an interesting  
20 and entertaining meeting with the Attorney General,  
21 right? Correct?

22 THE WITNESS: Thank you for the  
23 characterization. It's very kind.

24 MR. CHERTOFF: Is that a fair point?

25 THE WITNESS: I don't go to any meeting

1 feeling that way.

2 MR. CHERTOFF: Did you have a sense from Alex  
3 Waugh that you should be prepared to talk about things  
4 and answer questions of the Attorney General?

5 THE WITNESS: Not anything -- I'm telling  
6 you, I did not get any sense that I had to prepare  
7 anything in particular for this memo. I looked at what  
8 -- when I saw documents produced, I looked at what we  
9 had to produce. I knew there would be discussion about  
10 the new dates that were picked and I don't have any  
11 other recollection of doing any particular preparation.

12 MR. CHERTOFF: Is it your testimony that as  
13 to the agenda item, Production of Consent-to-Search  
14 Documents, as to which you had previously written a  
15 memo on April 22nd, is it your testimony you did  
16 nothing to prepare yourself to answer questions on that  
17 point?

18 THE WITNESS: Correct. There was -- right.  
19 I didn't have to do anything in particular. It was a  
20 status meeting.

21 MR. CHERTOFF: When you say a status meeting,  
22 is this -- this is the only status meeting you had with  
23 the Attorney General of the State of New Jersey on this  
24 topic.

25 THE WITNESS: Yes.

1 MR. CHERTOFF: And you didn't do anything  
2 different than you would do with a normal meeting with  
3 Alex Waugh, is that your testimony?

4 THE WITNESS: I don't think there was  
5 anything in particular I had to do.

6 MR. CHERTOFF: Sir, you just showed up  
7 without any papers or any proposed responses to any  
8 questions that might come up?

9 THE WITNESS: I can't recall specifically.  
10 I'm telling you that I did not view this meeting --  
11 Alex called and said we're going to have a meeting,  
12 come over. He didn't say prepare at all in particular  
13 or bring stuff. It was -- I go the impression it was  
14 like a status meeting. Where are we going?

15 MR. CHERTOFF: Didn't he send you an agenda  
16 for it, which you have in front of you? He sent you  
17 with a cover sheet.

18 THE WITNESS: Yes.

19 MR. CHERTOFF: And did you send a copy of the  
20 agenda on to Sergeant Gilbert?

21 THE WITNESS: I don't know.

22 MR. CHERTOFF: Now, who --

23 THE WITNESS: I don't recall doing that, but  
24 if you've got a document that says I did it.

25 MR. CHERTOFF: Did you talk to Sergeant

1 Gilbert in advance about the meeting?

2 THE WITNESS: I don't think I talked to  
3 Sergeant Gilbert before the meeting, but I believe I  
4 had a conversation that I knew a meeting was going to  
5 happen.

6 MR. CHERTOFF: With who?

7 THE WITNESS: With Alex and I think the  
8 Attorney General. In other words, I think I remember  
9 before the meeting was set that there was going to be a  
10 meeting and I told Tom that there was going to be a  
11 meeting.

12 MR. CHERTOFF: How did you know that there  
13 was going to be a meeting?

14 THE WITNESS: It must have been from Alex.

15 MR. CHERTOFF: And what did you think the  
16 subject of the meeting was going to be about?

17 THE WITNESS: In general, the Department of  
18 Justice.

19 MR. CHERTOFF: And what did you tell Tom  
20 about that meeting that was going to come up?

21 THE WITNESS: I just said I heard there's  
22 going to be a meeting.

23 MR. CHERTOFF: All right. So you go to the  
24 meeting. Who's at the meeting besides yourself?

25 THE WITNESS: Jack Fahy, Alex Waugh, Attorney

1 General Verniero, Colonel Williams. Is it Lieutenant  
2 Blaker? I don't know -- okay. And Sergeant Gilbert.  
3 That's my recollection.

4 MR. CHERTOFF: And where did the meeting take  
5 place?

6 THE WITNESS: In the Attorney General's  
7 Office.

8 MR. CHERTOFF: And how long did it last?  
9 Approximately.

10 THE WITNESS: All I can say is it wasn't real  
11 long. But I mean it is pure guess. I mean I just  
12 don't know. It wasn't an hour meeting. I know it  
13 wasn't real long. I'd be guessing.

14 MR. CHERTOFF: What did you talk about in the  
15 meeting?

16 THE WITNESS: The only thing I have a  
17 specific recollection of talking about is what  
18 documents we had already produced. I don't -- I don't  
19 remember talking that much at the meeting. Or I don't  
20 have a recollection.

21 MR. CHERTOFF: Do you know what? It's 12:30,  
22 why don't we take a break now for lunch and we'll pick  
23 up when we get back. What do you want to say, about 45  
24 minutes or an hour?

25 MS. ACCURSO: That's fine. Do you have an

1 idea of how long you're going to be today?

2 MR. CHERTOFF: If we get back here let's say  
3 at 1:15 or so, why don't we say we'll -- we'll  
4 certainly be done before 4:00, I would think.

5 MS. ACCURSO: Fine.

6 MR. CHERTOFF: All right. Great.

7 (Luncheon recess)

8 MR. CHERTOFF: All right. I think as we  
9 left, we had just focused on the meeting of May 20th at  
10 which you were present in the office of the Attorney  
11 General and I think I had asked you but I'm just going  
12 to ask you again to search your memory. What do you  
13 remember personally saying at the meeting?

14 THE WITNESS: The only thing I personally  
15 remember saying at the meeting was what we had produced  
16 so far with SOP's and I don't remember exactly but I  
17 assume we tracked what I have written on my copy of the  
18 agenda. Personally I have no other recollection that I  
19 -- that I personally said anything else. I don't have  
20 any other recollection of what I said.

21 MR. CHERTOFF: Now, on the writings column  
22 you said you had put down items to be produced. Did  
23 you go through these at the meeting?

24 THE WITNESS: I don't think so. I think --  
25 again, I'm guessing. We had previously provided some

1 documents to DOJ, including some tickets, warnings and  
2 then some radio logs and patrol charts for other select  
3 days. So it wasn't really an issue. I think people  
4 knew the kind of stuff that was going to go. In  
5 addition, I had written that memo to Colonel Williams  
6 which outlined the types of things they were looking  
7 for for the 30 dates. I don't think I talked about it.  
8 I didn't say a lot in the meeting.

9 MR. CHERTOFF: You didn't say a lot?

10 THE WITNESS: That I can recall.

11 MR. CHERTOFF: Well, what was said regarding  
12 the time table for production of documents?

13 THE WITNESS: I don't have any recollection.

14 MR. CHERTOFF: Was there a discussion about  
15 whether production ought to be kept slow or kept quick?

16 THE WITNESS: At this meeting?

17 MR. CHERTOFF: Yeah.

18 THE WITNESS: I don't have any recollection.

19 MR. CHERTOFF: At any point in time did you  
20 ever have a discussion with Alex Waugh about how  
21 quickly documents ought to be produced?

22 THE WITNESS: I think it was -- I think it  
23 was before the meeting and I think the way Alex phrased  
24 it was, "Take your time, but be responsive."

25 MR. CHERTOFF: You think this was when?

1 THE WITNESS: I think it was before the  
2 meeting.

3 MR. CHERTOFF: And what did you --

4 THE WITNESS: You know, I shouldn't be  
5 guessing. I take that back. I don't know when it was.

6 MR. CHERTOFF: What did you understand, "Take  
7 your time, be responsive," to mean?

8 THE WITNESS: I understood that to mean let  
9 DOJ in essence set the pace on how they wanted things,  
10 you know, presuming we could get them to them, but that  
11 see how DOJ wants to go with this and we should try and  
12 be responsive to that.

13 MR. CHERTOFF: Well, did you -- take your  
14 time sounds a little bit like don't be in any big rush.  
15 Is that how you took it?

16 THE WITNESS: No, I didn't take it that way  
17 and I think -- I agree with what you're saying because  
18 it says "Take your time, but be responsive." They  
19 almost seem somewhat inconsistent. I can't remember if  
20 I had that conversation with Alex, but as part of this,  
21 everyone knew that I was working in the Division of  
22 ABC. I was busy there and they recognized that I was  
23 going to also be dealing with many other matters at the  
24 Division of ABC and that, you know, you have to attend  
25 to your normal work also, but we want you to be

1 responsive.

2 MR. CHERTOFF: Well, but you definitely  
3 remember the phrase "Take your time, but be  
4 responsive," is the one that was used?

5 THE WITNESS: That's what I recall.

6 MR. CHERTOFF: All right. So with respect to  
7 time table for production of documents, you don't have  
8 any memory what was said at the meeting on May 20th  
9 about that?

10 THE WITNESS: No, I don't.

11 MR. CHERTOFF: What about U.S. DOJ strategy  
12 for traffic data analysis --

13 THE WITNESS: I don't have any -- I don't  
14 have any recollection of discussions at that meeting on  
15 that issue.

16 MR. CHERTOFF: What about -- again, let's go  
17 to production of consent-to-search documents. Who did  
18 most of the talking about that topic?

19 THE WITNESS: I have some recollection that  
20 Tom Gilbert spoke about the Maryland case and I have a  
21 recollection that Tom Gilbert again said that our  
22 numbers are in the same ball park. That -- I remember  
23 that.

24 MR. CHERTOFF: Did the State Police express,  
25 either Sergeant Gilbert or Colonel Williams, express

1 concern about the ability to defend those numbers  
2 before the Department of Justice?

3 THE WITNESS: I have no recollection of that.

4 MR. CHERTOFF: Well, what was the reaction  
5 when Sergeant Gilbert said our numbers are on a par  
6 with the Maryland case? Did somebody ask what the  
7 Maryland case was?

8 THE WITNESS: You know, I can't remember what  
9 the discussion was at the meeting.

10 MR. CHERTOFF: Well, did someone discuss the  
11 Maryland case?

12 THE WITNESS: I just said Tom Gilbert, I  
13 recall Tom Gilbert talking about the Maryland case and  
14 saying this phrase that the numbers are in the ball  
15 park.

16 MR. CHERTOFF: Well, did he say -- when he  
17 talked about the Maryland case, did he make it clear  
18 that the Maryland case had resulted in a consent  
19 decree?

20 THE WITNESS: What I remember, and this is  
21 what I remember, it is what it is. I remember that Tom  
22 Gilbert brought up the Maryland case and that he said  
23 that the numbers are in -- our numbers are in the ball  
24 park. The same thing I had heard from him before.  
25 That's what I remember from the meeting.

1 SENATOR GORMLEY: Did you think at that May  
2 20th meeting the reference to Maryland was good or bad  
3 for the New Jersey matter?

4 THE WITNESS: At this meeting?

5 SENATOR GORMLEY: Yes. Did you think it was  
6 good or bad that Maryland was brought up?

7 THE WITNESS: Did I think it was good or bad  
8 that it was brought up at the meeting, is that your  
9 question?

10 SENATOR GORMLEY: Do you think it was a  
11 positive or negative indicator in terms of the status  
12 of New Jersey as it related to the Department of  
13 Justice?

14 THE WITNESS: I had no thinking that way.  
15 What I did think is that in part because Tom said make  
16 sure you tell Alex, I thought it was good that we had a  
17 meeting with the Attorney General, that this was  
18 brought up at the meeting.

19 SENATOR GORMLEY: Now, he expressed to you  
20 concern when he talked to you on the phone about  
21 Maryland, didn't he?

22 THE WITNESS: He expressed to me the  
23 appearance issue, yes.

24 SENATOR GORMLEY: Okay. At the May 20th  
25 meeting when he discussed or brought up Maryland, do

1 you think he brought it up as a point of concern for  
2 the State?

3 THE WITNESS: I don't know if I'd call it a  
4 point of concern. It was an issue. Senator, as even  
5 set forth in my memo, it certainly was an issue that I  
6 think the impression to me was good that we had a  
7 meeting where I know I had told Alex but also now the  
8 Attorney General was in the meeting.

9 SENATOR GORMLEY: Well --

10 THE WITNESS: That's all I recall.

11 SENATOR GORMLEY: -- why was it good there  
12 was a meeting?

13 THE WITNESS: I just thought so the issue was  
14 out there.

15 SENATOR GORMLEY: I'm trying to get a sense  
16 of the gravity that you had for this.

17 THE WITNESS: It's hard for me to answer you  
18 -- I'm telling you in my opinion based upon what we  
19 just went through before lunch, that the position that  
20 I had been told of the Department was that consent-to-  
21 search data was post-stop. There didn't seem to be in  
22 and of itself a concern about that.

23 SENATOR GORMLEY: So you didn't think this  
24 was a problem.

25 THE WITNESS: I didn't think what was a

1 problem?

2 SENATOR GORMLEY: The Maryland case.

3 THE WITNESS: No, I thought it was an issue  
4 that needed to be brought to the attention for the same  
5 reasons I think that Tom did that like hey, guys,  
6 there's this case out there, we may have a different  
7 position as far as characterizing them, but you guys  
8 ought to know about it. And if we're getting any  
9 direction, let us know.

10 SENATOR GORMLEY: So you're presenting a  
11 potential problem.

12 THE WITNESS: It's an issue. I don't know if  
13 it was a problem. It was an issue. I mean I don't  
14 want to characterize it that way.

15 SENATOR GORMLEY: Okay. At this meeting do  
16 you recall what Alex Waugh said at the meeting? Any  
17 comments that he made at the meeting?

18 THE WITNESS: Alex Waugh, no.

19 SENATOR GORMLEY: Let's go beyond May the  
20 20th for a second. After May the 20th, did you have  
21 any conversations with Peter Verniero? After.

22 THE WITNESS: After?

23 SENATOR GORMLEY: After.

24 THE WITNESS: My next conversation with  
25 Peter Verniero was I believe January or February 1999.

1 SENATOR GORMLEY: What did he say to you?

2 THE WITNESS: That meeting was a meeting when  
3 the Justice Department inquiry became public and I got  
4 a call -- I remember I had a terrible sinus infection  
5 and I got a call to come over and Peter was there. I  
6 think Paul Zoubek was there and I think a couple press  
7 people. And I think Peter --

8 SENATOR GORMLEY: When you say "press"  
9 people, you mean from the Attorney General's Office?

10 THE WITNESS: Yes, I'm sorry, from the  
11 Attorney General's Office. And I think they had just  
12 gotten off the phone with someone from the Department  
13 of Justice and I think they were doing a press release.  
14 I don't know if it was January or February, it might  
15 have been February.

16 SENATOR GORMLEY: Between May the 20th and  
17 the meeting in January of '99 --

18 THE WITNESS: Yes.

19 SENATOR GORMLEY: -- did you, either by phone  
20 or at a meeting, were you in contact with Peter  
21 Verniero directly?

22 THE WITNESS: No, but just so there's no  
23 misunderstanding --

24 SENATOR GORMLEY: Sure.

25 THE WITNESS: -- I was on one conference call

1 with him and John Holl on an ABC matter.

2 SENATOR GORMLEY: Fine, very good. Okay.

3 THE WITNESS: And I ran a college summit on  
4 problem drinking and he was a speaker and he was there,  
5 I said hello. But there was no discussion at all.

6 SENATOR GORMLEY: Okay, fine.

7 THE WITNESS: Okay.

8 SENATOR GORMLEY: Now, the 1999 meeting,  
9 okay, you were called in the meeting, how did it start?  
10 Who started the meeting? When you got to the meeting,  
11 who told you what was the basis for the meeting?

