



1 MR. WEBER: Good Morning, Mr. Susswein. On  
2 behalf of the Committee, we appreciate you coming back  
3 to conclude your deposition today. You were previously  
4 sworn in on February 13th, 2001 and unless you object  
5 and you want me to swear you in again, we'll treat the  
6 oath as still applying today, if that's okay with you.

7 MR. SUSSWEIN: No objection.

8 MR. WEBER: Before we start, why don't we  
9 just have everyone identify themselves for the record,  
10 please. We'll start with Mr. Wheeler.

11 MR. WHEELER: Douglas Wheeler, Assistant  
12 Counsel, Senate Democratic Office.

13 MS. GLADING: Jo Astrid Glading, Staff  
14 Counsel, Senate Democratic Office.

15 MR. MILLER: Jeffrey Miller, Assistant  
16 Attorney General, counsel for Mr. Susswein.

17 MR. SUSSWEIN: Ronald Susswein.

18 MR. BOWEN: Jim Bowen, Court Reporter.

19 R O N A L D S U S S W E I N, PREVIOUSLY SWORN

20 MR. WEBER: Mr. Susswein, we left off on  
21 Tuesday, February 13th with a discussion about the  
22 provision of materials by Lieutenant Gilbert to Mr.  
23 Zoubek on March 15th, 1999, do you remember that  
24 discussion?

25 THE WITNESS: Yes.

1 MR. WEBER: Okay. And I show to you two  
2 documents. For the record they are GC002348 and  
3 OAG003548. Both are March 16th memorandums to file.  
4 One is for Mr. Zoubek, one is for Mr. Verniero. Both  
5 of those memorandums indicate that for the first time a  
6 packet of documents from the State Police regarding  
7 analyses and compilations of statistics regarding  
8 racial profiling was produced. And I'm just going to  
9 hold these up. You saw these documents on the 13th,  
10 correct?

11 THE WITNESS: You showed them to me.

12 MR. WEBER: Okay. And we discussed them on  
13 the 13th.

14 Let's pick up then from that point in time  
15 and we also discussed in some detail the undated memo  
16 from Sergeant Gilbert which is GC002697 through  
17 GC002700, which sets forth the analysis of consent to  
18 search data from Moorestown and Cranbury and makes a  
19 comparison between the New Jersey numbers and the  
20 Maryland State Police numbers. And you remember we  
21 showed you that document, correct?

22 THE WITNESS: Yes, sir.

23 MR. WEBER: And we discussed that document.

24 Let's now fast-forward just a bit to April  
25 13th or April 14th of 1999. You participated in a

1 meeting, and it was either April 13th or April 14th,  
2 1999, with Colonel Dunlop, Lieutenant Colonel Fedorko,  
3 Mr. Zoubek and Detective Sergeant Serrao on either of  
4 those two days, correct.

5 THE WITNESS: If that was the Power Point  
6 presentation --

7 MR. WEBER: Correct.

8 THE WITNESS: Yes.

9 MR. WEBER: Okay. Do you remember if it was  
10 April 13th or April 14th?

11 MR. WEBER: No, I don't.

12 THE WITNESS: Okay.

13 MR. WEBER: I will represent to you that  
14 Detective Sergeant Serrao testified yesterday and he  
15 placed that meeting on either April 13th or April 14th,  
16 1999. Does that sound about the right time frame?

17 THE WITNESS: Yes.

18 MR. WEBER: Okay. Were you aware prior to  
19 that meeting that the State Police were conducting a  
20 comprehensive analysis of arrests, consent to search  
21 and stop statistics for calendar years 1997 and 1998?

22 THE WITNESS: I don't recall being aware that  
23 they were doing that.

24 MR. WEBER: Okay. So why don't we just refer  
25 to it as the April 13th meeting.

1 THE WITNESS: Fine.

2 MR. WEBER: For convenience sake.

3 Was the April 13th meeting the first time you  
4 became aware that Detective Sergeant Serrao and others  
5 at the New Jersey State Police had conducted such an  
6 analysis?

7 THE WITNESS: If by analysis you mean their  
8 Power Point presentation, the information --

9 MR. WEBER: Yes.

10 THE WITNESS: Yes.

11 MR. WEBER: Prior to the April 13th meeting,  
12 were you involved in any either meetings or telephone  
13 calls with Colonel Dunlop or anyone else at the State  
14 Police in which this issue was discussed? And this  
15 issue, I mean the analysis -- or the Power Point  
16 presentation, were you aware of that from any prior  
17 telephone conversations?

18 THE WITNESS: No.

19 MR. WEBER: How is it that you were invited  
20 to the April 13th meeting?

21 THE WITNESS: I'm not sure. I would have  
22 been asked, I guess, by Paul Zoubek to come to the  
23 meeting.

24 MR. WEBER: Did he explain the purpose of the  
25 meeting?

1 THE WITNESS: That we were going to meet with  
2 State Police representatives and they had some  
3 information they wanted to give us.

4 MR. WEBER: What sort of information did Mr.  
5 Zoubek describe that they had for you?

6 THE WITNESS: I really don't remember how he  
7 described it. He just told me to show up to a meeting.

8 MR. WEBER: Did you have an understanding  
9 that the meeting would somehow involve a presentation  
10 of statistical analyses that the New Jersey State  
11 Police conducted?

12 THE WITNESS: Some kind of presentation they  
13 wanted to make to us.

14 MR. WEBER: Okay. And as best as you can  
15 recall, who was at the meeting, the April 13 meeting?

16 THE WITNESS: I believe Colonel Dunlop was at  
17 the meeting. I know Paul and I were at the meeting.  
18 I'm not sure who was actually running the Power Point.

19 MR. WEBER: Had you previously met Detective  
20 Sergeant Steven Serrao before this meeting?

21 THE WITNESS: I'm not sure that I have. I'm  
22 not sure that I would recognize him now.

23 MR. WEBER: Okay. How --

24 MS. GLADING: Before this meeting, did you  
25 have any information about analytical work that the

1 State Police were conducting?

2 THE WITNESS: No, I knew we were collecting  
3 things from them and Chris Boyle was compiling  
4 information for me.

5 MS. GLADING: Uh-huh. Mr. Zoubek never  
6 indicated that the State Police was doing its own  
7 study?

8 THE WITNESS: No.

9 MR. WEBER: How long was the presentation?

10 THE WITNESS: Maybe about a half hour,  
11 something of that nature. Maybe a little less.

12 MR. WEBER: What information was presented at  
13 the presentation?

14 THE WITNESS: I recall it was a Power Point  
15 presentation, so there were some slides. I recall that  
16 there were charts. I think there were pie charts. And  
17 I believe at one point there was a -- I'm not sure what  
18 the correct word you call it in Power Point, there was  
19 a diagram or a depiction of the Eastern Seaboard. It  
20 was an attractive professionally put-together Power  
21 Point presentation.

22 MR. WEBER: What was the substance of the  
23 presentation?

24 THE WITNESS: My impression was that these --  
25 was that the numbers for New Jersey State Police were

1 not inconsistent either with what other jurisdictions  
2 were experiencing, or with -- I think one of the major  
3 themes was that the numbers reflected a reality.

4 MR. WEBER: What reality?

5 THE WITNESS: That minority citizens are  
6 stopped or arrested disproportionately because they  
7 commit offenses disproportionately.

8 MS. GLADING: Beg your pardon? I'm sorry.

9 THE WITNESS: In other words, the stop  
10 numbers and the consent numbers reflected the extent of  
11 criminal activity, actual activity as opposed to some  
12 other explanation such as police bias or police  
13 profiling, racial profiling.