12 THE WITNESS: When I -- to the best of my  
13 recollection, the meeting was ongoing and I believe the  
14 Attorney General had just spoke to the Department of  
15 Justice. And I believe that the press people were  
16 there because they were going to put out a press  
17 release. That's what I remember from that meeting. In  
18 other words, I didn't walk in and the meeting --

19 SENATOR GORMLEY: Why were you told that you  
20 were invited to the meeting? What was your purpose for  
21 being there?

22 THE WITNESS: I just got a call to come over  
23 to the Attorney General's Office.

24 SENATOR GORMLEY: So you came over to the  
25 meeting. Why do you think you were called?

1 THE WITNESS: Because I was dealing with the  
2 Department of Justice.

3 SENATOR GORMLEY: Fine. You get to the  
4 meeting. Who's the first person who talked once you  
5 arrived at the meeting?

6 THE WITNESS: I don't know who the first  
7 person was who talked.

8 SENATOR GORMLEY: Okay. Let's go over what  
9 do you recall was said by the Attorney General at that  
10 meeting?

11 THE WITNESS: I remember that they said they  
12 were going to put out a press release.

13 SENATOR GORMLEY: Okay. They were working on  
14 a press release. Do you recall the names of the two  
15 press persons who were there?

16 THE WITNESS: I believe -- I believe it was  
17 Chuck Davis and Roger Shatzkin. I believe.

18 SENATOR GORMLEY: Okay. That sounds correct.  
19 Fine. That sounds good.

20 Do you recall anything that was stated by the  
21 Attorney General?

22 THE WITNESS: I don't recall having a  
23 conversation with him or -- I know you're asking if I  
24 heard anything also.

25 SENATOR GORMLEY: Do you remember anything

1 that he said at that meeting?

2 THE WITNESS: I don't remember anything he  
3 said, but I got -- either he was on the phone or had  
4 just gotten off the phone with someone from the  
5 Department of Justice.

6 SENATOR GORMLEY: But you don't recall  
7 anything that he said?

8 THE WITNESS: I don't.

9 SENATOR GORMLEY: Now, you said Paul Zoubek  
10 was there?

11 THE WITNESS: Correct.

12 SENATOR GORMLEY: Do you recall anything that  
13 Paul Zoubek said?

14 THE WITNESS: Paul -- the one thing I  
15 remember Paul saying to me after the meeting, at the  
16 end of the meeting, was with respect to the sample  
17 dates, "What did the numbers show"? In other words,  
18 the 30 days.

19 SENATOR GORMLEY: Fine. Well, therefore at  
20 the meeting did the issue of sample dates come up at  
21 the meeting?

22 THE WITNESS: All I remember is at the end of  
23 the meeting.

24 SENATOR GORMLEY: End of the meeting Paul  
25 Zoubek asks you about sample dates.

1 THE WITNESS: Right, from the Department of  
2 Justice inquiry.

3 SENATOR GORMLEY: Fine. In other words, was  
4 he not familiar with the request for sample dates?  
5 How would you -- how did he say it to you? How did he  
6 express himself when he asked about the sample dates?

7 THE WITNESS: I don't remember his demeanor.  
8 I don't remember his -- I remember he asked me that --  
9 talked about that, asked me that issue. I can't --

10 SENATOR GORMLEY: Do you recall any comment  
11 at all by Attorney General Verniero during that  
12 meeting?

13 THE WITNESS: During that meeting I don't.

14 SENATOR GORMLEY: Do you recall -- and the  
15 only comment you recall from Mr. Zoubek was at the end  
16 of the meeting when he asked about the sample dates?

17 THE WITNESS: Yes.

18 SENATOR GORMLEY: Did you have occasion to  
19 review the press release?

20 THE WITNESS: I think I did.

21 SENATOR GORMLEY: You did review the press  
22 release. Do you recall what date, around what time  
23 this was done? Was this January of '99?  
24 Approximately.

25 THE WITNESS: No, I think it was the middle

1 of February.

2 SENATOR GORMLEY: So you think in the middle  
3 of February this was a response to the Justice  
4 Department announcing they were -- they were publicly  
5 announcing the inquiry, is that it?

6 THE WITNESS: Yes.

7 SENATOR GORMLEY: So you had to deal with --  
8 obviously you had the press people. You were dealing  
9 with --

10 THE WITNESS: I think -- right. Something  
11 came around that was being drafted.

12 SENATOR GORMLEY: Now, what do you recall  
13 about the press release?

14 THE WITNESS: I don't -- I don't recall  
15 anything. Part of it was I literally at the meeting my  
16 nose -- I mean I had a sinus infection.

17 SENATOR GORMLEY: This was the second time  
18 you ever met with the Attorney General?

19 THE WITNESS: Yes.

20 SENATOR GORMLEY: You have two people from  
21 the press department.

22 THE WITNESS: Right.

23 SENATOR GORMLEY: You're asked to review --  
24 had you ever been asked to review a press release by  
25 the Attorney General before?

1 THE WITNESS: Never.  
2 SENATOR GORMLEY: Okay.  
3 THE WITNESS: By this Attorney General.  
4 SENATOR GORMLEY: Well --  
5 THE WITNESS: Right.  
6 SENATOR GORMLEY: Fine. Do you recall  
7 anything that was in that press release?  
8 THE WITNESS: I'd have to see it.  
9 SENATOR GORMLEY: Do you recall making any  
10 modifications to the press release? You might not  
11 recall specific changes, but did you recommend changes?  
12 THE WITNESS: I may have. You know, I want  
13 to be accurate. I may have. I'm not going to say I  
14 didn't. I can't say that I did.  
15 SENATOR GORMLEY: So between the May 20th,  
16 1997 meeting and this meeting that occurred in the  
17 beginning of 1999, these were the only two direct  
18 contacts you had with the Attorney General related to  
19 this issue, this assignment as it related to profiling?  
20 THE WITNESS: Yes.  
21 SENATOR GORMLEY: Okay, fine. At the May  
22 20th meeting, what directions were given by the  
23 Attorney General at the end of the meeting?  
24 THE WITNESS: What do you mean directions?  
25 SENATOR GORMLEY: Well, let's --

1 THE WITNESS: Can you --  
2 SENATOR GORMLEY: In a chain-of-command when  
3 a --  
4 THE WITNESS: Let me ask you one thing. Why  
5 don't you ask me what I remember from the meeting?  
6 SENATOR GORMLEY: I want to help you.  
7 THE WITNESS: Okay.  
8 SENATOR GORMLEY: I want to be a little more  
9 specific. I'm trying to help.  
10 THE WITNESS: Okay.  
11 SENATOR GORMLEY: Because you might say --  
12 I'd rather try it this way.  
13 THE WITNESS: Okay.  
14 SENATOR GORMLEY: So we have a chain-of-  
15 command. We have the General. We're at the end of the  
16 meeting, customarily if you're the General, you do a  
17 summation or give directions at the end of that  
18 meeting. What did he say at the end of the meeting?  
19 THE WITNESS: Well, I don't recall him saying  
20 anything at the meeting and with all due respect, I've  
21 been in meetings with --  
22 SENATOR GORMLEY: I guess that's why you  
23 wanted me to ask that question.  
24 THE WITNESS: I've been in meetings with the  
25 Attorney Generals and they haven't summed up. I mean

1 sometimes it's just a general discussion. I'm just  
2 saying it's not every meeting that ends that way.

3 SENATOR GORMLEY: So he didn't sum up. He  
4 didn't -- do you recall him making any comment?

5 THE WITNESS: The Attorney General?

6 SENATOR GORMLEY: All right. I'll try your  
7 question. Do you recall him making any comment at the  
8 meeting?

9 THE WITNESS: I remember him making a comment  
10 at the meeting.

11 SENATOR GORMLEY: Could you please tell me  
12 the comment?

13 THE WITNESS: I remember a comment to the  
14 effect that we're not going to sign a consent order.  
15 Something generally of that nature. Or we're not  
16 considering a consent order. That's all -- I do  
17 remember that.

18 SENATOR GORMLEY: Did he mention Janet Reno?

19 THE WITNESS: Not to my recollection.

20 SENATOR GORMLEY: Okay. Did he say he was  
21 going to contact the United States Attorney General?

22 THE WITNESS: Not to my recollection.

23 SENATOR GORMLEY: Did you recall him saying  
24 that he would contact anyone?

25 THE WITNESS: No. I do not recall that.

1 SENATOR GORMLEY: So you don't, with the  
2 exception of the quote that, the one quote that you've  
3 indicated that he made, you don't recall any other --

4 THE WITNESS: I'm paraphrasing.

5 SENATOR GORMLEY: With the exception of the  
6 one paraphrased quote, you don't recall any other  
7 comment he made at the meeting?

8 THE WITNESS: No. The only other thing I  
9 remember from that meeting, and I believe it was Tom  
10 Gilbert, was another short or another -- he brought up  
11 the issue of the DEA training and how they were being  
12 torn in two different directions. I know that came up.  
13 I recall that. They're the -- that's what I remember  
14 from this meeting.

15 MR. CHERTOFF: Let me just ask you this. You  
16 indicated that on the May 20th meeting -- May 20th,  
17 1997 meeting that Sergeant Gilbert did indicate that  
18 there was a Maryland case and that the numbers for New  
19 Jersey were in the ball park of the Maryland case.  
20 What was their reaction?

21 THE WITNESS: Reaction. I don't recall any  
22 reaction. I don't recall a reaction one way or the  
23 other. I don't recall. I just don't.

24 MR. CHERTOFF: Did anybody ask any questions?

25 THE WITNESS: Do I personally remember people

1 asking questions? No. Do I believe probably some  
2 people did? Yeah. I don't recall. I don't have any  
3 recollection.

4 MR. CHERTOFF: Did anybody say anything to  
5 the effect that we ought to get more facts? What are  
6 the facts here?

7 THE WITNESS: I've told you what I remember  
8 from the meeting. You know, I can only tell you what I  
9 recall and I've told you what I recall from the  
10 meeting.

11 MR. CHERTOFF: Are you sure you didn't do  
12 most of the talking at this meeting?

13 THE WITNESS: I don't recall doing most of  
14 the talking at this meeting.

15 MR. CHERTOFF: Now, I'm going to -- again,  
16 I'm going to read you just -- and I know your counsel  
17 has expressed unhappiness with this technique, but it's  
18 a very confined point. Page 293 of Sergeant Gilbert's  
19 deposition of February 14th. Ms. Glading asked the  
20 question at Line 6, Line 7.

21 "MS. GLADING: Why was Mr. Fahy at this  
22 meeting and who do you recall doing most of the  
23 talking?

24 THE WITNESS: My recollection is that Mr.  
25 Rover did most of the talking. As to why Mr. Fahy was

1 there, I'm not really in a position to answer that.  
2 That wasn't my call. That would have been -- somebody  
3 else could answer that. I'm not really sure."

4 Now, does that help you remember that you did  
5 most of the talking?

6 THE WITNESS: Of course -- if I remembered I  
7 did most of the talking, I would tell you. I mean I  
8 just don't remember. I would tell you if I did.

9 MR. CHERTOFF: Now, was Captain Blaker at the  
10 meeting -- or Lieutenant, was then Lieutenant Blaker at  
11 the meeting?

12 THE WITNESS: I believe he was there.

13 MR. CHERTOFF: Let me read you from his  
14 recorded interview at Page 110.

15 "LIEUTENANT BLAKER: Most of the talking was  
16 done by George Rover who had -- who was talking about  
17 the Maryland stats that had been provided to him by  
18 Tommy Gilbert is my understanding."

19 Does that help you remember you did most of  
20 the talking?

21 THE WITNESS: No, not at all.

22 MR. CHERTOFF: Now, I want to read you  
23 another passage of Captain Blaker's testimony. This is  
24 Page 110.

25 "QUESTION: The Maryland stats that had been

1 provided to George Rover by Tommy Gilbert did you say?  
2 CAPTAIN BLAKER: Yes."  
3 "QUESTION: Was George Rover talking about  
4 New Jersey statistics that had been provided to him?  
5 CAPTAIN BLAKER: Yes."  
6 "QUESTION: By Tommy Gilbert?  
7 CAPTAIN BLAKER: Right. Yes."  
8 "QUESTION: The New Jersey Turnpike  
9 statistics?  
10 CAPTAIN BLAKER: That's my recollection."  
11 "QUESTION: So what statistics were discussed  
12 at that meeting?  
13 CAPTAIN BLAKER: The numbers involved with  
14 the stop data in the Maryland State Police."  
15 And then it continues on at Page 110.  
16 "QUESTION: Okay. So what New Jersey  
17 statistics did you talk about at that meeting?  
18 CAPTAIN BLAKER: I didn't talk about  
19 anything. I didn't open my mouth."  
20 "QUESTION: What New Jersey statistics were  
21 spoken of at that meeting?  
22 CAPTAIN BLAKER: As I recall, they were the  
23 information that Tommy Gilbert had provided Rover."  
24 "QUESTION: This is the information you  
25 previously indicated was not good that Tommy Gilbert

1 and you had talked about?  
2 CAPTAIN BLAKER: Correct."  
3 "QUESTION: These were not good numbers.  
4 These were bad numbers compared to Maryland. They were  
5 comparable.  
6 CAPTAIN BLAKER: They were comparable."  
7 Okay. Do you remember that? Does that help  
8 you refresh?  
9 THE WITNESS: No.  
10 MR. CHERTOFF: That didn't happen?  
11 THE WITNESS: No. No.  
12 MR. CHERTOFF: You did not talk about that?  
13 THE WITNESS: No.  
14 MR. CHERTOFF: Lieutenant Blaker or Captain  
15 Blaker is wrong about that?  
16 THE WITNESS: Yes.  
17 MR. CHERTOFF: And Sergeant Gilbert is wrong  
18 about you doing most of the talking at this meeting?  
19 THE WITNESS: I do not recall doing most of  
20 the talking and I certainly do not recall talking about  
21 any particular numbers. Yes, I am saying that that is  
22 not accurate.  
23 MR. CHERTOFF: Now, after this discussion of  
24 the Maryland figures and the fact that there was a ball  
25 park relationship between the New Jersey figures and

1 the Maryland figures, is it clear to you that everybody  
2 understood there had been a consent decree in Maryland?

3 THE WITNESS: Well, first I would say you say  
4 there was talking about figures. I don't remember any  
5 figures being talked about.

6 MR. CHERTOFF: Not specific figures, but the  
7 fact that there was a comparable level of figures.

8 THE WITNESS: That it was in the ball park.

9 MR. CHERTOFF: Yeah.

10 THE WITNESS: As Tom Gilbert said.

11 MR. CHERTOFF: Did everybody understand that  
12 there had been a consent decree in Maryland?

13 THE WITNESS: Well, I can't speak for the  
14 Attorney General. I spoke to Alex and --

15 MR. CHERTOFF: He certainly knew it, right?

16 THE WITNESS: I can speak for him.

17 MR. CHERTOFF: And at that point in the  
18 meeting, did the Attorney General say in substance,  
19 they're going to have to drag me along the train track  
20 or drag me along the Turnpike before I'm going to sign  
21 a consent decree?