14 MR. WEBER: There's been testimony that one  
15 of the statistics that was presented at that -- well,  
16 let me step back first. Was it your understanding that  
17 the parameters of that presentation involved an  
18 analysis of calendar years 1997 and 1998?

19 THE WITNESS: I really don't -- I haven't  
20 seen the table since, so I don't recall.

21 MR. WEBER: Do you have any recollection that  
22 that presentation concerned an analysis of consent to  
23 search information, stop information and arrest  
24 information?

25 THE WITNESS: My recollection is that it

1 involved all of them.

2 MR. WEBER: Okay.

3 MS. GLADING: Beg your pardon?

4 THE WITNESS: My recollection is that it  
5 involved all of them.

6 MS. GLADING: All of them -- I'm sorry?

7 THE WITNESS: I'm sorry. Stop, arrest,  
8 consent.

9 MR. WEBER: To search.

10 THE WITNESS: To search.

11 MR. WEBER: Okay. Do you have any  
12 recollection of there being a statistic presented that  
13 for calendar years 1997 and 1998, the stop data  
14 reflected that 80 percent of the individuals who were  
15 stopped on the Turnpike were white, and 20 percent of  
16 the individuals who were stopped on the Turnpike were  
17 minority drivers?

18 THE WITNESS: To this moment I don't -- no, I  
19 don't recall that. Are you sure it was black or  
20 minority? Because we had a discussion during that  
21 meeting and following the meeting on how they were  
22 grouping the different categories. And my impression  
23 was that they had African-American and white. They  
24 didn't account for Hispanic.

25 MR. WEBER: Let's step back for a second.

1 Prior to this April 13th meeting, and we  
2 discussed this during our last session together, there  
3 was the receipt of documentation from the New Jersey  
4 State Police, more specifically from Sergeant Gilbert.  
5 And we know that from these two March 15th memos to the  
6 file in which there was statistical data presented to  
7 the Attorney General's Office that apparently had not  
8 been previously presented. And some of that data we  
9 discussed at your last deposition concerned the consent  
10 to search data and Sergeant Gilbert's analysis that the  
11 consent to search numbers in New Jersey basically  
12 mirrored the consent to search numbers of the Maryland  
13 State Police. Do you remember that discussion last  
14 time we met?

15 THE WITNESS: Yes, sir.

16 MR. WEBER: Okay. Now, let's go to the April  
17 13th meeting. Was there anything in the April -- any  
18 information presented in the April 13th meeting that  
19 contradicted or was different from the data that was  
20 received on March 15th, 1999 in connection with the  
21 consent to search issue?

22 THE WITNESS: We were told that those -- what  
23 I'll refer to as the Gilbert numbers, the numbers were  
24 inaccurate and they were providing different numbers.

25 MR. WEBER: In what way were they inaccurate?

1 THE WITNESS: Well, it was said they were  
2 inaccurate and that they had more up-to-date numbers,  
3 which we checked into.

4 MS. GLADING: You were told by whom?

5 THE WITNESS: It was at the meeting.

6 MS. GLADING: Who said it?

7 THE WITNESS: I don't recall whether it was  
8 Colonel Dunlop or someone else at the meeting.

9 MR. WEBER: Okay. Let me show you a copy of  
10 the April 20th, 1999 interim report and direct your  
11 attention to Page 27, Footnote Number 3. Does that  
12 refresh your recollection that the presentation on  
13 April 13th concerned an analysis of calendar years 1997  
14 and 1998?

15 THE WITNESS: Yeah, I'm assuming this is an  
16 accurate statement.

17 MR. WEBER: Okay. And someone advised you at  
18 the April 13th meeting that Sergeant Gilbert's numbers  
19 on the consent to search data were somehow inaccurate,  
20 correct?

21 THE WITNESS: Yes.

22 MR. WEBER: Okay. Let me put in front of you  
23 a copy of Sergeant Gilbert's undated memo which has  
24 been marked in Sergeant Gilbert's deposition, but it's  
25 GC002697 through GC002700.

1 Mr. Susswein, correct me if I'm wrong, but  
2 the analysis in Sergeant Gilbert's memo concerns time  
3 frames in the 1994, 1995 and 1996 years, correct?

4 THE WITNESS: This memo appears to, yes.

5 MR. WEBER: Okay. And the Gilbert memo you  
6 have in front of you doesn't have any analysis of  
7 numbers for 1997 or 1998, does it?

8 THE WITNESS: This particular document does  
9 not.

10 MR. WEBER: Okay. Well, were you provided  
11 with any other information from Sergeant Gilbert on --  
12 or was the Attorney General's Office provided with  
13 other information from Sergeant Gilbert on March 15th,  
14 1999 that had an analysis of data from 1997 or 1998?

15 THE WITNESS: I don't know that it was on  
16 March 15th. I know that Table 2 in the interim report  
17 is based on information that was provided, provided to  
18 Chris Boyle.

19 MR. WEBER: By whom?

20 THE WITNESS: I don't know specifically.  
21 Someone in State Police obviously, but I don't know  
22 specifically who.

23 MR. WEBER: Table 2, and I'm looking at  
24 Footnote Number 2 now in the interim report, includes  
25 Cranbury searches from January '94 through March of

1 '94; January '96; March '96 through December of '96;  
2 April '97 through February of '99; and Moorestown  
3 searches from January of '94 through April of '94;  
4 December of '94; January of '96; March of '96 through  
5 December of '96; and April of '97 through February of  
6 '99, correct?

7 THE WITNESS: Yes, that's what the footnote  
8 says.

9 MR. WEBER: Okay. Was there any attempt to  
10 compare the calendar year analysis of '97 and '98 that  
11 was conducted by Detective Sergeant Serrao with the  
12 various time periods that are set forth in Footnote  
13 Number 2 of the interim report?

14 THE WITNESS: I'm sorry, could you --

15 MR. WEBER: Okay.

16 THE WITNESS: Whose analysis?

17 MR. WEBER: Detective Sergeant Serrao's  
18 analysis of the April 13th meeting.

19 THE WITNESS: Okay.

20 MR. WEBER: The Power Point presentation.

21 THE WITNESS: Um-hmm.

22 MR. WEBER: Concerned calendar years '97 and  
23 '98, correct?

24 THE WITNESS: Yes.

25 MR. WEBER: Okay. The full years, not

1 portions of each year, correct?

2 THE WITNESS: Right.

3 MR. WEBER: Okay. Footnote Number 2 of the  
4 interim report seems to indicate that there are  
5 additional time frames that were considered in putting  
6 together this Table Number 2, correct?

7 THE WITNESS: Yes.

8 MR. WEBER: Okay. Was there any comparison  
9 made between the analysis that Detective Sergeant  
10 Serrao did, that's the Power Point analysis that  
11 concerned calendar years '97 and '98, to the analysis  
12 that was done in connection with Table Number 2, which  
13 includes more than that time frame?

14 THE WITNESS: Yes. I asked Chris Boyle --  
15 let me be precise. I asked Chris Boyle to take the  
16 numbers that were presented to us, described to us at  
17 the April 13th meeting and to compare them with the  
18 numbers we had to see, in fact, if the information we  
19 had already had was inaccurate. I'm not sure exactly  
20 what analysis she performed, but she did that, and  
21 reported back to me that, in fact, they were all  
22 consistent when you account for ethnicity. The  
23 presentation that the State Police made on April 13th  
24 merely had black and white. And the problem with that,  
25 if you're going to be talking about minorities, is that

1 the overwhelming majority of Hispanics, if you had to  
2 put them into a racial category, would tend to go into  
3 white. So the effect is, you take a minority person  
4 and you put them -- if you don't account for Hispanic  
5 ethnicity, you put them into the majority category  
6 which is misleading.

7 MR. WEBER: Okay. There was testimony by  
8 Detective Sergeant Serrao that his presentation bore  
9 out the following statistics. That for 1997 and 1998  
10 the consent to search data was broken up almost 50/50.  
11 Fifty percent of the whites who -- fifty percent of the  
12 people who were asked for a consent to search were  
13 white. Fifty percent of the people who were asked for  
14 consent to search were black. Do you remember that?

15 THE WITNESS: I don't specifically recall it,  
16 but if that's what the table said, it said it.

17 MR. WEBER: You've been mentioning Ms. Boyle  
18 several times this morning. Am I to understand that  
19 Ms. Boyle was responsible for collecting information  
20 and conducting the statistical analysis that then  
21 resulted in Table Number 2 in the interim report?

22 THE WITNESS: Yes. She compiled the  
23 information and drafted, came up with Table Number 2.  
24 All the tables, in fact, in the interim report.

25 MR. WEBER: She compiled the information and

1 put together all the tables in the report?

2 THE WITNESS: Yes.

3 MR. WEBER: Did she explain to you where she  
4 got the underlying data that she used to ultimately put  
5 together Table Number 2 in the interim report?

6 THE WITNESS: She may have, but I'm not sure  
7 specifically from what exact sources.

8 MR. WEBER: Did she indicate to you that she  
9 was receiving -- that she already -- strike that.

10 Did she indicate to you whether she was  
11 having a difficult time or an easy time obtaining the  
12 data that she needed to then conduct her analyses and  
13 put together all the tables in the report?

14 THE WITNESS: My impression is that she  
15 wasn't directly getting it from the State Police but  
16 rather through someone.

17 MR. WEBER: Through who?

18 THE WITNESS: I thought it was Mike LoGalbo's  
19 responsibility to be the liaison. I might be mistaken.

20 MR. WEBER: Did you have any discussions with  
21 Ms. Boyle as to, you know, what information she should  
22 be looking to obtain in order to conduct her analysis?

23 THE WITNESS: Well, I wanted it to be as  
24 complete as possible and the time frames involved. And  
25 Chris is very precise about dropping footnotes and

1 tables to explain the type of data and the time  
2 periods.

3 MR. WEBER: But in other words, did you  
4 explain to her the parameters of her assignment?

5 THE WITNESS: I suppose yes. I'm not sure  
6 exactly what you mean.

7 MR. WEBER: Well, what did you tell her she  
8 had to do? What --

9 THE WITNESS: Well, we were interested -- I'm  
10 sorry.

11 MR. WEBER: No. What did you tell her she  
12 had to do?

13 THE WITNESS: We wanted as much data as  
14 possible, relevant time frames, on consent searches by  
15 station.

16 MR. WEBER: Did you give her instructions as  
17 to analyses you wanted her to conduct on issues other  
18 than the consent to search issue?

19 THE WITNESS: Yeah. She did all of the  
20 tables, so the same game plan, the same goal of getting  
21 as much data compiled as possible, both -- well, not  
22 both; stops, arrests and consent searches. I think  
23 that's the three types of data.

24 MR. WEBER: At the April 13th meeting, was  
25 there any information presented that came as a surprise

1 to either you or Mr. Zoubek?

2 THE WITNESS: Well, when they first told us  
3 that our consent numbers were wrong, we had to look  
4 into that.

5 MR. WEBER: You touched briefly upon there  
6 being a discrepancy between your consent numbers and  
7 their consent numbers. How did they know what your  
8 consent numbers were if the report hadn't been issued  
9 yet?

10 THE WITNESS: I'm not sure, they just --  
11 actually that's an interesting question. I don't know  
12 how they told us that the numbers -- I assume they had  
13 Gilbert's numbers.

14 MR. WEBER: Well, did they make any reference  
15 to Gilbert's numbers?

16 THE WITNESS: I don't recall specifically. I  
17 know that they told us that the numbers that had been  
18 provided were not as accurate and up-to-date as the  
19 ones that they were providing on April 13th.

20 MR. WEBER: Okay. Gilbert's numbers, and  
21 we'll use his phrase in the undated memo you have  
22 before you, "were very bad," or I think he said  
23 something to the effect "We're in a very bad spot," in  
24 that the consent to search numbers were on par with the  
25 consent to search numbers in the Maryland case,

1 correct?

2 THE WITNESS: I mean that's what it says  
3 here.

4 MR. WEBER: That's what it says in the memo.

5 THE WITNESS: I have no idea about the  
6 Maryland case.

7 MR. WEBER: Okay. But that's what it says in  
8 the undated Gilbert memo, correct?

9 THE WITNESS: Yes.

10 MR. WEBER: All right. The numbers that were  
11 presented at the April 13th meeting, were they similar  
12 to the numbers in Sergeant Gilbert's undated memo or  
13 did they show equal disparity, a greater disparity,  
14 less of a disparity?

15 THE WITNESS: To be honest, I can't  
16 differentiate what I learned at that meeting or what I  
17 learned shortly after when Chris told me that, in fact,  
18 the numbers that now appear in Table 2 are consistent  
19 with the numbers that the State Police were presenting  
20 on April 13th. That when you control for ethnicity,  
21 they're the same.

22 MR. WEBER: Okay. So Ms. Boyle's position  
23 was that if you take the State Police's numbers that  
24 were presented at the April 13th meeting and you figure  
25 in correctly the variable for ethnicity, i.e., Hispanic

1 and Asian, which had previously been lumped into the  
2 white category, if you separate them out, then the  
3 State Police's numbers presented at the April 13th  
4 meeting were on par with the numbers that are in Table  
5 2 of the interim report?

6 THE WITNESS: Right. And the phrase that  
7 Chris used, because she drafted this footnote, were  
8 generally consistent with those reported in this  
9 section.

10 MR. WEBER: Was there an explanation given at  
11 the April 13th meeting as to why in that presentation  
12 the numbers for Hispanic and Asian motorists were  
13 included in with the white motorists numbers and not  
14 separated out?

15 THE WITNESS: To be honest with you, I'm not  
16 certain that that came up at the meeting, that it  
17 wasn't Chris who's a numbers person, looking at it,  
18 identifying it, I'm not -- again, this is all within  
19 the time frame of a day or so. I'm not certain that I  
20 caught that, for example, and brought it up at the  
21 meeting.

22 MR. WEBER: Anything else that was presented  
23 at the April 13th meeting that either you or Mr. Zoubek  
24 were surprised by?

25 THE WITNESS: Surprised?

1 MR. WEBER: Yeah.

2 THE WITNESS: No.

3 MS. GLADING: Do you recall saying at that  
4 meeting these numbers don't match with what the State  
5 Police have been giving us or had already given us?

6 THE WITNESS: I don't recall, but the numbers  
7 that were represented didn't seem to match, no.

8 MR. WEBER: There was testimony that both you  
9 and Mr. Zoubek were visibly upset at that meeting by  
10 the information that was presented in the Power Point  
11 presentation. Would that be an accurate description or  
12 an inaccurate description?