22 THE WITNESS: I did not hear him say that. I  
23 told you what I thought I heard him say.

24 MR. CHERTOFF: Which is he didn't want to  
25 sign --

1 THE WITNESS: "I am not going to sign a  
2 consent order. I am not considering a consent order."  
3 That's what I recall.

4 MR. CHERTOFF: And what spurred that comment?  
5 What was the --

6 THE WITNESS: I don't know.

7 MR. CHERTOFF: Was it a response to the  
8 discussion about the Maryland case?

9 THE WITNESS: I have -- I do not know.

10 MR. CHERTOFF: Isn't that the only context in  
11 this whole meeting in which the issue of a consent  
12 order came up was the Maryland case?

13 THE WITNESS: I don't know. I don't recall.

14 MR. CHERTOFF: You were at the -- you didn't  
15 leave the meeting in the middle --

16 THE WITNESS: I was at the meeting. I didn't  
17 go to the bathroom, I was at the meeting.

18 MR. CHERTOFF: Right. You didn't drink a lot  
19 of ice tea before the meeting so you weren't in and  
20 out, right? Correct?

21 THE WITNESS: That's correct. I was at the  
22 meeting.

23 MR. CHERTOFF: But you can't tell us what  
24 spurred the discussion of consent decree?

25 THE WITNESS: No.

1 MR. CHERTOFF: But you'll agree with me that  
2 the Maryland case did end with a consent decree, right?

3 THE WITNESS: That the Maryland case ended  
4 with a consent order.

5 MR. CHERTOFF: Right.

6 THE WITNESS: Yes.

7 MR. CHERTOFF: And you'll agree with me the  
8 Maryland case was discussed and the comparison between  
9 New Jersey and Maryland was discussed at the meeting,  
10 right?

11 THE WITNESS: To the extent I remember is  
12 that Tom Gilbert said that our numbers were in the same  
13 ball park as Maryland.

14 MR. CHERTOFF: But you can't connect that up  
15 with the Attorney General's comment about a consent  
16 decree?

17 THE WITNESS: I can't.

18 MR. CHERTOFF: Did anybody express surprise  
19 or concern after this comment about the New Jersey  
20 numbers are in the ball park of the Maryland numbers?

21 THE WITNESS: I don't recall any expressions  
22 or concerns. I just don't have a recollection.

23 MR. CHERTOFF: At any point in the May 20th  
24 meeting did anybody say to you or say in your presence,  
25 do we really have a problem here? Let's do some

1 research and examination to see if there's a problem.

2 THE WITNESS: I have no recollection.

3 MR. CHERTOFF: As of this point in time, May  
4 20th, did you have an understanding about whether  
5 Thomas Gilbert and the State Police had done their own  
6 analysis of internal figures to determine what, in  
7 fact, the statistical breakdown was with respect to  
8 various types of racial profiling issues at the State  
9 Police?

10 THE WITNESS: No.

11 MR. CHERTOFF: You had no idea about that?

12 THE WITNESS: No.

13 MR. CHERTOFF: Wasn't that important for you  
14 to know as a matter of discovery?

15 THE WITNESS: It never came up.

16 MR. CHERTOFF: Your job was to represent the  
17 State of New Jersey dealing with the Department of  
18 Justice on issues of discovery, right? Correct?

19 THE WITNESS: My --

20 MR. CHERTOFF: Isn't that correct?

21 THE WITNESS: My job was to facilitate the  
22 production of documents from the State Police to the  
23 Department of Justice.

24 MR. CHERTOFF: Did you deal with the U.S.  
25 Department of Justice in Washington?

1 THE WITNESS: Yes.  
2 MR. CHERTOFF: As an attorney?  
3 THE WITNESS: Yes.  
4 MR. CHERTOFF: Representing the State of New  
5 Jersey?  
6 THE WITNESS: Yes.  
7 MR. CHERTOFF: With respect to this inquiry,  
8 correct?  
9 THE WITNESS: Correct.  
10 MR. CHERTOFF: Now, isn't it the most basic  
11 thing to do as an attorney dealing with discovery  
12 requests to determine what is out there that might be  
13 subject to discovery?  
14 THE WITNESS: It wasn't like an official --  
15 this wasn't like an official discovery request. It was  
16 an informal -- my discussions was an informal inquiry.  
17 We were going to wait to hear from Justice as to what  
18 they wanted.  
19 MR. CHERTOFF: Having --  
20 THE WITNESS: I'm just telling you how this  
21 thing progressed.  
22 MR. CHERTOFF: As of May 1997, having already  
23 written a memo about what the Department of Justice  
24 might be wanting to get by way of consent-to-search  
25 data, is it your testimony that you never went to find

1 out whether there were any bad documents that might be  
2 called for?  
3 THE WITNESS: Yes. I didn't. I was asked to  
4 produce -- they were going to tell us what kind of  
5 documents they wanted and I was going to produce them.  
6 MR. CHERTOFF: Did you ever say to the State  
7 Police, to Tom Gilbert, Tom, do we have any problem  
8 documents out there that might be an issue in  
9 discovery?  
10 THE WITNESS: I would assume he would have  
11 told me if there were any.  
12 MR. CHERTOFF: Well, who was responsible for  
13 doing the legal representation for the State of New  
14 Jersey on this matter, you or Sergeant Gilbert,  
15 Sergeant First Class Gilbert?  
16 THE WITNESS: I was in charge of getting  
17 information that was responsive from the Division of  
18 State Police to the Department of Justice.  
19 MR. CHERTOFF: Did you think it was within  
20 your area of responsibility to advise your superiors if  
21 there were problem documents that might have to be  
22 turned over to the United States Government that would  
23 be a problem fro New Jersey in this investigation?  
24 THE WITNESS: Would I tell like Alex Waugh?  
25 Yes.

1 MR. CHERTOFF: Well, did you make an effort  
2 to find out if there was a problem, any problem  
3 documents?

4 THE WITNESS: I didn't -- I didn't have a  
5 charge to go and quiz State Police or question State  
6 Police. I was like, George, State Police is going to  
7 give you documents, you report to me and that's what  
8 you do. Even in my discussions with Justice, I was  
9 specifically told, do not discuss substance with the  
10 Department of Justice. If they have questions, you get  
11 back to us with them.

12 MR. CHERTOFF: Is it your testimony that as  
13 of this point in May 1997 you had no awareness of  
14 whether there were internal studies by the State Police  
15 showing statistical breakdowns --

16 THE WITNESS: Yes.

17 MR. CHERTOFF: You had no knowledge of that?

18 THE WITNESS: Yes.

19 MR. CHERTOFF: Did there come a point you had  
20 knowledge of that? Did you get knowledge that there  
21 were internal reports of the State Police analyzing  
22 stop data and other data?

23 THE WITNESS: I got -- I had knowledge of in  
24 July or August of '97 from Alex that there was an  
25 analysis on the Moorestown station.

1 MR. CHERTOFF: Alex Waugh told you that?

2 THE WITNESS: Yes, to the best of my  
3 recollection.

4 MR. CHERTOFF: How did he get it?

5 THE WITNESS: I don't know.

6 MR. CHERTOFF: But he told you it? He told  
7 you about that?

8 THE WITNESS: Yes.

9 MR. CHERTOFF: Did he show it to you?

10 THE WITNESS: I believe yes, he did show it  
11 to me.

12 MR. CHERTOFF: Okay. I'm going to show you  
13 R -- it's been marked already. I think it's W -- I'm  
14 sorry, G-27 for identification.

15 Do you see this?

16 THE WITNESS: Yes.

17 MR. CHERTOFF: Is this -- putting aside the  
18 cover page to Peter Verniero from Alex Waugh, the  
19 documents attached to this exhibit, which are OAG976  
20 through 998, are these documents that Alex Waugh showed  
21 you?

22 THE WITNESS: Yes.

23 MR. CHERTOFF: Did he tell you where he got  
24 them from?

25 THE WITNESS: No.

1 MR. CHERTOFF: Was there -- to your knowledge  
2 did the State Police have another conduit to Alex Waugh  
3 besides yourself? Weren't you the principal conduit --

4 THE WITNESS: State Police --

5 MR. CHERTOFF: -- of information?

6 THE WITNESS: No. Other people -- he's the  
7 Executive Assistant Attorney General. I have no idea  
8 who Alex was talking to.

9 MR. CHERTOFF: When he gave you these  
10 documents, what did he tell you to do about it?

11 THE WITNESS: When he gave me these  
12 documents?

13 MR. CHERTOFF: Um-hmm.

14 THE WITNESS: He told me, "Take the documents  
15 and I'll get back to you as to whether or not they  
16 should be produced to DOJ."

17 MR. CHERTOFF: Well, were you asked to find  
18 out whether they were within the scope of what should  
19 be produced to DOJ?

20 THE WITNESS: I wasn't asked as to whether or  
21 not they were within the scope. My opinion was that it  
22 seemed like they were relevant.

23 MR. CHERTOFF: Did you produce them?

24 THE WITNESS: No, I did not produce them.

25 MR. CHERTOFF: Why not?

1 THE WITNESS: When Alex gave them to me, he  
2 left me with the impression, I said what am I going to  
3 do with the documents, with this document? And he's  
4 like "I'll get back to you, don't do anything."  
5 That's --

6 MR. CHERTOFF: And so what happened?

7 THE WITNESS: He never -- I didn't hear from  
8 him.

9 MR. CHERTOFF: He never got back to you.

10 THE WITNESS: That's correct.

11 MR. CHERTOFF: Did you follow up?

12 THE WITNESS: I think I followed up once and  
13 I don't if he was talking to the Attorney General and  
14 he said "If Justice asks for it, let me know -- asks  
15 for something, let me know." That's --

16 MR. CHERTOFF: And that was it?

17 THE WITNESS: Yes.

18 MR. CHERTOFF: Now, you thought these were  
19 relevant documents, right? Right?

20 THE WITNESS: I thought that a decision would  
21 have to be made by higher-up people, but they clearly  
22 struck me as being relevant.

23 MR. CHERTOFF: And no one actually told you  
24 to produce them, right?

25 THE WITNESS: Oh, no, right.

1 MR. CHERTOFF: And so you didn't do anything,  
2 right?

3 THE WITNESS: Right, I did not.

4 MR. CHERTOFF: You didn't do a memo to the  
5 file or anything like that?

6 THE WITNESS: No.

7 MR. CHERTOFF: And did you look at the  
8 documents?

9 THE WITNESS: Briefly.

10 MR. CHERTOFF: Obviously you had to determine  
11 if they're relevant, right?

12 THE WITNESS: Right. Right.

13 MR. CHERTOFF: Well, let's focus like on the  
14 last page here. Do you see where it says court  
15 searches, 1997; probable cause searches, 1996 -- 1995?

16 THE WITNESS: Yes.

17 MR. CHERTOFF: Do you see the percentage  
18 numbers of consent searches for minorities and non-  
19 minorities?

20 THE WITNESS: I see them now. I mean -- yes.

21 MR. CHERTOFF: Well, you read it then, right,  
22 because you determined it was relevant, right?

23 THE WITNESS: What I -- what I recall doing  
24 is seeing that there was a, like an analysis or audit  
25 or survey and Alex may have said, hey, this is an audit

1 or survey and I know I didn't like go back and spend a  
2 lot of time looking at it because I was waiting for  
3 Alex to get back at me, but I did -- I did go through  
4 it. Do I remember specific things in it? No.

5 MR. CHERTOFF: But you have no doubt you  
6 looked at this section here, right?

7 THE WITNESS: I'm sure I looked through the  
8 document.

9 MR. CHERTOFF: Now, can we --

10 THE WITNESS: I mean again, I got it from the  
11 Executive Assistant Attorney General and he had looked  
12 at it and said, you know, this is like an audit or  
13 analysis of the Moorestown and I'm going to get back to  
14 you about what we can do with it or, you know, what are  
15 we going to do with it? Because I said it's relevant,  
16 right? And he's like well, I'll get back to you.

17 MR. CHERTOFF: Well, let me ask you. As the  
18 years went by, did you become concerned that maybe  
19 you're sitting on a document that's called for to be  
20 produced and you've represented that you've made  
21 production of documents and this is something that's  
22 buried and hasn't been produced? Did that bother you?

23 MR. CHERTOFF: Well, I was told in essence  
24 not to produce it and I didn't. When Justice asked for  
25 it -- when Justice made a request in December '98 of

1 something similar to this like hey, do you have any  
2 audits or analysis of the lower end of the Turnpike, I  
3 immediately called the First Assistant Attorney General  
4 at the time.

5 MR. CHERTOFF: Is it your --

6 THE WITNESS: Because I thought that the  
7 request -- I thought that the request was relevant to  
8 this document.

9 MS. GLADING: The First Assistant Attorney  
10 General at that time was who?

11 THE WITNESS: David Hesbe.

12 MR. CHERTOFF: Let me show -- and I've shown  
13 you this previously --

14 MS. GLADING: Are you done with this  
15 document, Mr. Chertoff?

16 MR. CHERTOFF: No, I'm actually going to  
17 bounce back to it in a minute. I just want to frame  
18 this. I had shown you earlier I think R-1. I think  
19 you have R-1 in front of you. If you look at R-1  
20 you'll see there's an information request form, a blank  
21 one attached to it, right?

22 THE WITNESS: Yes.

23 MR. CHERTOFF: Isn't that the information  
24 request form that you essentially used as a template  
25 for what was being requested by the Department of

1 Justice?

2 THE WITNESS: My understanding of the  
3 information request was that it was a template and I  
4 think I got this from Alex Waugh. That this was an  
5 outline of what Justice may be looking for. As we  
6 moved into February and March, Justice started asking  
7 for particular radio logs, patrol charts, et cetera,  
8 and then in May they gave us like 30 dates which in  
9 essence was like what they were looking for.

10 MR. CHERTOFF: When was that? When was it  
11 they were looking for it?

12 THE WITNESS: Well, when they sent me the 30  
13 dates in May, the random dates --

14 MR. CHERTOFF: Yeah.

15 THE WITNESS: -- that was like okay, here's  
16 our request.

17 MR. CHERTOFF: And with respect to those  
18 dates, what were they requesting?

19 THE WITNESS: Radio logs, patrol charts. I  
20 think there were six documents that are listed I think  
21 in the memo to Colonel Williams.

22 MR. CHERTOFF: Now, with respect to this  
23 exhibit you have before you which is G-27, you  
24 testified earlier that you did believe this -- at the  
25 time that you got this from Executive Assistant

1 Attorney General Waugh, you believed this to be  
2 relevant to the request that had been made, right?

3 THE WITNESS: I thought it could be relevant,  
4 yes.

5 MR. CHERTOFF: And you were told not to turn  
6 it over.

7 THE WITNESS: I was told not to turn it over,  
8 that he would get back to me.

9 MR. CHERTOFF: And he never got back to you.

10 THE WITNESS: Alex never got back to me.

11 MR. CHERTOFF: And you didn't discuss with  
12 him the content of this, did you?

13 THE WITNESS: No.

14 MR. CHERTOFF: But you knew he had a copy of  
15 it because he gave you a copy, right?

16 THE WITNESS: Yes.

17 MR. CHERTOFF: Now, you said you turned it  
18 over when? When did you turn this document over?

19 THE WITNESS: What happened is in I believe  
20 it was December of '98 I got a call from Mr. Posner. I  
21 believe a day or two before he had asked if he could  
22 speak to active New Jersey state troopers and I said I  
23 have to get back to you. I believe a couple days after  
24 that he called and said -- and also he goes, "If you  
25 have any audits or anything of that nature of the

1 Turnpike, you know, let me know because we might want  
2 to take a look at those also." And I said I'll get  
3 back to you. With the request to talk to the troopers,  
4 the active troopers, I had called Dave Hesbe's office  
5 and said hey, I need to talk to you, I have an issue  
6 here. And then I called again and said hey, there's  
7 another issue here because they are requesting  
8 something and I think this is applicable to that  
9 request.