13 THE WITNESS: Visibly upset? Maybe -- I  
14 would not describe that as an accurate --

15 MR. WEBER: There's also been testimony that  
16 both you and Mr. Zoubek had expressed concern that the  
17 Attorney General's Office was for the first time being  
18 presented with such a comprehensive analysis. Would  
19 you agree with that?

20 THE WITNESS: It's the first time we had seen  
21 that presentation.

22 MR. WEBER: That wasn't my question. My  
23 question was, that you and Mr. Zoubek had expressed  
24 concern that for the first time the Attorney General's  
25 Office was being presented with a comprehensive

1 analysis of calendar years '97 and '98?

2 THE WITNESS: I would not have expressed  
3 concern because I had not been dealing with the State  
4 Police and whatever their assignments were in terms of  
5 compilations.

6 MR. WEBER: Did Mr. Zoubek express a concern?

7 THE WITNESS: I don't recall specifically,  
8 but I do have an impression that why were they  
9 compiling information and presenting it now instead of  
10 compiling it and giving it to you throughout the  
11 pendency of this inquiry?

12 MR. WEBER: Well, what inquiry, the State  
13 Police Review Team?

14 THE WITNESS: Yes.

15 MR. WEBER: Okay. And that began on February  
16 10, 1999, correct?

17 THE WITNESS: I believe so, yes.

18 MR. WEBER: Okay. So approximately two  
19 months later this information is presented, correct?

20 THE WITNESS: Information -- yes, that  
21 information -- the Power Point presentation was on  
22 April 13th or thereabouts.

23 MR. WEBER: Did Mr. Zoubek indicate to you at  
24 anytime that on February 10th the Attorney General's  
25 Office requested that the New Jersey State Police

1 conduct the analysis that ultimately wound up being the  
2 Power Point presentation on April 13th?

3 THE WITNESS: I really don't know what  
4 assignments were given to the State Police in terms of  
5 compiling information.

6 MS. GLADING: Did Mr. Zoubek indicate at all  
7 that he had any conversations with anyone in the State  
8 Police about analysis that they had undertaken and were  
9 conducting during this February, March, April time  
10 period?

11 THE WITNESS: Not that I recall. I know that  
12 information was continuously coming in.

13 MS. GLADING: No, that's not my question. My  
14 question was, did Mr. Zoubek indicate to you that at  
15 anytime during February, March or April of 1999, prior  
16 to the Power Point presentation, that State Police were  
17 doing an analysis also and they were looking at  
18 documents also?

19 THE WITNESS: I don't believe him mentioning  
20 anything like that. I wasn't aware of them doing any  
21 independent analysis.

22 MR. WEBER: Did anyone at that meeting  
23 express, the April 13th meeting, express concerns about  
24 the analyses that were previously conducted by Sergeant  
25 Gilbert as far as the methodology employed in those

1 analyses?

2 THE WITNESS: Not that I recall. I mean the  
3 State Police may have been saying just what you said,  
4 which is that his analyses were incomplete or  
5 inaccurate.

6 MR. WEBER: Do you remember anyone saying  
7 that at the April 13 meeting?

8 THE WITNESS: I believe that there was talk  
9 about saying that the information they were now  
10 providing was more accurate. It turns out it's not  
11 different.

12 MR. WEBER: Well, we're at April 13th now and  
13 the interim report is released on April 20th, a week  
14 later. Were you or Mr. Zoubek at all upset or  
15 concerned that you were being given information one  
16 week prior to the issuance of the final report and that  
17 information clearly would have an impact on the interim  
18 report?

19 THE WITNESS: We knew we had to check up on  
20 that information, certainly.

21 MR. WEBER: Was there any sentiment, you  
22 know, similar in substance to the following expressed,  
23 hey, you know, we're going to issue this report in a  
24 week and you're first giving this to us now?

25 THE WITNESS: I have no specific

1 recollection. That certainly is possible. I mean we  
2 had been working with them, the State Police Review  
3 Team, have for a couple of months.

4 MR. WEBER: Well, you were the draftsman of  
5 the report, correct?

6 THE WITNESS: Yes.

7 MR. WEBER: Okay. So if information was  
8 presented to you as the draftsman a week before you  
9 were supposed to finish the report, clearly that would  
10 have an impact on your ability to finish the report on  
11 time, correct?

12 THE WITNESS: Especially with respect to the  
13 consent numbers, yes.

14 MR. WEBER: Okay. Didn't you personally as  
15 the person who had been given the task of having to  
16 draft what turned out to be 112-page report, have a  
17 concern that you were being given new, highly-probative  
18 information one week before your report was to be  
19 issued in final form?

20 THE WITNESS: I knew we had to work very  
21 quickly to accommodate and account for that new  
22 information.

23 MR. WEBER: And you didn't express any  
24 displeasure with this additional information that was  
25 going to impact your ability to complete the report on

1 time?

2 THE WITNESS: I would like to think I did  
3 not, but if someone says that I acted with some  
4 exasperation, I'm not denying it, I just don't recall  
5 that being the issue.

6 MR. WEBER: Well, and I don't mean to be  
7 argumentative, but you yourself had said that you don't  
8 pull any punches. And clearly some of your prior memos  
9 indicate, and I mean no disrespect by that, but you  
10 don't pull any punches, you tell people how you feel.  
11 And if you disagree with something, you have no problem  
12 stating that. Do you remember at any point in time in  
13 the April 13th meeting stating to the people at that  
14 meeting, in substance, why are we getting this now, my  
15 report is due in a week?

16 THE WITNESS: That's possible that either I  
17 or Paul made a statement along those lines.

18 MR. WEBER: But you don't have any  
19 recollection of it?

20 THE WITNESS: Not specifically, no, but it's  
21 not inconsistent with working on a project for two  
22 months and having new information provided, which  
23 turned out not to be new information.

24 MR. WEBER: Well, until Ms. Boyle did her  
25 analysis, it appeared that it was new information,

1 correct?

2 THE WITNESS: Yes.

3 MR. WEBER: Okay. And Ms. Boyle, I take it,  
4 took some time to conduct her analysis. A day, two  
5 days, three days; how long did she take?

6 THE WITNESS: Yes, I assume, yes.

7 MR. WEBER: Okay. So it wasn't until either  
8 a day or two or three days later that Ms. Boyle  
9 conducted an analysis that at that point in time you  
10 knew that the information presented at the April 13th  
11 meeting wasn't really that different from the  
12 information you already had, correct?

13 THE WITNESS: That's true.

14 MR. WEBER: Okay. So for the period of time  
15 between the April 13th meeting and the time in which  
16 Ms. Boyle confirms for you that the information isn't  
17 that different, you had in your lap, for lack of a  
18 better phrase, information, statistical information,  
19 that was different than the information you were  
20 relying upon to draft this 100 plus page report,  
21 correct?

22 THE WITNESS: Here's what I don't recall. If  
23 I was smart enough, and I'm not saying that I was, if I  
24 was smart enough to have recognized the categorization  
25 error in not including ethnic -- Hispanic ethnicity, I

1 would have not reacted one way or the other to the  
2 numbers because I would have known they're not valid  
3 yet. I don't know what they mean. What I don't recall  
4 at that specific meeting is whether I was present  
5 enough to realize that those numbers didn't mean what  
6 the State Police said that meant.

7 MR. WEBER: Well, had you, as of the April  
8 13th meeting, had you been involved with Ms. Boyle in  
9 her analysis and how she went about conducting her  
10 analysis? Had she given you any of the results yet?