10 MR. CHERTOFF: And what did Dave Hesbe say in  
11 response?

12 THE WITNESS: I went to a meeting.

13 MR. CHERTOFF: Who was at the meeting?

14 THE WITNESS: Dave Hesbe, Al Ramey and Jack  
15 Fahy. And with respect to the troopers, they said  
16 Justice could speak to them and you can tell Justice  
17 that. And with respect to this memo, the words were  
18 something to the effect well, we're working on  
19 something right now that we might be able to share,  
20 don't turn it over now, tell them you're looking at it.  
21 In other words, it's being looked at, if there's  
22 anything to that request.

23 MR. CHERTOFF: Did you bring the memo to the  
24 meeting?

25 THE WITNESS: I believe I did.

1 MR. CHERTOFF: So everybody at the meeting  
2 was aware of the memo?  
3 THE WITNESS: There was a memo there. It  
4 wasn't like we were talking --  
5 MR. CHERTOFF: A copy -- there was a copy of  
6 G-27 there?  
7 THE WITNESS: Yeah. It wasn't like we were  
8 talking in the abstract. There was a copy there. I  
9 believe I brought it.  
10 MR. CHERTOFF: And you were told not to turn  
11 it over?  
12 THE WITNESS: I was told -- you know, I just  
13 want to be careful, yes. In a way I was told not to  
14 turn it over, I was told we're working on something  
15 that we may be sharing with them, don't give it to them  
16 and if they press you, get back to us.  
17 MR. CHERTOFF: And was Paul Zoubek at that  
18 meeting?  
19 THE WITNESS: No.  
20 MR. CHERTOFF: He was not in place yet. He  
21 was not First Assistant yet.  
22 THE WITNESS: I don't know.  
23 MR. CHERTOFF: But David Hesbe was there,  
24 right?  
25 THE WITNESS: Yes.

1 MR. CHERTOFF: Okay. And then there comes a  
2 point -- and this meeting occurred in late 1998.  
3 THE WITNESS: Yes.  
4 MR. CHERTOFF: Now, did there come a point --  
5 I'm going to jump ahead a little bit. Did there come a  
6 point in time in March of 1999 that you turned over a  
7 package of documents that Tom Gilbert had given you to  
8 Paul Zoubek.  
9 THE WITNESS: Not that Tom Gilbert gave me.  
10 MR. CHERTOFF: Or did you have a package of  
11 documents from the State Police regarding analyses and  
12 compilations of statistics regarding racial profiling?  
13 THE WITNESS: Is there a document I can look  
14 at?  
15 MR. CHERTOFF: Let me ask you first. Do you  
16 remember turning over a bunch of documents to Paul  
17 Zoubek or somebody else in March of 1999 related to  
18 profiling?  
19 THE WITNESS: I remember turning over my DOJ  
20 file.  
21 MR. CHERTOFF: Okay. Your DOJ file.  
22 THE WITNESS: Yes.  
23 MR. CHERTOFF: And did that include State  
24 Police documents?  
25 THE WITNESS: It may have, I don't know.

1 MR. CHERTOFF: And who did you give it to?  
2 THE WITNESS: Paul Zoubek.  
3 MR. CHERTOFF: Did it contain, among other  
4 things, this memo which is G-27?  
5 THE WITNESS: Without the cover sheet.  
6 MR. CHERTOFF: Without the cover sheet.  
7 THE WITNESS: This memo was in that package,  
8 in that box.  
9 MR. CHERTOFF: And you say you turned it over  
10 to Paul Zoubek.  
11 THE WITNESS: Yes.  
12 MR. CHERTOFF: Did he say anything to you?  
13 THE WITNESS: No.  
14 MR. CHERTOFF: Did he express surprise?  
15 THE WITNESS: Not to my recollection.  
16 MR. CHERTOFF: Did you come up with a  
17 handcart full of documents?  
18 THE WITNESS: I think there were like --  
19 MR. CHERTOFF: To bring your file over?  
20 THE WITNESS: -- six boxes.  
21 MR. CHERTOFF: So you brought them over like  
22 -- and how did you come to deliver all those documents?  
23 THE WITNESS: Paul asked me to bring the file  
24 over.  
25 MR. CHERTOFF: Did he tell you why?

1 THE WITNESS: I just think he said he was  
2 going to handle dealing with the Department of Justice.  
3 MR. CHERTOFF: Do you remember when this was  
4 in 1999, was it in February or March?  
5 THE WITNESS: I think it was in February, the  
6 middle of February.  
7 MR. CHERTOFF: I'm going to show you what I'm  
8 going to mark as R-18. It's dated February 26th. This  
9 is a memo from you to Paul Zoubek dated February 26,  
10 1999. See if you remember that.  
11 THE WITNESS: Yes, I do, sir.  
12 MR. CHERTOFF: Did your turn-over of these  
13 documents follow this memo?  
14 THE WITNESS: What do you mean follow?  
15 MR. CHERTOFF: In other words, did the  
16 occasion which you brought up a cart full of documents,  
17 your file, was that prompted by your having written  
18 this memo and then Zoubek having called you up and said  
19 bring your file over?  
20 THE WITNESS: No. This was -- this was --  
21 this came like with the file.  
22 MR. CHERTOFF: With the file.  
23 THE WITNESS: Yes.  
24 MR. CHERTOFF: So this would help us to  
25 understand the date in which the file was turned over.

1 Would it be approximately February 26th?

2 THE WITNESS: Yes.

3 MR. CHERTOFF: And you'll see in this memo  
4 that there's a list of numerous -- you say "There are  
5 numerous documents I have not produced to DOJ and they  
6 include the following," right?

7 THE WITNESS: Yes.

8 MR. CHERTOFF: And among those are the July  
9 5th, 1996 IAB motor vehicle stop audit of Moorestown  
10 station, Lieutenant Gilbert, right?

11 THE WITNESS: Correct.

12 MR. CHERTOFF: And that is, in fact, one of  
13 the documents contained in the package G-27, correct?

14 THE WITNESS: Correct.

15 MR. CHERTOFF: And there's also mention of an  
16 audit IAB Perryville-Washington station, March 29,  
17 1996, right?

18 THE WITNESS: Correct.

19 MR. CHERTOFF: Take a look and see if that's  
20 also contained in this package of documents.

21 THE WITNESS: I don't understand your  
22 question, sir.

23 MR. CHERTOFF: Is that audit also contained  
24 in this package of documents which is --

25 THE WITNESS: That I -- yes.

1 MR. CHERTOFF: -- G-27?

2 THE WITNESS: Oh --

3 MR. CHERTOFF: Take a look.  
4 (Pause)

5 THE WITNESS: Unless you know differently, I  
6 don't think so.

7 MR. CHERTOFF: You don't see it in here.

8 THE WITNESS: Right.

9 MR. CHERTOFF: But that's a separate audit  
10 you remember having in your file, right?

11 THE WITNESS: Yes.

12 MR. CHERTOFF: And I take the documents not  
13 produced were in the file that you brought over,  
14 correct?

15 THE WITNESS: Yes.

16 MR. CHERTOFF: As well as G-27 was also part  
17 of what you brought over, right?

18 THE WITNESS: Yes.

19 MR. CHERTOFF: Now, I want to show you -- and  
20 you brought it over at the end of February, correct?

21 THE WITNESS: Yes, I believe this date is --  
22 indicates the date.

23 MR. CHERTOFF: I'm going to show you what I  
24 want to mark as R-19. It's a memorandum to the file  
25 from Peter Verniero dated March 16th, 1999. Actually,

1 let me back up for a second before I do that.

2 Let me show you also what I'm going to call  
3 R-19A, which is a memo to the file from Paul Zoubek  
4 dated the same date. It's called State Police Review.  
5 Now, looking at -- have you ever seen either of these  
6 memos before?

7 THE WITNESS: No.

8 MR. CHERTOFF: Okay. Looking at R-19A, is it  
9 correct as stated in this memo that on March 15th in  
10 your presence at a meeting with Ron Susswein, Wayne  
11 Fisher and Paul Zoubek, Thomas Gilbert turned over a  
12 packet of documents regarding racial profiling?

13 THE WITNESS: I was at a meeting. I think  
14 that's the date. I don't particularly recall the date,  
15 but I would say yes.

16 MR. CHERTOFF: And you remember Tom Gilbert  
17 turning over like a blue notebook full of documents?

18 THE WITNESS: Yes.

19 MR. CHERTOFF: I'm going to show you what  
20 we're going to mark as -- which has been marked as  
21 G-33.

22 THE WITNESS: Should I review the --

23 MR. CHERTOFF: Yeah, take a look at it and  
24 see if you remember this being the packet of documents  
25 that Thomas Gilbert turned over on March 15th, 1999.

1 THE WITNESS: Well, one thing I can say is, I  
2 don't know if they are. I didn't look at the documents  
3 he turned over. I came to the meeting. The documents  
4 were turned over and we left.

5 MR. CHERTOFF: Well, what was the reaction  
6 when the documents were turned over at the meeting,  
7 surprise?

8 THE WITNESS: Reaction? I don't know. The  
9 State Police was bringing over information. I didn't  
10 know what the information was and it was like we were  
11 there for like five minutes. I don't --

12 MR. CHERTOFF: Who's "we"? "We" were there  
13 five minutes.

14 THE WITNESS: I remember some of the people  
15 indicated in the March 16th memo, R-19A.

16 MR. CHERTOFF: Well, take a look at -- you  
17 remember there being a blue notebook with papers that  
18 Tom Gilbert turned over, right?

19 THE WITNESS: Yes.

20 MR. CHERTOFF: Okay. Look at G-33, which  
21 I'll represent to you is identified as that notebook.  
22 Start at the first page there. It says, "Internal  
23 audit of summonses." It's to a Captain Touw and it  
24 talks about -- it's dated March 29th. It talks about  
25 summonses at the Perryville and Washington stations.

1 March 29th, 1996. Now, you see that document in there?

2 THE WITNESS: Yes.

3 MR. CHERTOFF: You had seen this before that  
4 meeting, right?

5 THE WITNESS: I had this -- I had that  
6 document before that meeting.

7 MR. CHERTOFF: Right. Because, in fact,  
8 that's one of the documents --

9 THE WITNESS: Of course, I identified it in  
10 my memo.

11 MR. CHERTOFF: As not having been turned  
12 over.

13 THE WITNESS: Yes.

14 MR. CHERTOFF: So it would be completely  
15 incorrect to suggest that these documents had not  
16 previously been furnished to the Department of Law and  
17 Public Safety by the State Police, right?

18 THE WITNESS: Oh, yeah, I had this.

19 MR. CHERTOFF: You had this.

20 THE WITNESS: Oh, yes.

21 MR. CHERTOFF: This did not turn up for the  
22 first time in your possession in March of 1999.

23 THE WITNESS: No, I had this.

24 MR. CHERTOFF: Did you pass this up to Alex  
25 Waugh?

1 THE WITNESS: Alex -- I believe that this  
2 came -- let me make sure I testify accurately here.  
3 What do I remember? This document became known to me  
4 in early 1997.

5 MR. CHERTOFF: How did it become known to  
6 you?

7 THE WITNESS: I don't know if it was Tom  
8 Gilbert, it might have been Jack Fahy. And I know that  
9 because I was told that it doesn't apply to the Justice  
10 Department inquiry.

11 MR. CHERTOFF: Who told you that?

12 THE WITNESS: Alex Waugh.

13 MR. CHERTOFF: And was that in early '97?

14 THE WITNESS: Early '97.

15 MR. CHERTOFF: Was this in a meeting?

16 THE WITNESS: I don't know.

17 MR. CHERTOFF: How did the subject come up?

18 THE WITNESS: Well, I believe it came up -- I  
19 don't want to...

20 (Pause)

21 How did it come up? It came up as to whether  
22 or not it was applicable to the DOJ inquiry.

23 MR. CHERTOFF: Did you ask Alex this?

24 THE WITNESS: I can't specifically recall. I  
25 would think that I did.

1 MR. CHERTOFF: You had gotten this from Tom  
2 Gilbert.  
3 THE WITNESS: I may have gotten it from Jack  
4 Fahy.  
5 MR. CHERTOFF: All right. And he said to you  
6 it doesn't apply.  
7 THE WITNESS: I recall him saying that it  
8 applied -- what DOJ is looking at is the Turnpike, the  
9 end of the Turnpike and that this wouldn't apply.  
10 MR. CHERTOFF: Did he indicate to you he had  
11 discussed that with anybody else?  
12 THE WITNESS: No.  
13 MR. CHERTOFF: Let's go to the next one,  
14 which is a document -- it's dated -- I think it's dated  
15 June 30th, 1996. In any case, it's from Major Fedorko  
16 to Lieutenant Colonel Littles, Moorestown station  
17 audit. Do you remember seeing this one before?  
18 MS. GLADING: I think that's 9-30.  
19 MR. CHERTOFF: You're right. Maybe it's  
20 9-30-96.  
21 MS. GLADING: Because it goes through July  
22 31st, '96.  
23 THE WITNESS: I'm trying to find it.  
24 MR. CHERTOFF: It's --  
25 THE WITNESS: Oh, okay.

1 MR. CHERTOFF: You got that?  
2 THE WITNESS: I have located it.  
3 MR. CHERTOFF: Had you seen that before 1999?  
4 THE WITNESS: Is this the '96, part of the  
5 '96 document?  
6 MR. CHERTOFF: I can only -- you have to take  
7 a look at the document yourself.  
8 THE WITNESS: Okay.  
9 MR. CHERTOFF: It says Moorestown station.  
10 Oh, part of R --  
11 THE WITNESS: Thirty-one, is it?  
12 MR. CHERTOFF: Out of G-27?  
13 THE WITNESS: Right.  
14 MR. CHERTOFF: Let me take a look.  
15 (Pause)  
16 THE WITNESS: No. I don't recall this  
17 document.  
18 MR. CHERTOFF: Okay. And you don't recall  
19 seeing --  
20 THE WITNESS: No.  
21 MR. CHERTOFF: -- this one?  
22 THE WITNESS: No.  
23 MR. CHERTOFF: Let's keep going. How about  
24 the next one we have is dated 9-24-96 from Lieutenant  
25 F. Hinkle entitled Patrol Issues, Concerns at

1 Moorestown Station. Now, that actually is part of  
2 G-27, right?  
3 THE WITNESS: Okay. Let me -- what document  
4 are you looking at?  
5 MR. CHERTOFF: It says Patrol Issues,  
6 Concerns at Moorestown Station.  
7 THE WITNESS: Dated 10-4?  
8 MR. CHERTOFF: Dated 9-24-96.  
9 You may be going too far.  
10 THE WITNESS: Yeah, okay.  
11 MR. CHERTOFF: You got it?  
12 THE WITNESS: Okay. Yes, I have it.  
13 MR. CHERTOFF: Now, isn't that identical to  
14 the -- on G-27, the second page, right, after -- on  
15 your cover page?  
16 THE WITNESS: Yes, it appears to be.  
17 MR. CHERTOFF: Okay. So you clearly had this  
18 document as of 1997, right?  
19 THE WITNESS: This, whatever it was --  
20 MR. CHERTOFF: 9-24-96 report.  
21 THE WITNESS: -- July or August of '97 when  
22 I --  
23 MR. CHERTOFF: Right.  
24 THE WITNESS: -- met with Alex.  
25 MR. CHERTOFF: Right. And you had given this

1 to Alex Waugh, right?  
2 THE WITNESS: No. I don't --  
3 MR. CHERTOFF: Oh, I'm sorry, he had given it  
4 to you.  
5 THE WITNESS: I think Alex gave it to me.  
6 MR. CHERTOFF: I'm sorry, okay.  
7 So this document, I want to be completely  
8 clear for the record, this document, 9-24-96, is a  
9 duplicate of the 9-24-96 memo which Alex Waugh gave to  
10 you and which is contained starting at the second page  
11 of G-27, right?  
12 THE WITNESS: Yes.  
13 MR. CHERTOFF: And this is again a document  
14 Alex Waugh told you you didn't need to produce or not  
15 to produce until further notice.  
16 THE WITNESS: Correct.  
17 MR. CHERTOFF: Now, unlike the first document  
18 he told you not to produce having to do with Perryville  
19 and Washington stations, Moorestown station is a  
20 Turnpike station, right?  
21 THE WITNESS: Correct.  
22 MR. CHERTOFF: So there's no doubt in your  
23 mind that that was covered by the Department of  
24 Justice's focus on the southern part of the Turnpike?  
25 THE WITNESS: What I told Alex was there's an

1 issue of relevance in here. Now, I didn't know what  
2 their position was, if they had a privileged position,  
3 whatever but, you know, to answer your question, it  
4 clearly struck me as being relevant and a decision  
5 would need to be made as to whether or not it should be  
6 produced.

7 MR. CHERTOFF: Now, when you had this  
8 conversation with Alex Waugh about the memo dated  
9 September 24th about Moorestown where you said this is  
10 clearly relevant, did you make --

11 THE WITNESS: First of all, I didn't say  
12 clearly relevant.

13 MR. CHERTOFF: Possibly relevant.

14 THE WITNESS: Right.

15 MR. CHERTOFF: Did you make that point by way  
16 of distinguishing between this memo and the Perryville  
17 and Washington station memo of March '96 which Mr.  
18 Waugh had told you is not relevant because it's not  
19 Turnpiked?

20 THE WITNESS: I don't recall doing that.

21 MR. CHERTOFF: All right. Let's keep going  
22 down.

23 The next document is dated 10-4-96 to Major  
24 Fedorko. Do you see that?

25 THE WITNESS: Yes, I do.

1 MR. CHERTOFF: Had you seen that previous to  
2 March of 1999?

3 THE WITNESS: I didn't see it in March of  
4 1999 either.

5 MR. CHERTOFF: Okay. When is the first time?

6 THE WITNESS: I have never seen these  
7 documents -- that document.

8 MR. CHERTOFF: All right. Now, you see the  
9 information request, you've seen a copy of that before,  
10 that's --

11 THE WITNESS: Yes.

12 MR. CHERTOFF: -- the next document. Then we  
13 go to the next document which is document 1-9-97  
14 regarding Justice Department investigation, profiling  
15 allegations, logistical concerns. Had you seen that  
16 previous to March of 1999?

17 THE WITNESS: I have no recollection of  
18 receiving this, no. No.

19 MR. CHERTOFF: Take a look through G-33 for a  
20 few moments and, in fact, maybe it's a good time to  
21 take a short break so you can do this. And tell me if  
22 there are any other documents, apart from the ones  
23 we've talked about, which you recall having seen prior  
24 to March of 1999.

25 Okay, why don't we take ten minutes.

1 (Off the record)

2 MR. CHERTOFF: Have you had an opportunity to  
3 look at the rest of G-33?

4 THE WITNESS: Yes.

5 MR. CHERTOFF: Okay. And other than the  
6 documents we've identified, the two documents we've  
7 identified that you had seen prior to March 1999 and  
8 that Mr. Waugh had also seen prior to March of 1999, do  
9 you recognize any of the other documents as having been  
10 documents you have seen prior to March 1999?

11 THE WITNESS: I say no with one caveat. In  
12 my closing memo I refer to the Hunterdon County  
13 statistics --

14 MR. CHERTOFF: Yes.

15 THE WITNESS: -- and the Gloucester County  
16 data base.

17 MR. CHERTOFF: Um-hmm.

18 THE WITNESS: I don't know what they are  
19 because I believe they came into my possession with the  
20 Perryville audit and the same was like they're not  
21 relevant. So I never really looked at them. So if  
22 they're in here, I at least looked at them quickly once  
23 and so I don't want to misrepresent that. I don't know  
24 if they're in there or not. Otherwise I haven't seen  
25 anything else.

1 MR. CHERTOFF: When you referred to the  
2 Hunterdon County statistics and Gloucester County data  
3 base, arrest data, that's items seven and eight that  
4 you've listed on Page 3 of your closing memo. "It says  
5 numerous documents I have not" --

6 THE WITNESS: Yes.

7 MR. CHERTOFF: -- "produced to DOJ."

8 THE WITNESS: Yes.

9 MR. CHERTOFF: Now, those are documents you  
10 had also discussed with Mr. Waugh.

11 THE WITNESS: I believe I discussed the audit  
12 IAB at Perryville, six, seven and eight.

13 MR. CHERTOFF: Did you discuss those three  
14 with Mr. Waugh at the same or on separate occasions?

15 THE WITNESS: I can't recall. It could have  
16 been either way. It would have been in early '97 and I  
17 don't know if I got them from Jack Fahy or maybe Tom  
18 Gilbert. I don't know who gave them to me.

19 MR. CHERTOFF: Okay. Now, you've also  
20 indicated that item number -- well, let's talk about  
21 item number one, the July 5th, 1996 IAB motor vehicle  
22 stop audit of Moorestown station. Is that contained in  
23 G-27?

24 THE WITNESS: I think -- I believe we went  
25 over it. Are you talking about the second page of

1 G-27?

2 MR. CHERTOFF: Yeah. Is that the -- what you  
3 have as item one on your closing memo?

4 THE WITNESS: I believe it is.

5 MR. CHERTOFF: Okay. Now, I just want to, so  
6 it's clear to me, Page 2 of G-27, it says reporting  
7 date 9-24-96. Why do you have July 5th, 1996 IAB motor  
8 vehicle stop audit at Moorestown station? I'm trying  
9 to ascertain --

10 THE WITNESS: Yes, I agree.

11 MR. CHERTOFF: I just want to ascertain, is  
12 that what you're referring to in item one on Page 3 of  
13 your closing memo, this memorandum called Patrol  
14 Issues, Concerns at Moorestown Station?

15 THE WITNESS: In looking at G-27?

16 MR. CHERTOFF: Um-hmm.

17 THE WITNESS: I think on Page 4 there is a  
18 document dated 7-5-96.

19 MR. CHERTOFF: Okay.

20 THE WITNESS: That would be what I was  
21 referring to.

22 MR. CHERTOFF: I see. And were there  
23 attachments to that memo of 7-5-96 in addition to this?  
24 Because it makes reference to internal -- to some  
25 enclosures.

1 THE WITNESS: I don't believe it was a two-  
2 page document. I think there were attachments. I  
3 can't be a hundred percent certain, but I believe there  
4 were attachments.

5 MR. CHERTOFF: Were the pie charts attached?

6 THE WITNESS: I believe they were. I can't  
7 remember.

8 MR. CHERTOFF: All right. So it would be  
9 clear then in terms of items that you had discussed  
10 with Mr. Waugh on your closing memo, certainly item  
11 one, item six, item seven and item eight, you had  
12 discussed with Mr. Waugh in early to mid --

13 THE WITNESS: Right.

14 MR. CHERTOFF: And Mr. Waugh indicated to you  
15 in the case of six, seven and eight, not to turn those  
16 over, correct?

17 THE WITNESS: Yes, at various times and in  
18 various ways. I mean --

19 MR. CHERTOFF: And with respect to one, he  
20 said he would get back to you.

21 THE WITNESS: Correct.

22 MR. CHERTOFF: And he never did.

23 THE WITNESS: Correct.

24 MR. CHERTOFF: In that respect, to be fair,  
25 he said "If they ask for it though, also let me know."

1 MR. CHERTOFF: Let me -- by the way, just go  
2 through the other items. What is item three? It says  
3 statistical breakdown of motor vehicle stops for the  
4 sample date.

5 THE WITNESS: It is -- it is what it says  
6 meaning there was no statistical breakdown of motor  
7 vehicle stops for the sample dates that I had.

8 MR. CHERTOFF: Well, it says "These are  
9 numerous documents I have not produced to DOJ."

10 THE WITNESS: Right.

11 MR. CHERTOFF: And it says "The statistical  
12 breakdown of motor vehicle stops for the sample dates."

13 THE WITNESS: It's inarticulately worded. I  
14 never had a statistical breakdown of the sample dates.

15 MR. CHERTOFF: Well, let me show you G-21 and  
16 G-25 for identification and see whether these are the  
17 statistical breakdown of motor vehicle stops for the  
18 sample dates that you referred to as item number three.

19 THE WITNESS: No. Remember, I didn't -- I'm  
20 saying -- this isn't worded right. I'm saying numerous  
21 documents aren't produced. What happened is at the  
22 meeting with respect to the -- when the DOJ issue went  
23 public, I was called over, I was sick that day. I came  
24 to the meeting, it was almost over. At the end of that  
25 meeting, Paul said, "Do we have a" -- Paul Zoubek said,

1 "Do we have a statistical breakdown of the sample  
2 dates?" And I said no, we don't. I said no one ever  
3 said to do that. I then called Tom Gilbert and said do  
4 you have a statistical breakdown of the sample dates  
5 and he said no. I believe his answer was no. He  
6 clearly didn't have a breakdown. I then told Paul that  
7 that same day, that we did not. And Tom Gilbert began  
8 doing the statistical breakdown.

9 MR. CHERTOFF: You're saying that happened in  
10 '99?

11 THE WITNESS: Yes.

12 MR. CHERTOFF: Well, let me show you G-25.  
13 Isn't that, in fact, the statistical breakdown for the  
14 30 sample dates that was generated on July 10th, 1997?

15 THE WITNESS: Yes, it is. I did not get  
16 this. I did not get this.

17 MR. CHERTOFF: In 1997 did Gilbert orally  
18 convey this information to you?

19 THE WITNESS: I do not recall Tom Gilbert  
20 orally giving me statistical numbers or information.

21 MR. CHERTOFF: What about looking at G-21,  
22 have you seen this before?

23 THE WITNESS: No, I have not.

24 MR. CHERTOFF: Do you know when this was  
25 generated?

1 THE WITNESS: No, I don't.

2 MR. CHERTOFF: Is it your testimony that  
3 until early 1999 you had not gotten a statistical  
4 analysis from the 30 sample dates?

5 THE WITNESS: That's correct.

6 MR. CHERTOFF: Didn't he give you G-25 and  
7 G-21 by the early fall of 1997?

8 THE WITNESS: No, he did not.

9 MR. CHERTOFF: So when you say here that the  
10 documents you've not produced include the statistical  
11 breakdown of motor vehicle stops for the sample dates,  
12 what documents are you referring to?

13 THE WITNESS: I've explained it to you. It's  
14 inartfully worded. Because I had a discussion with  
15 Paul that there was no statistical breakdown. When I  
16 did my closing memo, I was saying there isn't a  
17 statistical breakdown. I recognize that this reads as  
18 if there is a document in my file that is a statistical  
19 breakdown. I recognize that's the way it reads. But I  
20 called Tom that day. Tom had told me, he said he  
21 didn't have one. I called him on the phone from the  
22 8th floor that day. He goes, "I don't have those  
23 numbers." That's what he told me. And he said he was  
24 going to get -- he was going to work on them.

25 MR. CHERTOFF: What is number five?

1 "February 18, 1997 State Police IAB memo concerning  
2 maintenance of complaint records."

3 THE WITNESS: Do you have it?

4 MR. CHERTOFF: I don't think we do. Do you  
5 remember what that was?

6 THE WITNESS: I don't recall what that was.

7 MR. CHERTOFF: What about number four,  
8 Negative OPR Probable Cause Searches, what does that  
9 refer to?

10 THE WITNESS: That I remember. In --  
11 sometime in January, Mark Posner called me and said --

12 MR. CHERTOFF: January of what year?

13 THE WITNESS: '99. It was late. He said "Do  
14 you have any other documents relating to stops for the  
15 sample dates?" And he's like -- I believe he said, for  
16 example, like a sheet that -- like a one-page sheet  
17 saying that someone has stopped somebody, or any other  
18 documents that relate to that. I recall calling Tom  
19 Gilbert and saying hey, do you have this? I think he  
20 said no. I said but he said we have the probable cause  
21 searches. I do remember though Tom Gilbert saying to  
22 me, George, I gave them to you. And I said well, they  
23 would be produced with investigation and arrest  
24 reports, right? I didn't know what they were. And he  
25 goes "No, they're a separate document." He goes,

1 "George, I gave them to you," meaning back in time.

2 MR. CHERTOFF: Back in '97?

3 THE WITNESS: He did say that. And I said  
4 can you send them to me again? I said -- and, quite  
5 honestly, I think I do remember him mentioning that  
6 document to me. I believed that they were part of the  
7 investigation arrest report files that we turned over.  
8 But again, in fairness to Tom, he did say, "George, you  
9 know, I told you, we talked about this, I think." And  
10 I said I did vaguely recollect. And when he sent them  
11 to me again, they're clearly producible. They clearly  
12 are.

13 MR. CHERTOFF: So what did you do?

14 THE WITNESS: Well, before I got to turn them  
15 over, my file got transferred. But they were clearly  
16 producible.

17 MR. CHERTOFF: A significant amount of  
18 training materials. What materials were withheld?

19 THE WITNESS: I think a number of the  
20 materials -- I can't remember it specifically. There  
21 was some materials that were not related. Everything  
22 that said materials not produced didn't mean that they  
23 were relevant materials. There was some materials on,  
24 I think on other types of drunk driving training, et  
25 cetera. I had also received additional training

1 materials from Tom fairly recently and I did not -- had  
2 not yet turned them over. There was nothing in those  
3 materials that led me believe from my recollection that  
4 they wouldn't be turned over. And I might add at this  
5 time, Justice really wasn't pursuing training  
6 materials. Starting in '98 it became clear that they  
7 were tracking the appeal of the Soto case. And it got  
8 very quiet. For all of '98 I did not hear from Mr.  
9 Posner all that often.

10 MR. CHERTOFF: At the bottom of that section  
11 one through eight about the documents not produced,  
12 there's a statement that says, "These are other  
13 documents," maybe it should be "There are other  
14 documents" --

15 THE WITNESS: Right.

16 MR. CHERTOFF: -- "not produced to DOJ which  
17 I have kept in a separate file."

18 THE WITNESS: Right.

19 MR. CHERTOFF: What was in that separate  
20 file?

21 THE WITNESS: I'm telling you, I think it was  
22 materials like -- some of the training materials. I  
23 think there were some SOP's that weren't relevant. I  
24 think there might be some court opinions. Documents of  
25 that nature.