11 THE WITNESS: I believe we had tables along  
12 these lines, if not this table.

13 MR. WEBER: Okay. Were you, as of April  
14 13th, aware of the breakdowns that Ms. Boyle had  
15 delineated in her various analyses?

16 THE WITNESS: With respect to consent  
17 searches, yes.

18 MR. WEBER: Okay.

19 MS. GLADING: So you knew she had broken it  
20 out in Hispanic, black, Asian, white?

21 THE WITNESS: Oh, absolutely.

22 MS. GLADING: Okay. So when you saw the  
23 Power Point presentation and you saw it didn't say  
24 Hispanic, black, Asian, white, other, did that ring a  
25 bell in your head?

1 THE WITNESS: This is what I don't recall,  
2 whether I generated the -- whether I recognized that  
3 methodological design issue or whether Chris first  
4 pointed it out to me.

5 MR. WEBER: Was there anything else, any  
6 other information in the April 13th Power Point  
7 presentation that differed from the information that  
8 the Attorney General's Office had had as of April 13th,  
9 1999? Putting aside the consent to search data.

10 THE WITNESS: No. The bulk of the  
11 presentation was about that the numbers were consistent  
12 with what other police agencies were doing and with a  
13 reality of criminal behavior out on the road.

14 MR. WEBER: Well, was that -- was that an  
15 argument that you were going to adopt in the interim  
16 report?

17 THE WITNESS: We had already -- I had already  
18 drafted the chapter called the Circular Illogic of  
19 Racial Profiling and tautological use of statistics.  
20 So clearly by this point, very early in the process  
21 because that's a very early version, I knew that you  
22 could not use, for example, arrest numbers. They did  
23 not necessarily reflect -- with respect to drug  
24 offenses, they don't necessarily reflect criminality,  
25 they reflect proactive law enforcement targeting or

1 effort. It could be realty, but it need not be related  
2 to reality.

3 MR. WEBER: So the part of the presentation  
4 on April 13th that dealt with a comparison of New  
5 Jersey to other states, and basically making the  
6 argument that what's happening here is anything  
7 different than is happening in other states, was that  
8 something that -- was that a concept that you had  
9 already embraced or you had already rejected?

10 THE WITNESS: I believe that was already  
11 written in the earlier drafts. I know it's in the  
12 final one, I haven't gone through all the initial ones.  
13 That this was not an issue by any means limited to the  
14 New Jersey State Police or the New Jersey Turnpike.

15 MR. WEBER: Okay. So for that particular  
16 bent of the presentation or that particular part of the  
17 presentation, you were basically on the same page with  
18 the State Police, correct?

19 THE WITNESS: Yeah, if I -- let me just  
20 separate that. On the question of was State Police  
21 different from other law enforcement agencies in terms  
22 of their arrest numbers? We knew that.

23 MR. WEBER: That they were not.

24 THE WITNESS: They were not out of league or  
25 in any way different from -- at least along the Eastern

1 Seaboard and the I-95 corridor.

2 With respect to a related, what I would call  
3 distinct issue, that those arrest numbers -- one of the  
4 points that they made was that, and this is true, the  
5 overwhelming majority of those persons who were  
6 arrested were ultimately convicted, which I will accept  
7 as a member of the bar, meaning that they were guilty.  
8 And that's true. But that doesn't necessarily mean  
9 that minorities are more likely to be engaged in drug  
10 offenses.

11 MR. WEBER: Well, you anticipated my next  
12 question.

13 If one of the main focuses of the interim  
14 report was an analysis of the consent to search data,  
15 and the use of the consent to search data to establish  
16 that racial profiling was real and not imagined, you  
17 would agree with me, would you not, that the arrest  
18 data is ex-post-facto information that doesn't really  
19 have any bearing on the issue of racial profiling?

20 THE WITNESS: I agree with that completely.

21 MR. WEBER: Okay.

22 THE WITNESS: It might have a bearing, but  
23 it's a much more tenuous argument.

24 MR. WEBER: Okay. And I think you would  
25 agree, because I believe we discussed this at your

1 February 13th deposition, that the reason why the  
2 consent to search data is so important is because that  
3 is when a road trooper really has an ability to use  
4 their discretion in how they proceed going forward,  
5 correct?

6 THE WITNESS: Exactly. The circumstances  
7 aren't dictated or the enforcement techniques aren't  
8 dictated by the circumstances.

9 MR. WEBER: And if there was a point in time  
10 that a road trooper wanted to engage in racial  
11 profiling, it was really the point at which the stop  
12 has already occurred and then the trooper sees the race  
13 of the driver and then decides to go -- where to go  
14 from there, correct?

15 THE WITNESS: That would be one point. I'm  
16 not minimizing the importance of the stop decision --

17 MR. WEBER: Correct.

18 THE WITNESS: -- but --

19 MR. WEBER: Correct, yes. But for the issue  
20 of racial profiling you've got -- you've got the  
21 analysis of the stop data, assuming that it's daytime  
22 and the trooper is able to see the race of the driver,  
23 they can engage in racial profiling that way, correct?

24 THE WITNESS: Yes, that's certainly  
25 theoretically possible.

1 THE COURT: Okay. Or the technique of  
2 spotlighting was also a technique that was used in  
3 connection with the initial stop in which a trooper can  
4 engage in racial profiling, correct?

5 THE WITNESS: Yeah, again that's  
6 theoretically possible.

7 MR. WEBER: Okay. So we've got that first  
8 part of it. The second part of it then is the driver  
9 is now stopped and pulled over on the side of the  
10 highway and the trooper now affirmatively sees the race  
11 of the driver and has the ability to use his or her  
12 discretion to decide whether or not to go forward and  
13 ask for a consent to search the car, correct?

14 THE WITNESS: That's right. And that  
15 decision thus is because it's discretionary, is subject  
16 to the influence of the stereotypes given the broad  
17 definition of racial profiling that we were adopting.

18 MR. WEBER: Okay. So if a trooper -- if a  
19 trooper was going to engage in racial profiling, it  
20 would most likely occur either at the stop stage or at  
21 the stage of asking for consent to search, correct?

22 THE WITNESS: Well, it could occur at any --

23 MS. GLADING: To clarify --

24 THE WITNESS: I'm sorry.

25 MS. GLADING: To clarify, when else might it

1 possibly occur? I'm not sure I understand your  
2 question.

3 MR. WEBER: Well --

4 THE WITNESS: Well, there's a --

5 MR. WEBER: -- then I'll ask you the  
6 question. Aside from the stop and aside from the point  
7 in time in which the trooper decides okay, I'm going to  
8 ask the motorists for their consent to search, is there  
9 another point in time later on in that interaction that  
10 racial profiling could occur?

11 THE WITNESS: Not necessarily later on, but  
12 it could theoretically apply to any action during -- or  
13 the sequence of steps during the stop. For example,  
14 the decision to stop, the decision to order a driver  
15 out of the vehicle, the decision to order passengers  
16 out of the vehicle, the decision to use probing  
17 questions that are unrelated to the motor vehicle  
18 violation that was the basis for the stop. We talked  
19 about the decision to request consent to search. The  
20 decision to arrest is theoretically certainly  
21 susceptible to that, although there's less discretion  
22 there.

23 MR. WEBER: Right. I mean you have to find  
24 some evidence of criminal behavior before you arrest  
25 somebody, correct?

1 THE WITNESS: That's right. And presumably,  
2 for example, if you see or smell drugs, there's very  
3 little -- there's very little discretion that you would  
4 have at that point.