1 MR. CHERTOFF: All right. You brought this  
2 over with your boxes to Paul Zoubek on or around  
3 February 26 of 1999, correct?

4 THE WITNESS: Correct.

5 MR. CHERTOFF: And what was his response or  
6 what did he say to you when you brought it over?

7 THE WITNESS: My recollection was that he  
8 commented -- he asked for the -- he asked for copies --  
9 he asked me about what correspondence we had received  
10 from the Department of Justice and I said there really  
11 wasn't any, and he seemed surprised by that. I think  
12 he also called Mark Posner that day to talk about a  
13 traffic study or something of that nature.

14 MR. CHERTOFF: And what happened next with  
15 respect to your involvement in this matter?

16 THE WITNESS: Well, the only thing that comes  
17 to mind is that I was asked to -- I was asked to  
18 contact Maryland and Pittsburgh regarding their  
19 relationship with the Justice Department.

20 MR. CHERTOFF: Who asked you to do that?

21 THE WITNESS: Paul Zoubek.

22 MR. CHERTOFF: Let me back up though. Before  
23 then, you indicated that after you brought over your  
24 boxes of documents you were present on March 15th when  
25 Lieutenant Gilbert brought over his blue notebook.

1 THE WITNESS: Yes.

2 MR. CHERTOFF: How did you come to be at that  
3 meeting again?

4 THE WITNESS: Someone I guess from Paul's  
5 office called me.

6 MR. CHERTOFF: And what was the discussion  
7 when Lieutenant Gilbert came in?

8 THE WITNESS: I don't recall much discussion.  
9 I mean --

10 MR. CHERTOFF: I'm sorry, Sergeant Gilbert  
11 came in.

12 THE WITNESS: Sergeant Gilbert. I don't  
13 recall much discussion. I remember the meeting as  
14 being very short. I mean I certainly -- I don't think  
15 I said anything. I don't think anyone really said much  
16 of anything. There was a conversation. I thought  
17 there was someone else from State Police there, but  
18 maybe not. And that was the end of the meeting.

19 MR. CHERTOFF: Did you subsequently hear any  
20 feedback concerning Mr. Zoubek's reaction to receiving  
21 this notebook of documents?

22 THE WITNESS: I think the next conversation I  
23 had from Paul was with respect to the consent judgment  
24 in Maryland and Pittsburgh.

25 MR. CHERTOFF: That's not my question.

1 THE WITNESS: Okay.

2 MR. CHERTOFF: My question is, did you hear  
3 from any source of any reaction by Paul Zoubek to the  
4 fact that he had gotten this notebook on March 15th,  
5 1999?

6 THE WITNESS: I don't recall hearing from  
7 anybody about a reaction or anything of that nature.

8 MR. CHERTOFF: Did it come to your attention  
9 that Paul Zoubek was angry and believed that the State  
10 Police had withheld something from him?

11 (Pause)

12 THE WITNESS: I don't recall. I recall being  
13 asked to do those two projects. I'm trying to think if  
14 I heard -- being in a different building, I'm trying to  
15 think if I heard through the grapevine from someone  
16 that there was -- I'd be guessing. I don't recall.

17 MR. CHERTOFF: Did you have a conversation  
18 with Tom Gilbert after the notebook was turned over in  
19 which you discussed with him the timing of that  
20 material being turned over?

21 THE WITNESS: I don't recall a conversation  
22 with Tom about his turn-over of the blue binder?

23 MR. CHERTOFF: Yeah, or about Paul Zoubek's  
24 reaction to the turn-over of documents.

25 THE WITNESS: No, sir.

1 MR. CHERTOFF: Did anybody ever ask you to  
2 find out why they believed or they were -- let me  
3 withdraw the question.

4 Did anybody ever ask you to find out why  
5 information had been withheld by the State Police?

6 THE WITNESS: I didn't know if information  
7 had been withheld.

8 MR. CHERTOFF: Did anyone ever suggest to you  
9 that it had been withheld and asked you to find out why  
10 it had been withheld?

11 THE WITNESS: No, I don't recall anyone  
12 asking me to call up people and say why didn't you give  
13 this stuff over.

14 MR. CHERTOFF: Are you aware of any effort by  
15 Mr. Zoubek or the Attorney General or Mr. Hesbe through  
16 anybody else to determine whether the State Police  
17 withheld information until March of 1999?

18 THE WITNESS: No, I'm not.

19 MR. CHERTOFF: Now, let me ask you this. Let  
20 me take your attention back to June 27th. I'm going to  
21 put before you what has been -- I'm going to mark as  
22 R-20. Do you have that in front of you?

23 THE WITNESS: Yes, I do.

24 MR. CHERTOFF: You see there, you write a  
25 letter that says -- you requested the State Police to

1 produce documents relating to consent searches of  
2 motorists by New Jersey state troopers assigned to the  
3 Cranbury and Moorestown stations. What did that  
4 request encompass, that initial request?

5 THE WITNESS: I would be referring to the 30  
6 sample dates and the request for the radio logs, patrol  
7 charts, tickets, warnings. I think investigation and  
8 arrest reports. Whatever is set forth in the letter to  
9 Carl Williams -- Colonel Williams.

10 MR. CHERTOFF: You didn't consider this  
11 request or the request from Justice to encompass what's  
12 on the last page of G-27, which is a record of  
13 percentages of minority driver consent searches in  
14 Moorestown?

15 THE WITNESS: Say that again. Sorry.

16 MR. CHERTOFF: You did not -- you did not  
17 view the Department of Justice's request to which you  
18 were responding as encompassing the last two pages of  
19 G-27, which is a statistical summary of, among other  
20 things, consent searches in Moorestown?

21 THE WITNESS: I believe that this is the  
22 issue that I had dealt with with Alex Waugh on. And,  
23 you know, I never received any indication that my prior  
24 instruction, you know, not to produce it or whatever,  
25 was changed. And I believe this memo did go over to

1 him for review.

2 MR. CHERTOFF: So that basically -- what did  
3 the State request? Did they request all documents  
4 relating to consent searches on the days in question?

5 THE WITNESS: Say that again.

6 MR. CHERTOFF: Did the Department of Justice  
7 request all documents relating to consent searches on  
8 the 30 days in question?

9 THE WITNESS: As I understood it, they asked  
10 for consent search documents.

11 MR. CHERTOFF: And that would have included  
12 1995, right?

13 THE WITNESS: Whatever the dates were.

14 MR. CHERTOFF: And your response is to turn  
15 over the actual consent search forms only, the reports  
16 only, correct?

17 THE WITNESS: Correct.

18 MR. CHERTOFF: And that was based on your  
19 discussion with Mr. Waugh that he didn't think that the  
20 material in G-27 that related to consent searches was  
21 called for by the response?

22 THE WITNESS: I wasn't given any indication  
23 that that should also be included.

24 MR. CHERTOFF: But you were aware that that  
25 was potentially called for by the response.

1 THE WITNESS: We had talked about it in July.  
2 MS. GLADING: I want to ask you about a  
3 document, I wonder if I could come in here, related to  
4 this letter?  
5 MR. CHERTOFF: Which one?  
6 MS. GLADING: What number are we up to?  
7 MR. CHERTOFF: On the letter we were just  
8 talking about?  
9 MS. GLADING: Yes.  
10 MR. CHERTOFF: I think we're up to R -- I  
11 think it's R-20, yes.  
12 MS. GLADING: So this would be R-21?  
13 MR. CHERTOFF: Right. This would be R-21.  
14 MS. GLADING: Do you remember this letter?  
15 THE WITNESS: It's my letter.  
16 MS. GLADING: Um-hmm. It's several weeks  
17 before this November 5th letter.  
18 THE WITNESS: Right.  
19 MS. GLADING: Was it your intention when you  
20 wrote this letter to produce the consent-to-search  
21 documents?  
22 THE WITNESS: I would imagine, yes.  
23 MS. GLADING: Okay. And you indicate in the  
24 letter that you'll begin sending them to him tomorrow,  
25 did you do that?

1 THE WITNESS: I think they went out on  
2 November 5th.  
3 MS. GLADING: R-20, which Mr. Chertoff was  
4 just asking you about, indicates that you'll produce  
5 the consent-to-search documents for limited purposes.  
6 Do you see at the bottom of the letter?  
7 THE WITNESS: Yes.  
8 MS. GLADING: And this letter does not  
9 indicate there were any attachments attached to it.  
10 THE WITNESS: I agree, it does not. The  
11 consent to searches went out on that date or the next  
12 day. But you're right, this letter does not have an  
13 attachment. But they went out.  
14 MS. GLADING: Okay.  
15 MR. CHERTOFF: Can I interrupt for a second?  
16 This November 5th letter, when it talks about the  
17 request that Mr. Posner made, was that a written  
18 request or a telephonic request?  
19 THE WITNESS: I'm trying to find which  
20 request you're talking about.  
21 MR. CHERTOFF: November -- you're responding  
22 to the November 5th letter to Mr. Posner.  
23 THE WITNESS: Right.  
24 MR. CHERTOFF: You say, "You've requested the  
25 State produce documents relating to consent to

1 searches."

2 THE WITNESS: Right.

3 MR. CHERTOFF: Had that been an oral request  
4 on the telephone or written request?

5 THE WITNESS: Oh, it was an oral request.

6 MR. CHERTOFF: Okay. So when -- the list of  
7 dates came in writing, correct?

8 THE WITNESS: Correct.

9 MR. CHERTOFF: But the request for documents  
10 relating to consent searches was oral.

11 THE WITNESS: Correct.

12 MR. CHERTOFF: And you understood that to be  
13 any documents relating to the consent searches,  
14 correct?

15 THE WITNESS: I don't --

16 MR. CHERTOFF: You understood that to be a  
17 request for any documents relating to consent searches  
18 at Moorestown and Cranbury --

19 THE WITNESS: I related that to the  
20 production of consent searches.

21 MR. CHERTOFF: But you say here, "documents  
22 relating to consent searches." You understood the  
23 request to be for more than merely the actual forms  
24 themselves.

25 THE WITNESS: No, I didn't. No, I did not.

1 MR. CHERTOFF: Well, the phrase "relating to  
2 consent searches" --

3 THE WITNESS: Okay. I understand what you're  
4 saying, but I'm telling you what I understood it to be.

5 MR. CHERTOFF: You had understood it just to  
6 be the actual consent-to-search forms?

7 THE WITNESS: Yes. Oh, yes.

8 MR. CHERTOFF: Was there a discussion, other  
9 than the discussion you had with Mr. Waugh in July, was  
10 there a specific discussion about excluding the audit  
11 information about the consent searches from this  
12 response by specifically turning over or limiting the  
13 turn-over of documents to the actual report forms  
14 themselves?

15 THE WITNESS: Say that one more time.

16 MR. CHERTOFF: Other than the conversation  
17 you had with Mr. Waugh in approximately July of 1997,  
18 did you have other discussions, specifically as it  
19 relates to this request, about keeping -- about  
20 interpreting the request so as to limit it to the  
21 report forms themselves and excluding the audit data?

22 THE WITNESS: The only recollection I have is  
23 sometime after speaking with Alex the first time, it  
24 might have been a week or two later, I said, you know,  
25 do you have anything on that -- on the Moorestown? And

1 he goes, you know, "I'll get back to you." So after  
2 that though, no.

3 MR. CHERTOFF: Now, this memo, this letter  
4 you wrote on November 5th, you actually passed that up  
5 to Alex Waugh to review before you checked it out?

6 THE WITNESS: Oh, yes.

7 MR. CHERTOFF: And your understanding is he  
8 presented it to the Attorney General as well, right?

9 THE WITNESS: I don't know.

10 MR. CHERTOFF: But you heard that, correct?

11 THE WITNESS: No, I didn't hear that. I mean  
12 my impression was that it probably would, but I didn't  
13 hear that from Alex. I didn't hear that from anybody.

14 MR. CHERTOFF: And you see it's on stationery  
15 -- Office of the Attorney General stationery, right?

16 THE WITNESS: Right.

17 MR. CHERTOFF: Letterhead. Who authorized  
18 you to use that letterhead for this letter?

19 THE WITNESS: Well, Alex. If you look -- if  
20 you look back, I think a lot of my memos went out in  
21 the early days on Office of the Attorney General. Then  
22 when I was doing the documents, it was back to Division  
23 of ABC. I would imagine, and I don't have a  
24 recollection, but I wouldn't have used that letterhead  
25 unless I think someone said oh, no, put it on OAG

1 letterhead. I'm not sure, though, on that.

2 MR. CHERTOFF: Let me show you -- I guess  
3 we'll call it R-22. It's a memo to Peter Verniero from  
4 Alexander Waugh dated October 31, 1997. And tell me if  
5 you've seen it before. But if not, I want to direct  
6 your attention to something.

7 (Pause)

8 THE WITNESS: I've never seen it before.

9 MR. CHERTOFF: It says here, and if you look  
10 at the attachment it's essentially a draft of the  
11 letter that you ultimately sent out on November 5th,  
12 correct?

13 THE WITNESS: I'll have to look.

14 MR. CHERTOFF: Take a quick look.

15 THE WITNESS: Are you representing that?

16 MR. CHERTOFF: Yeah, it's basically the same,  
17 similar.

18 In the passage in the cover memo it says,  
19 "DAG Rover and I want to go on record that we are not  
20 consenting to any broadening of the scope of the  
21 inquiry. I attach a draft which I prepared for that  
22 purpose. Although DAG Rover would be more vociferous  
23 in stating the position, I recommend that it be made in  
24 a more subtle manner expressed in the attached."

25 What was the reason here that you wanted to

1 go on record at this time about not consenting to any  
2 broadening of the scope of the inquiry on consents to  
3 search?

4 THE WITNESS: I think what I was talking  
5 about is the post-stop analysis.

6 MR. CHERTOFF: Right. Why did -- let me ask  
7 you, first of all. Is this an accurate statement of  
8 your review? Did you want to go on record that you did  
9 not consent to any broadening of the scope of the  
10 inquiry to include consents to search?

11 THE WITNESS: I don't know if I would have  
12 written it that way. I think what it was was a  
13 reflection of the position that I had all along that  
14 consent searches were post-stop activity. And in  
15 essence we were letting Justice know that our view is  
16 that this is post-stop, but you can have the stuff  
17 anyway.

18 MR. CHERTOFF: But you were giving them the  
19 stuff, but that didn't mean -- but you specifically  
20 reserved the right not to consent to broaden the scope  
21 of the inquiry, right?

22 THE WITNESS: Where does it say that?

23 MR. CHERTOFF: It says, "DAG Rover and I want  
24 to go on record that we are not consenting to any  
25 broadening of the scope of the inquiry."

1 THE WITNESS: Well, my characterization of  
2 what my intention was, and I don't know what Alex was  
3 indicating of his own opinion, was that consents to  
4 search were a post-stop. That was the extent of my  
5 thinking on that letter. That's the extent of it. The  
6 same position.

7 MR. CHERTOFF: But the passage here that  
8 says, "we're not consenting to broaden the scope of the  
9 inquiry." Does that accurately reflect your view as of  
10 that time? Yes or no.

11 THE WITNESS: It depends on how you -- I've  
12 answered your question. It depends on how you define  
13 broadening the scope of the inquiry. If your  
14 definition of that is consents to search are post-stop,  
15 yes. If it means something else, no. My opinion was  
16 limited strictly to that policy.