5 MS. GLADING: Do you recall Sergeant Serrao  
6 discussing find rates during his Power Point  
7 presentation?

8 THE WITNESS: I believe that he did discuss  
9 and there was some question over the accuracy of the  
10 find rate, whether it was 20 or 30 percent.

11 MR. WEBER: Okay. So let's go back to my  
12 question which was several questions ago. If the Power  
13 Point -- if the main thrust of the April 13th Power  
14 Point presentation was to present information to show  
15 that through arrest statistics New Jersey was pretty  
16 much on par with the Northeastern Corridor states, and  
17 you principally agreed with that information, you  
18 didn't take issue with that information, was there any  
19 other information in that presentation that impacted on  
20 any other aspects of the interim report other than the  
21 consent to search data?

22 THE WITNESS: Well, I would just add to that  
23 in terms of I think you used the word "major theme," my  
24 impression of the major theme was that the conduct of  
25 the State Police, not that it was consistent with other

1 states, that was clearly made, but that minorities are  
2 -- they were using, as I recall, UCR data for other  
3 states, all arrests. Not just road arrests, all  
4 arrests from Florida up through New Jersey, along the  
5 I-95 corridor, and they were using those numbers to  
6 basically say we stop or we search and we arrest more  
7 minorities because more minorities commit drug  
8 offenses. And there was an argument there and we deal  
9 with that argument. They wouldn't have had the benefit  
10 of that, I don't think, in a chapter that explains why  
11 that's not necessarily true.

12 MS. GLADING: Did you raise that discussion,  
13 discuss the argument you had already made in the drafts  
14 of your report?

15 THE WITNESS: I don't recall doing that. I  
16 don't think we did.

17 MR. WEBER: But, Mr. Susswein, that argument,  
18 correct me if I'm wrong, is very similar to an argument  
19 that was made by Colonel Williams in February of 1999,  
20 which resulted ultimately in his termination, correct?

21 MR. MILLER: Resignation.

22 MR. WEBER: Resignation.

23 MR. MILLER: According to the Superior Court  
24 of New Jersey.

25 THE WITNESS: It is --

1 MR. WEBER: We'll go back to what I used  
2 before, Colonel Williams leaving the force.

3 THE WITNESS: It is a similar argument.

4 MR. WEBER: Okay. And that argument was very  
5 quickly rejected by the Governor and by others,  
6 correct?

7 THE WITNESS: I wasn't involved in that  
8 decision, but I read in the paper that he --

9 MR. WEBER: Well, you read it in the papers,  
10 okay.

11 THE WITNESS: Something happened to his  
12 employment at that point.

13 MR. WEBER: Anyone in the meeting express a  
14 concern that the State Police were relying on the very  
15 argument that resulted in Colonel Williams leaving the  
16 New Jersey State Police just a month or two before?

17 THE WITNESS: I don't know whether it was  
18 expressed at the meeting. I know Paul and I talked  
19 about it afterwards. But in fairness, I don't believe  
20 that we took the time -- I mean I might be wrong to go  
21 through that chapter, and I don't know that anyone in  
22 that room had yet had an opportunity to have read that  
23 chapter.

24 MR. WEBER: What did you and Mr. Zoubek  
25 discuss on this issue as far Colonel Williams and the

1 arguments -- Colonel Williams and the arguments he made  
2 or the analysis he provided in the *Star Ledger* article  
3 and now it seems that just two months later the same  
4 argument and same analysis is being presented to the  
5 Attorney General's Office.

6 THE WITNESS: We didn't talk about it in  
7 terms of Colonel Williams' argument. The question was,  
8 is this a valid argument? Many law enforcement  
9 agencies throughout the country have made and continue  
10 to make that argument.

11 MR. WEBER: What position did you take on  
12 that and what position did Mr. Zoubek take on that as  
13 to whether or not it's a valid argument?

14 THE WITNESS: Well, it's in the interim  
15 report. I wrote that and I wrote that because I  
16 believed in that.

17 MR. WEBER: And Mr. Zoubek --

18 THE WITNESS: I wasn't told to write that,  
19 that was my -- and you can see in my memos leading up  
20 to the drafts of the interim report, I earnestly  
21 believed that you cannot use non-index offenses as a  
22 measure of criminal activity.

23 MR. WEBER: And I take it Mr. Zoubek agreed  
24 with that, otherwise it wouldn't have made its way into  
25 the final version of the interim report.

1 THE WITNESS: I think that's a fair  
2 statement.

3 MS. GLADING: I want to ask you some  
4 questions about Table 2. Are you still on this line of  
5 questioning or --

6 MR. WEBER: No. Go ahead.

7 MS. GLADING: Is it your testimony that the  
8 numbers in Table 2 on Page 27 of the interim report  
9 were the work product of Christine Boyle?

10 THE WITNESS: Yes. She put together the  
11 tables.

12 MS. GLADING: Okay. Is it your testimony  
13 that these numbers were the result of her analysis?

14 THE WITNESS: Yes, her compilation, her  
15 analysis, yes.

16 MS. GLADING: Okay. And is it your testimony  
17 that her compilation, her analysis consisted of  
18 reviewing the raw data that she had gotten from the  
19 State Police?

20 THE WITNESS: I can't testify as to exactly  
21 the sources of her information.

22 MS. GLADING: Excuse me, I'm sorry. With all  
23 due respect, you wrote the report.

24 THE WITNESS: Right.

25 MS. GLADING: The principal findings of the

1 report are based on these tables and these numbers.

2 THE WITNESS: Right.

3 MS. GLADING: So did you investigate and find  
4 out what she based her numbers on?

5 THE WITNESS: To answer your question  
6 specifically. When you use the word "raw" data, that  
7 has a meaning to me. I do not know how "raw" her data  
8 was.

9 MS. GLADING: You testified last week that  
10 she was going through boxes and boxes of data.

11 THE WITNESS: At some point, yes. And at  
12 some point that stopped when we began getting  
13 compilations.

14 MS. GLADING: Okay, so, that's my -- we're  
15 getting to my question. Do you know if she used  
16 Sergeant Gilbert's compilations in developing these  
17 tables?

18 THE WITNESS: I do not know exactly what  
19 compilations she used.

20 MS. GLADING: Have you ever asked her?

21 THE WITNESS: Specifically what documents she  
22 used? No.

23 MS. GLADING: Well, this entire report is  
24 built upon a couple of tables in here, three tables.

25 THE WITNESS: Yes.

1 MS. GLADING: That's the evidence of racial  
2 profiling.

3 THE WITNESS: Well, I do not agree with that  
4 characterization at all for the reasons stated --

5 MS. GLADING: Oh. What other evidence is  
6 there in the interim report of racial profiling?

7 THE WITNESS: As explained in the section on  
8 the source of information, it was anecdotal  
9 information. There was an ongoing criminal  
10 investigation. Deb Stone had conducted an  
11 investigation and provided information.

12 MS. GLADING: This is the statistical  
13 scientific evidence on which this report is based,  
14 right?

15 THE WITNESS: That's the only empirical  
16 evidence, yes.

17 MS. GLADING: Did you ask her -- I'm looking  
18 at Footnote 2 now. Did you ask her why the months are  
19 so random? You've got Cranbury, January to March '94.

20 THE WITNESS: They're not random. They're  
21 just missing.

22 MS. GLADING: Beg your pardon?

23 THE WITNESS: I did ask her why.

24 MS. GLADING: Okay. What did she say?

25 THE WITNESS: There were months where they

1 were missing, that she didn't have them.