17 MR. CHERTOFF: And at the time you held the  
18 opinion or expressed the opinion that there should not  
19 be an expansion of the inquiry to cover post --

20 THE WITNESS: Excuse me. I told you that  
21 that wasn't my opinion. You keep characterizing it. I  
22 have explained to you that my position was that post-  
23 stops -- that consent searches were post-stop. What  
24 Alex meant by this, if he meant something else, then  
25 it's not my opinion.

1 MR. CHERTOFF: What I'm saying to you is at  
2 this point in time your opinion was the inquiry -- that  
3 the State should not consent to allow the inquiry to  
4 cover consent searches, correct? That was your  
5 position.

6 THE WITNESS: No. My position was -- we're  
7 turning the stuff over. My position was how you're  
8 going to use it, Justice. We want to let you know that  
9 we may want to characterize it differently, which is  
10 exactly the same position that I heard in early '97.  
11 It was no different. That was it.

12 MR. CHERTOFF: Would you agree with me that  
13 at the time this memo was prepared and your letter of  
14 November 5th goes out, both you and Mr. Waugh were  
15 aware of the existence of audit information regarding  
16 consents to search at Moorestown that showed that the  
17 ratio of consents to search for minorities was  
18 approximately twice that of non-minorities?

19 THE WITNESS: I was aware of the Moorestown  
20 audit. I can't testify to what the substance of it  
21 was, but I was aware of that document because Alex made  
22 me aware of it.

23 MR. CHERTOFF: And you were aware that that  
24 document contained information analyzing consents to  
25 search, right? Correct?

1 THE WITNESS: The document says that, yes.

2 MR. CHERTOFF: And you and he were aware of  
3 that when this letter was signed and sent out on  
4 November 5th, 1997.

5 THE WITNESS: It was in July that I became  
6 aware of that.

7 MR. CHERTOFF: Is it your testimony that the  
8 position that you and Mr. Waugh recommended with  
9 respect to how to handle the issue of consent searches  
10 was not influenced by your knowledge of what the actual  
11 data in the consent searches was?

12 THE WITNESS: Absolutely my testimony of  
13 that. And my only further point on that is when Mark  
14 Posner did mention a request for that kind of  
15 information, I immediately called the First Assistant  
16 Attorney General and said hey, they're asking for this.

17 MR. CHERTOFF: That was Mr. Hesbe.

18 THE WITNESS: Yes.

19 MR. CHERTOFF: And he told you he'll get back  
20 to you.

21 THE WITNESS: He told me, and I've testified  
22 to this already, he told me, I believe he said, "We're  
23 working on something now that we may be able to share  
24 with Justice, don't turn it over now and tell them  
25 you'll get back to them."

1 MR. CHERTOFF: And you didn't actually turn  
2 it over until after February 26, '99 when you passed  
3 your file over to Mr. Zoubek.

4 THE WITNESS: I never heard back from Dave  
5 Hesbe.

6 MR. CHERTOFF: Did Mr. Hesbe tell you that in  
7 the same phone call where you --

8 THE WITNESS: It wasn't a phone call, it was  
9 a meeting.

10 MR. CHERTOFF: It was a meeting.

11 Did he tell it to you immediately when you  
12 came in and asked him about it or did he get back to  
13 you? Let me withdraw the question.

14 Did you come to him and say look, they're  
15 specifically asking for this audit information now and  
16 did he then say I'll get back to you and come back  
17 later with an answer or did he give you an answer on  
18 the spot?

19 THE WITNESS: He gave me an answer in that  
20 meeting.

21 MR. CHERTOFF: Who else was in that meeting?

22 THE WITNESS: Al Ramey and Jack Fahy.

23 MR. CHERTOFF: And no one said anything to  
24 the contrary? If you remember.

25 THE WITNESS: I don't know -- I mean I can't

1 remember what the discussion was.

2 MR. CHERTOFF: When he said they're working  
3 on something, do you know what he meant?

4 THE WITNESS: No, I did not.

5 MR. CHERTOFF: Did you know how they could be  
6 working on something with respect to this specific  
7 inquiry when you hadn't told him about that specific  
8 inquiry until the meeting itself?

9 THE WITNESS: Say that again? I'm sorry.

10 MR. CHERTOFF: Did he tell you how it is they  
11 could be working on something to give to Justice in  
12 response to Mr. Posner's specific request when they  
13 didn't know about the request until you walked into the  
14 meeting?

15 THE WITNESS: I believe I testified that I  
16 got a phone call from Mark Posner asking to interview  
17 active troopers. And that shortly thereafter I got  
18 another phone call. On both of those, I called over to  
19 -- I don't know if I spoke to Dave personally, the  
20 First Assistant personally or not, but I told him what  
21 the two issues were.

22 MR. CHERTOFF: And then you came over for a  
23 meeting afterwards?

24 THE WITNESS: Yes.

25 MR. CHERTOFF: Okay. That was my point.

1 THE WITNESS: Okay.

2 MR. CHERTOFF: Maybe I was inartful in making  
3 it clear. So let me be completely clear. You get a  
4 phone call in late '98 from Posner, right?

5 THE WITNESS: Yes.

6 MR. CHERTOFF: From the Civil Rights  
7 Division, right?

8 THE WITNESS: Yes.

9 MR. CHERTOFF: In one of the phone calls he  
10 says, finally he hits the nail on the head and he says,  
11 "If you have any audit data on Moorestown, I want  
12 that," right?

13 THE WITNESS: Yeah, something to that --  
14 close enough for me to say that he was requesting  
15 information.

16 MR. CHERTOFF: You know you have that data  
17 because you had it since July '97, right? Correct?

18 THE WITNESS: Correct.

19 MR. CHERTOFF: You call over to Hesbe or  
20 someone else who is in Hesbe's office, right?

21 THE WITNESS: Right. Correct.

22 MR. CHERTOFF: You then later go over to a  
23 meeting to find out what Hesbe's position was going to  
24 be, right?

25 THE WITNESS: Correct.

1 MR. CHERTOFF: And Hesbe in that meeting  
2 says, "We're working on something, don't turn it over  
3 yet."

4 THE WITNESS: He says --

5 MR. CHERTOFF: In essence.

6 THE WITNESS: In essence.

7 MR. CHERTOFF: You don't know who Hesbe  
8 talked to between the time you called over and said the  
9 specific request is coming and the time you met with  
10 him and he told you how to respond.

11 THE WITNESS: No, I have no idea.

12 MR. CHERTOFF: You don't know whether he met  
13 with the Attorney General, for example?

14 THE WITNESS: I have no idea.

15 MR. CHERTOFF: Or whom else he met with.

16 THE WITNESS: I have no idea.

17 MR. CHERTOFF: I want to show you one other  
18 document.

19 (Pause)

20 Have you ever seen this before?

21 THE WITNESS: Never.

22 MR. CHERTOFF: It's a memo prepared by  
23 Sergeant Gilbert. I want to direct your attention to  
24 Page 3 and I want to just go over certain things that  
25 are laid out in this chronology and see to the extent

1 you can tell us whether you agree, disagree or maybe  
2 have no knowledge about some of these things.

3 It talks about -- it starts with 9-24-96, IAB  
4 submits a report referring to investigation of  
5 complaints from minority troopers in Moorestown station  
6 over profiling. Statistical analysis included. Now,  
7 you've actually seen that document, right? That's part  
8 of G-27.

9 THE WITNESS: If your representation is  
10 accurate, yes.

11 MR. CHERTOFF: Well, take a look, I don't  
12 want to be on the record.

13 THE WITNESS: Okay.

14 MR. CHERTOFF: I want you to take a look and  
15 see if that's G-27.

16 (Pause)

17 THE WITNESS: If that's referring to G-27  
18 minus the cover page.

19 MR. CHERTOFF: You see that document in that  
20 package, right? 9-24-96, IAB report regarding  
21 Moorestown.

22 THE WITNESS: Yes.

23 MR. CHERTOFF: That's on Page 2 of G-27,  
24 right?

25 THE WITNESS: Yes.

1 MR. CHERTOFF: Then 12-24-96, Colonel  
2 Williams receives a DOJ request for information from  
3 DOJ via A.G. Verniero. Request for policy, et cetera,  
4 and data for all duty sites, time period '94 to '96.  
5 You were not involved at that point in time, right?

6 THE WITNESS: Correct.

7 MR. CHERTOFF: But you have seen the memo --  
8 you did receive a copy of the template, discovery memo,  
9 from Mr. Waugh in early 1997, correct?

10 THE WITNESS: Correct. I think labeled an  
11 information request with blanks.

12 MR. CHERTOFF: And that's R-1, right?

13 THE WITNESS: Okay. Yes.

14 MR. CHERTOFF: Now, 1-10-97, as per AG data  
15 to be limited to Moorestown and Cranbury stations. You  
16 were not present at that meeting.

17 THE WITNESS: No, I was not.

18 MR. CHERTOFF: Right. Did you learn, in  
19 fact, that was a decision made with respect to  
20 production of documents?

21 THE WITNESS: When I became involved in this,  
22 it always was about Moorestown, Cranbury. You know, if  
23 they were talking about other places, I didn't know  
24 about it. When I came in, it's this is Moorestown,  
25 Cranbury.

1 MR. CHERTOFF: Okay. 2-97. "DAG learning we  
2 are not computerized. Decides to amend request,  
3 advising they'll pick sample dates for analysis. They  
4 ultimately specify 15 sample dates in '95; 15 in 1996.  
5 Data provided is gathered to DAG Rover for forwarding  
6 to DOJ." Is that correct?

7 THE WITNESS: If they're talking -- I believe  
8 at this time Justice asks for tickets and warnings and  
9 we sent a letter I believe in February listing tickets  
10 and summonses. Then if that's it, that's correct.  
11 That letter went out with that information. In other  
12 words, it wasn't for the 30 sample dates that we  
13 received in April, is my point.

14 MR. CHERTOFF: After February of 1999, did  
15 you have any further conversations with Tom Gilbert  
16 about his work on the racial profiling matter?

17 THE WITNESS: February 1999?

18 MR. CHERTOFF: Yeah.

19 THE WITNESS: I don't believe I had any  
20 discussions with Tom Gilbert after that.

21 MR. CHERTOFF: When was the last time you had  
22 a conversation with Tom Gilbert?

23 THE WITNESS: I don't think I've talked to  
24 Tom since that day.

25 MR. CHERTOFF: Since the day of what?

1 THE WITNESS: February or March of 1999.

2 MR. CHERTOFF: When he brought in the blue  
3 notebook?

4 THE WITNESS: Yes.

5 MR. CHERTOFF: Is that based upon someone's  
6 request that you not talk to him?

7 THE WITNESS: Oh, no. No.

8 MR. CHERTOFF: Did you become involved in the  
9 State Police racial profiling interim report  
10 investigation that started in March of '99?

11 THE WITNESS: No, I did not.

12 MR. CHERTOFF: Do you know how it is that  
13 interim report process, that investigation got started?

14 THE WITNESS: No, I don't.

15 MR. CHERTOFF: Do you know why it got  
16 started?

17 THE WITNESS: No, I don't know how that whole  
18 process went.

19 MR. CHERTOFF: I'm going to mark this R-24.

20 (Pause)

21 Do you recognize this?

22 THE WITNESS: Yes, I do.

23 MR. CHERTOFF: What is this?

24 THE WITNESS: A memo from Paul Zoubek to a  
25 number of people, including myself. And as it states,

1 outlining assignments.

2 MR. CHERTOFF: What were the assignments in  
3 relation to?

4 THE WITNESS: My two assignments had to do  
5 with -- my two assignments had to do with talking to  
6 Maryland and talking to Pittsburgh with respect to  
7 consent.

8 MR. CHERTOFF: But was this part of the  
9 interim -- the process of generating what later became  
10 the interim report on racial profiling?

11 THE WITNESS: I'm under the impression it was  
12 part of --

13 MR. CHERTOFF: Were you part of the State  
14 Police Review Team?

15 THE WITNESS: I'm going to -- I don't know  
16 how you want to characterize it. I'm going to tell you  
17 what I did, what I was asked to do and what I actually  
18 did. I was asked to talk to Maryland and Pittsburgh  
19 and find out about their experiences in dealing with  
20 consent orders. That was it.

21 MR. CHERTOFF: Do you know how the State  
22 Police Review Team came to come about?

23 THE WITNESS: Do you know how the State  
24 Police Review Team came to be established?

25 THE WITNESS: No.

1 MR. CHERTOFF: So after mid-March 1999, you  
2 only had limited assignments in the area of racial  
3 profiling?

4 THE WITNESS: Yes. And I think part of the  
5 reason is I had started a new job in Gaming  
6 Enforcement.

7 MR. CHERTOFF: Did you have any conversations  
8 since the announcement of this inquiry, this  
9 examination by the State Senate in approximately August  
10 or September of 2000, have you had any conversations  
11 about the subject matter of this inquiry with Mr.  
12 Waugh?

13 THE WITNESS: No. I wanted to call him  
14 because he's a friend, but I did not speak with him.

15 MR. CHERTOFF: What about with Mr. Fahy?

16 THE WITNESS: I had a conversation with Mr.  
17 Fahy generally once or twice, but not about substance.

18 MR. CHERTOFF: About what?

19 THE WITNESS: I had a conversation with him,  
20 I bumped into him last week and said how did it go?

21 MR. CHERTOFF: And what did he say?

22 THE WITNESS: He said it was a long day and  
23 we did not talk about the substance.

24 MR. CHERTOFF: Anything else? Any other  
25 conversations with him about this investigation?

1 THE WITNESS: No.

2 MR. CHERTOFF: What about with Justice  
3 Verniero?

4 THE WITNESS: After '99, I only saw Justice  
5 Verniero once and that was when my Judge was sworn in  
6 on the Supreme Court, Justice Long. And they got sworn  
7 in together and I saw him. I don't even think we  
8 spoke, but I have not had any conversations. He hasn't  
9 contacted me. I haven't spoken to him.

10 MR. CHERTOFF: What about -- apart from the  
11 lawyers who are representing you, Ms. Accurso and Mr.  
12 Miller, have you had any conversations -- and your  
13 wife, let's say, have you had any conversations about  
14 the subject matter of this investigation with anybody  
15 else?

16 THE WITNESS: No, I haven't.

17 MR. CHERTOFF: Jo, do you have any questions?

18 MS. GLADING: I do.

19 MR. CHERTOFF: Okay. Do you want to take a  
20 little break before we --

21 MS. GLADING: Sure.

22 MR. CHERTOFF: Okay. We're just going to  
23 take a five-minute break.

24 (Off the record)

25 MR. CHERTOFF: I just have a few questions,

1 and then Ms. Glading is going to proceed.

2 I just want to focus you back on June 27th,  
3 so I'm completely clear on this. On June 27th, you  
4 received -- you didn't get the cover page marked  
5 interoffice memorandum, right?

6 THE WITNESS: Correct.

7 MR. CHERTOFF: You did get the other pages,  
8 correct?

9 THE WITNESS: I believe I got the -- yes.

10 MR. CHERTOFF: You got them from Alex Waugh,  
11 right?

12 THE WITNESS: I'm fairly certain I got them  
13 from Alex Waugh.

14 MR. CHERTOFF: At the time he gave them to  
15 you, he did not -- he said to you, "Don't turn them  
16 over yet, I'll get back to you about what to do,"  
17 right?