2 MS. GLADING: So what was then her intent  
3 when she set out to do a comprehensive analysis? What  
4 years was she going to cover?

5 THE WITNESS: The years that are listed here.

6 MS. GLADING: Well, there's a lot of years  
7 listed here. There's '94, parts of '96.

8 THE WITNESS: Through the present.

9 MS. GLADING: April of '97 through February  
10 of '99. So was she going to cover '94 through February  
11 of 1999?

12 THE WITNESS: Yes, that's consistent with  
13 Soto up to the present.

14 MS. GLADING: Okay. Was all of '95 missing?  
15 I'm trying to make heads or tails.

16 THE WITNESS: I'm trying to read -- let's  
17 see.

18 MS. GLADING: Maybe we need to get Christine  
19 Boyle in here to testify to her methodology. Because  
20 the witness does not appear to have any knowledge about  
21 her methodology.

22 MR. WEBER: Well, we'll talk about that  
23 after.

24 MS. GLADING: That's fine.

25 MR. WEBER: After we finish Mr. Susswein's

1 deposition.

2 MS. GLADING: Do you know why she broke out  
3 Moorestown and Cranbury separately in her analysis?

4 THE WITNESS: That's an aspect of being  
5 precise. They're two different stations.

6 MS. GLADING: Okay. Do you know why she did  
7 not conduct an analysis of Newark, which is the third  
8 Troop D station?

9 THE WITNESS: That I don't know. Whether  
10 because we didn't have the information or --

11 MS. GLADING: Did you ask for it?

12 THE WITNESS: Because we did do it for Table  
13 3.

14 MS. GLADING: Did you ask for the information  
15 for Newark?

16 THE WITNESS: I don't recall.

17 MS. GLADING: Okay. Do you know why this  
18 analysis does not deal at all with Troops A, B, C and  
19 E?

20 THE WITNESS: Well, this report was driven by  
21 Soto and the Turnpike.

22 MS. GLADING: So should the title of this  
23 report in fairness be Interim Report of the State  
24 Police Review Team Regarding Allegations of Racial  
25 Profiling in the Moorestown and Cranbury Stations?

1 THE WITNESS: It would not be inaccurate to  
2 add that to the title, that's why we label tables very  
3 precisely.

4 MS. GLADING: Okay. When Mr. Serrao made his  
5 Power Point presentation according to his sworn  
6 testimony yesterday, he said that he provided data that  
7 was generated from the CAD system, the Computer Aided  
8 Dispatch or Computer Assisted Dispatch system which had  
9 come online over the past couple of years. Do you  
10 recall that?

11 THE WITNESS: Not specifically. I don't  
12 disagree with that, but --

13 MS. GLADING: Did you ever make an inquiry as  
14 part of developing this report on whether or not there  
15 were computer information available, digital  
16 information available on State Police stops?

17 THE WITNESS: I did not, no.

18 MS. GLADING: Okay. When Mr. Serrao made his  
19 presentation, he said that he covered for Troopers A, B  
20 and C. And this was based upon availability of CAD  
21 data.

22 THE WITNESS: Um-hmm.

23 MS. GLADING: His presentation included stop  
24 data for Troops A, B and C for all of 1998. It  
25 included the last three months of '98 for Troop D and

1 he thought, he was unsure, but it included possibly six  
2 months of '98 for Troop E. After you realized that  
3 this information did not -- that his presentation did  
4 not break out Hispanic, did you call him and say can  
5 you rerun those numbers, those computer-generated  
6 numbers to break out Hispanics for the analysis of stop  
7 data that you did?

8 THE WITNESS: I did not, I don't know whether  
9 Chris reached out to him or whoever.

10 MS. GLADING: Did you ask Chris if she did?

11 THE WITNESS: She had to get some -- well,  
12 she had to get some information to make the statement  
13 to me that the numbers that they were presenting were  
14 generally consistent.

15 MS. GLADING: You testified earlier that you  
16 gave her the presentation, right, you gave her a copy  
17 of it?

18 THE WITNESS: I didn't testify to that.

19 MS. GLADING: No? I'm sorry. Did you  
20 testify on whether --

21 THE WITNESS: I really don't know whether I  
22 had a copy of her -- those tables. I guess I did. I  
23 don't know whether I gave them to her or not. They  
24 were just pie charts. They were not the kind of data  
25 that she would have been able to do any kind of

1 comparison with.

2 MR. WEBER: Well, did you have any concern  
3 that it --

4 MS. GLADING: Comparison of what?

5 THE WITNESS: Comparison with -- here is the  
6 question again: Are the numbers that we now have in  
7 Table 2, are they inconsistent with the information  
8 that was now being provided via the April 13th meeting?  
9 The answer is they're not inconsistent.

10 MR. WEBER: Well, how could you say they're  
11 not inconsistent if --

12 MS. GLADING: Wait, one second, no.  
13 Inconsistent, you had brand new information about  
14 Troops A, B and C according to Sergeant Serrao's  
15 testimony.

16 THE WITNESS: All right. One of the major  
17 themes of this report is that the racial profiling  
18 problem is intimately related to the war on drugs. The  
19 I-95, the New Jersey, is a major drug courier route,  
20 was a major focus of drug interdiction activities. And  
21 by the way, the different stations have different  
22 aspects because of different road patterns and traffic  
23 patterns that make drug interdiction possible. Any  
24 attempt to combine data, and this is a major flaw in  
25 many reports, the GAO points this out all the time.

1 When you do not isolate, for example, station or troop  
2 and you combine data, you lose precision. Our  
3 hypothesis here and our conclusion was that the racial  
4 profiling problem was real, not imagined, and that it  
5 was closely related to the question of drug  
6 interdiction.

7 MS. GLADING: Okay. Well, I'm looking at  
8 Table --

9 THE WITNESS: And that is a Turnpike  
10 phenomenon.

11 MR. WEBER: Okay, but --

12 MS. GLADING: Sir, I'm looking at Table 1  
13 now. Now, you've got a breakdown of Cranbury and  
14 Moorestown for stops on Page 26 of your report.

15 THE WITNESS: Yes.

16 MS. GLADING: Now, you've been presented at  
17 this presentation, according to Mr. Serrao's sworn  
18 testimony, with A, B and C, Troop A, B and C stop data.

19 THE WITNESS: Were they combined all  
20 together? I really don't -- I haven't seen that  
21 presentation in two years.

22 MS. GLADING: It's computer information.

23 THE WITNESS: But they didn't provide us  
24 with --

25 MS. GLADING: Computer-generated information.

1 THE WITNESS: -- computer information.

2 MS. GLADING: Excuse me --

3 THE WITNESS: They showed us a Power Point  
4 presentation.

5 MS. GLADING: According to Mr. Serrao's --

6 MR. WEBER: But before we go any further --  
7 before we go any further, hold on. In all fairness to  
8 the court reporter, I'm not assessing blame on anyone,  
9 but the court reporter ultimately will type up a  
10 transcript and can't take two people talking at once.

11 MS. GLADING: I will shoulder the blame.

12 MR. WEBER: Okay. But let me just  
13 respectfully request to everyone, Ms. Glading, you ask  
14 your question, Mr. Susswein, you answer the question.  
15 Ms. Glading wait until the question is answered before  
16 you ask the next question, please.