18 THE WITNESS: Yes.

19 MR. CHERTOFF: About a week or so later you  
20 asked him about it again, what should I do with this  
21 document, G-27, and he said "I'll get back to you,"  
22 again.

23 THE WITNESS: Yes.

24 MR. CHERTOFF: And then he never got back to  
25 you.

1 THE WITNESS: Correct.

2 MR. CHERTOFF: And then this was also the  
3 document which you had with you at the meeting in 1998  
4 with Mr. Hesbe?

5 THE WITNESS: Correct.

6 MR. CHERTOFF: And everyone in the meeting  
7 understood that this document that was now being  
8 referred to by the more specific Justice Department  
9 request in '98 for audit information on Moorestown?

10 THE WITNESS: I don't know what the request  
11 was, but it triggered -- whatever the language was, it  
12 seemed to me that it was -- this was covered by that.

13 MR. CHERTOFF: And that was the request Mr.  
14 Posner made to you telephonically.

15 THE WITNESS: Correct.

16 MR. CHERTOFF: And so you -- at the time you  
17 had -- so you phoned over after you got the call from  
18 Mr. Posner in late '98 and indicated that you believed  
19 this audit information was now being specifically  
20 requested by Justice, right?

21 THE WITNESS: Correct.

22 MR. CHERTOFF: And then you later went to a  
23 meeting with Mr. Hesbe and Mr. Fahy, correct?

24 THE WITNESS: And Mr. Ramey I think was  
25 there.

1 MR. CHERTOFF: And Mr. Ramey. And at that  
2 meeting you were told they're working on something,  
3 don't turn this over yet, right?

4 THE WITNESS: Correct.

5 MR. CHERTOFF: And then the next instruction  
6 you got with respect to turning anything over was to  
7 come with all your files at the end of February of 1999  
8 to Mr. Zoubek's office.

9 THE WITNESS: Correct.

10 MR. CHERTOFF: And then you turned the files  
11 over and that was the end of your responsibility, as to  
12 turning over documents.

13 THE WITNESS: Correct.

14 MS. GLADING: The second page of G-27. The  
15 bottom of the second page and the top of the third  
16 page. The statistics on stop rates. Do you see where  
17 I'm pointing to?

18 THE WITNESS: I'm looking at the bottom of  
19 976.

20 MS. GLADING: Yes. Yeah, 976 and 977.

21 THE WITNESS: Right.

22 MS. GLADING: It indicates the percentage of  
23 minorities stopped, depending upon the racial  
24 composition of the patrol, ranges from 33 percent to  
25 52.1 percent. And now skip to the next page.

1 THE WITNESS: Percent minority?

2 MS. GLADING: Um-hmm.

3 THE WITNESS: I see 36 to 52, is that what  
4 you're talking --

5 MS. GLADING: Correct. Do you -- did these  
6 figures strike you at the time you first saw these in  
7 the summer of 1997 as being high?

8 THE WITNESS: I don't have a recollection.  
9 My recollection is that Alex had the document. I got  
10 the document. I was going to hear from him and I think  
11 I literally just thumbed through it.

12 MS. GLADING: Is it your recollection that  
13 these statistics struck you as being high?

14 THE WITNESS: I don't have a recollection.

15 MS. GLADING: You don't have a recollection?

16 THE WITNESS: No, I don't.

17 MS. GLADING: Do you recall what the stop  
18 rates were in Soto?

19 THE WITNESS: No.

20 MS. GLADING: Did you discuss these stop  
21 rates with Mr. Fahy or anyone who was familiar with the  
22 stop rates in Soto?

23 THE WITNESS: No, I didn't.

24 MS. GLADING: What do you think of those stop  
25 rates today?

1 THE WITNESS: I'm really -- I haven't kept up  
2 on the issue. I just -- I haven't followed the issue.

3 MS. GLADING: Okay. Do you recall -- when  
4 you received the call from the Department of Justice at  
5 the end of 1998 regarding -- I guess it was from Mr.  
6 Posner?

7 THE WITNESS: Yes, it was.

8 MS. GLADING: And they were requesting  
9 statistical information?

10 THE WITNESS: Are you referring to the G-27?

11 MS. GLADING: No, I'm off that document now.  
12 I'm referring to when you received the call from the  
13 Department of Justice at the end of 1998 and they had  
14 two requests I believe you said.

15 THE WITNESS: Okay. Correct. They had one,  
16 can we speak to active troopers. And then I think a  
17 couple days later a second request was made regarding  
18 whether or not there's -- I don't know what the  
19 language -- but is there an analysis or a statistical  
20 study of Cranbury or Moorestown or the southern --  
21 something of that nature that made me believe it was --  
22 that this was within the scope of that.

23 MS. GLADING: Okay. And this call was placed  
24 by Mr. Posner to you?

25 THE WITNESS: Yes.

1 MS. GLADING: Okay. Do you recall calling  
2 Sergeant Gilbert after getting that call?  
3 THE WITNESS: I don't think I did call  
4 Sergeant Gilbert.  
5 MS. GLADING: Okay.  
6 THE WITNESS: I called the AG's Office.  
7 MS. GLADING: Do you recall subsequently  
8 talking with Sergeant Gilbert about the request that  
9 the DOJ had made?  
10 THE WITNESS: I don't.  
11 MS. GLADING: Do you recall going over to the  
12 Division of State Police and attending a meeting with  
13 Lieutenant Colonel Fedorko, Lieutenant Colonel Dunlop  
14 and Colonel Williams and Sergeant Gilbert about the  
15 Department of Justice request?  
16 THE WITNESS: When?  
17 MS. GLADING: After receiving the call from  
18 the Department of Justice.  
19 THE WITNESS: No.  
20 MS. GLADING: Okay.  
21 THE WITNESS: Oh, no. That was with who?  
22 Just so I'm clear.  
23 MS. GLADING: Lieutenant Colonels Fedorko and  
24 Dunlop, Colonel Williams --  
25 THE WITNESS: No.

1 MS. GLADING: -- and Sergeant Gilbert.  
2 THE WITNESS: No.  
3 MS. GLADING: No. Okay. I just want to give  
4 you one more document. What's the next number, Scott?  
5 MR. WEBER: The next number is R-25.  
6 Do you recall writing this letter?  
7 THE WITNESS: I don't recall, it is my  
8 handwriting. It's my memo. My letter.  
9 MS. GLADING: Okay. If I represent to you  
10 that this letter of June 17th, 1997 is the first  
11 document in terms of the time line, the first time  
12 specific documents responsive to the 30 random dates  
13 are sent to DOJ, does that sound correct to you?  
14 THE WITNESS: Yeah.  
15 MS. GLADING: Okay. Earlier you looked at  
16 another document, it was R-21.  
17 THE WITNESS: Correct. I have that document.  
18 MS. GLADING: Okay. Reading this, it appears  
19 that you have the tickets and warnings and consent to  
20 search documents in your office at this point, is that  
21 correct?  
22 THE WITNESS: I don't remember.  
23 MS. GLADING: You don't remember?  
24 THE WITNESS: No.  
25 MS. GLADING: Do you remember when you

1 received these things from the State Police, the items  
2 that the Department of Justice was requesting for the  
3 30 sample dates?

4 THE WITNESS: I don't remember when I  
5 received them. They came in, you know, piece by piece.  
6 And Mr. Posner said to me that he did not want -- he  
7 said, "Don't wait to get -- you don't have to wait to  
8 get like a ton of them, just start sending stuff to me  
9 as you get it."

10 MS. GLADING: And is that what you did?

11 THE WITNESS: Generally that's what I did.

12 MS. GLADING: Okay. Is there any reason why  
13 you were still sending them tickets and warnings as  
14 late as May 13th, 1998?

15 THE WITNESS: I can't recall why. I know in  
16 -- there were certain conversations in '98 where I  
17 believe Mark Posner got back to me and said, you know,  
18 I think I'm missing X, Y and Z. I think there were  
19 some documents that he couldn't read and we had to send  
20 them back to State Police to be examined to see if  
21 they're more legible. But I believe the bulk of the  
22 documents were produced I think by December of '97.

23 MS. GLADING: Okay. Is there any reason why  
24 in the production of these documents to DOJ you  
25 typically would give two or three days worth of a

1 document and then three or four days later send another  
2 two or three days of the document?

3 THE WITNESS: My recollection would be  
4 generally because that's when I was getting them in.

5 MS. GLADING: Okay. So it's your testimony  
6 that as you received the documents, that's the speed  
7 with which you were sending them out to DOJ?

8 THE WITNESS: Well, my testimony is that when  
9 documents came in, I tried to get to them. There were  
10 times where a document might have sat for a couple  
11 weeks, or some documents. They weren't sitting for two  
12 months though. And State Police -- there were times  
13 when I called Tom Gilbert and said, you know, whatever  
14 you're working on, Mr. Posner is looking for X. And he  
15 would say, "Okay, I'll get those. I'll drop what I'm  
16 doing and I'll try and get those." Because he would  
17 always say he was working on other things also and he  
18 had a lot of difficulty getting these documents.

19 MS. GLADING: Did he convey to you that the  
20 consent-to-search documents were all in-house at the  
21 Division and he could put his hands on them pretty  
22 easily?

23 THE WITNESS: He did not convey that to me.

24 MS. GLADING: Would it be inaccurate for him  
25 to state that he had collected all the documents from

1 the stations that DOJ was requesting from the 30 sample  
2 days by sometime in October and got them all over to  
3 you by the end of October?

4 THE WITNESS: I can't recall. I mean I'm  
5 just telling you, I think in my ongoing discussions he  
6 indicated to me he was having difficulty getting them.  
7 He had to go through them. He sent me documents for  
8 the wrong days. I had to send them back. I mean it  
9 was -- it was a back and forth.

10 MS. GLADING: Okay. If, as he testified, he  
11 got you these documents, the bulk of them, by the end  
12 of October of 1997, is there any reason in your mind  
13 that you can think of that documents would have -- you  
14 would have been steadily sending a couple of documents  
15 -- a couple of dates worth of documents per day until  
16 March 24th, 1998?

17 THE WITNESS: Well, he may have got me a  
18 large portion by October which were sent out, but there  
19 were still documents coming in here and there and part  
20 of it was, I believe, that Mr. Posner in some cases  
21 said that he hadn't received something. There were  
22 some documents for the wrong dates. I mean these  
23 things were coming in. There were times when I didn't  
24 get to them the day they came in.

25 MS. GLADING: Bear with me a second.

1 So is it your testimony that if you sent, and  
2 I'm not making this up, I'm looking at -- I'm basing it  
3 on the document release by the AG's Office. If you --

4 THE WITNESS: What document?

5 MS. GLADING: The document release, the  
6 95,000 pages. I'm basing this on culling from the DOJ  
7 documents, when you sent documents down to Washington.

8 THE WITNESS: Okay.

9 MS. GLADING: And I'll represent to you that  
10 on December 5th, 1997, for example, you sent tickets  
11 from Moorestown for 12-12 and 12-14-96 and stop data  
12 for 12-14-96. Three days later you sent copies of  
13 tickets from Moorestown station for 11-19-96 and  
14 11-23-96. Two days after that you sent copies of  
15 tickets for the Moorestown station for 10-6-96. A day  
16 after that you sent copies of tickets for the  
17 Moorestown station for 7-23, 8-6 and 8-25-96. And  
18 that's representative of how each different type of  
19 document the DOJ requested was sent. There were a  
20 couple of days worth of each document --

21 THE WITNESS: Right.

22 MS. GLADING: -- for one station, maybe two  
23 stations, sent. And then three or four days later a  
24 few more would be sent. Is it your testimony that you  
25 were sending these documents at the speed with which

1 you received them?

2 THE WITNESS: I told you, there were times --  
3 generally documents were coming in sporadically. In  
4 addition, there were times when Posner would say he  
5 didn't get documents and I would call Tom Gilbert up  
6 and say hey, he doesn't have these for these particular  
7 days. There were some documents that were illegible.

8 MS. GLADING: Were you checking off documents  
9 as you sent them?

10 THE WITNESS: I don't think I was, no.

11 MS. GLADING: So you were just getting a  
12 couple of documents from Tom Gilbert -- would he  
13 personally deliver them?

14 THE WITNESS: I think he sent a lot of them  
15 interoffice mail.

16 MS. GLADING: So you'd get a couple of  
17 documents from Tom Gilbert and you'd pass them on and  
18 you wouldn't look at them.

19 THE WITNESS: Right -- no, I looked at them.

20 MS. GLADING: You'd look at them but --

21 THE WITNESS: I didn't earmark them because  
22 as I understood it Justice was going to put together a  
23 study or an analysis which they were going to send us  
24 which we would review.

25 MS. GLADING: If you weren't checking them

1 off as you got them, why would you look at them?

2 THE WITNESS: Because, first of all, I had to  
3 make sure they were for the right dates. I had to make  
4 sure they were for the right dates. I had to make sure  
5 they were legible.

6 MS. GLADING: If you weren't keeping a  
7 running tally checking off what you had sent already,  
8 how would you know they were for the correct dates?

9 THE WITNESS: I had a list of the dates.

10 MS. GLADING: So were you keeping it all in  
11 your head? Oh, I've already sent the February 14th,  
12 1996 warnings, so these are duplicate? I'm not  
13 following.

14 THE WITNESS: I had a list of the dates and  
15 Tom was sending me documents that I assumed were in  
16 answers to those dates and I was sending them on to the  
17 Department of Justice.

18 MS. GLADING: Okay. I don't have anything  
19 else.

20 MR. CHERTOFF: I don't think we have anything  
21 further. Thank you.

22 THE WITNESS: Thank you.

23 (Off the record)

24 MS. GLADING: Mr. Rover, did you receive on  
25 about May 16th, 1997, before the May 20th meeting, did

1 you meet with or speak with or have a communication  
2 from Colonel Williams regarding handing over  
3 information about profiling claims?

4 THE WITNESS: My recollection is I spoke to  
5 Alex Waugh and said that I wanted to make sure that we  
6 got the information and I said we probably should do a  
7 memo to the Colonel. And I asked, you know, did he  
8 want to do it or did he want to call and he said, "No,  
9 you can call the Colonel," and I did. And then I sent  
10 that memo on May 16th.

11 MS. GLADING: Okay. And the purpose of that  
12 memo was what?

13 THE WITNESS: The purpose of the memo was --  
14 I think it had attached the 30 days selected by Justice  
15 and said that, you know, they're going to be looking  
16 for the listed documents related to those 30 days.

17 MS. GLADING: Okay. Thank you.

18 (Off the record)

19  
20 \* \* \* \* \*

**C E R T I F I C A T I O N**

I, JAMES V. BOWEN, OF J&J COURT TRANSCRIBERS, INC., a Notary Public and Electronic Sound Recording operator, do hereby certify that prior to the commencement of the examination, GEORGE ROVER, was duly sworn to testify to the truth, the whole truth, and nothing but the truth.

I DO FURTHER CERTIFY that the foregoing is a true and accurate transcript of the testimony as taken by electric sound recording before me at the time, place, and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney or counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.

Date: February 28, 2001

\_\_\_\_\_  
JAMES V. BOWEN  
Notary Public of the State of New Jersey

My Commission expires \_\_\_\_\_

\_\_\_\_\_  
Patricia A. Kontura, AOC #234