17 MS. GLADING: Sergeant Serrao -- Lieutenant  
18 Serrao --

19 MR. WEBER: It's Detective Sergeant Serrao.

20 MS. GLADING: Detective Sergeant Serrao's  
21 sworn testimony was that one of the reasons Mr. Zoubek  
22 was extremely upset at this presentation was because he  
23 had never seen, according to what he said, the CAD  
24 data. So apparently according to his sworn testimony  
25 there was some discussion at this meeting about the

1 fact that some of this was computer-generated  
2 information.

3 THE WITNESS: It's possible.

4 MS. GLADING: You do recall that?

5 THE WITNESS: Not specifically, no.

6 MS. GLADING: Did you ask Detective Sergeant  
7 Serrao whether or not this was aggregate Troop A, B and  
8 C information for '98 or not?

9 THE WITNESS: You mean his Power Point  
10 presentation?

11 MS. GLADING: Um-hmm.

12 THE WITNESS: No and I don't recall whether  
13 it was labeled that way or not.

14 MS. GLADING: Okay. You had -- you were  
15 operating, according to your testimony, under a  
16 hypothesis that there was an I-95 drug corridor, drug  
17 interdiction connection to the racial profiling  
18 problem, is that correct?

19 THE WITNESS: Yes, that's one of the major  
20 themes in the report.

21 MS. GLADING: Wouldn't it be essential in  
22 proving that hypothesis to compare the stop numbers for  
23 Troop D with the stop numbers for Troops A, B, C and E?

24 THE WITNESS: That's an interesting  
25 hypothesis. Yeah, one would --

1 MS. GLADING: No, I'm not asking a  
2 hypothesis, I'm asking you as a Criminal Justice  
3 expert.

4 THE WITNESS: Well, I --

5 MS. GLADING: To prove a hypothesis that  
6 there's a problem in Troop D. Don't you need to  
7 compare it against something aside from --

8 THE WITNESS: I do know that during the  
9 course of this, of the Review Team inquiry we did get  
10 some information from other stations and the numbers  
11 were different. Sometimes the numbers were very small.  
12 For whatever reason we didn't make that argument. It's  
13 certainly an argument that confirms, as you point out,  
14 the relationship between drug enforcement and the  
15 problem of racial profiling. We just didn't make it.

16 MR. WEBER: You testified previously that you  
17 get the numbers at the April 13th meeting. Ms. Boyle  
18 then does an analysis of those numbers and within a few  
19 days confirms for you that with the exception of the  
20 State Police's failure to separate out Hispanic and  
21 Asian motorists from white motorists, the numbers were  
22 basically the same, correct?

23 THE WITNESS: Right. Her phrase is exactly  
24 what's in that footnote.

25 MR. WEBER: Okay. My question to you is, was

1 there any discussion that you had with Ms. Boyle in  
2 which she confirmed for you that she also separated out  
3 from the State Police's analysis only the numbers that  
4 related to Troop D, because the State Police's  
5 presentation concerned other troops in addition to  
6 Troop D, correct?

7 THE WITNESS: I have not seen those State  
8 Police presentations in two years so I don't know how  
9 it was labeled. Whether I was even aware at the time  
10 that they had not segregated out Troop D. Or if they  
11 did, I just don't know. I don't -- to answer your  
12 question specifically, I don't recall what I told Chris  
13 or what she told me, I know that Chris would account  
14 for a station.

15 MR. WEBER: Well, there's no indication in  
16 Footnote Number 2 or Footnote Number 3 that the State  
17 Police data concerned troops in addition to Troop D,  
18 does it?

19 THE WITNESS: That's correct. Which would  
20 lead me to believe that she had control for that and  
21 the data she was getting was consistent with comparing  
22 it to Table 2.

23 MR. WEBER: Okay. Assuming that the State  
24 Police presentation on April 13th involved information  
25 from troops other than Troop D or Troop D and other

1 troops --

2 THE WITNESS: Right.

3 MR. WEBER: -- would you agree with me that  
4 it was not proper to make a comparison between the  
5 Troop D information in this interim report and the  
6 information that was presented by the Stat Police on  
7 April 13th, 1999?

8 THE WITNESS: I'm not sure I understand.

9 MR. WEBER: Okay. In the interim report  
10 there is some indication that the analysis completed to  
11 date are, however, generally consistent with those  
12 reported in this section. That's Footnote Number 3,  
13 correct?

14 THE WITNESS: Yes, sir.

15 MR. WEBER: Is that an accurate statement if  
16 the State Police analysis that was presented on April  
17 13th included information in addition to Troop D data  
18 and --

19 THE WITNESS: No, it would inappropriate to  
20 -- that would be apples and oranges.

21 MR. WEBER: Okay. So let's assume, for  
22 purposes of the deposition --

23 THE WITNESS: But you realize the direction  
24 that goes in. If, in fact, the numbers for A, B and C  
25 and E are lower, the minority numbers are lower, that

1 would tend to skew the numbers downward, not upward.

2 MR. WEBER: Right.

3 THE WITNESS: Okay.

4 MR. WEBER: Okay. But my concern is with  
5 making sure that apples and oranges aren't being  
6 compared here.

7 THE WITNESS: That's right. And Chris takes  
8 that very seriously.

9 MR. WEBER: Okay. And there's no indication  
10 in the interim report, is there, that the numbers that  
11 were presented by the State Police at the April 13th  
12 meeting included a data base of information different  
13 from the data base that was relied upon in the interim  
14 report, i.e, Troop D?

15 THE WITNESS: That's correct.

16 MR. WEBER: You may have testified about this  
17 before. If you did, I apologize. But what was Ms.  
18 Boyle's position at the Attorney General's Office in  
19 1999 when she was working with you?

20 THE WITNESS: She was chief of the Research  
21 and Evaluation Section and a Ph.D.

22 MR. WEBER: And what's her primary function?  
23 I mean does she do statistical analyses and crunch  
24 numbers and --

25 THE WITNESS: Yes, I mean she has a number of

1 different projects; the high school survey of drug and  
2 alcohol abuse, monitoring and evaluating the drug  
3 program but, yes, she's our statistical analyst.

4 MR. WEBER: Is she still at the Attorney  
5 General's Office?

6 THE WITNESS: Yes.

7 MR. WEBER: There was testimony that at the  
8 April 13th meeting the presentation was given by  
9 Detective Sergeant Serrao. He was then asked to leave  
10 the room and a meeting occurred out of his presence for  
11 approximately an hour. Do you remember Detective  
12 Sergeant Serrao leaving the room and then the meeting  
13 continuing without him?

14 THE WITNESS: No, I don't.

15 MR. WEBER: What was discussed at the meeting  
16 after Detective Sergeant Serrao finished his  
17 presentation? What was discussed amongst you and Mr.  
18 Zoubek and Colonel Dunlop and Lieutenant Colonel  
19 Fedorko?

20 THE WITNESS: I have no recollection that I  
21 was even present.

22 MR. WEBER: Well, did you leave and people  
23 remain?

24 THE WITNESS: I really -- I don't remember.  
25 I know it was a rather busy time. But I don't remember

1 there being any hour-long discussion after the  
2 presentation.

3 MR. WEBER: Did you have any discussions with  
4 Mr. Zoubek after the presentation out of the presence  
5 of the representatives from the New Jersey State Police  
6 about what transpired during that presentation?

7 THE WITNESS: Yes.

8 MR. WEBER: Okay. What was that discussion?

9 THE WITNESS: One, we had to check on those  
10 numbers. And two, it was the argument we had heard  
11 before and had already were addressing in the chapter  
12 on the tautological use of those numbers. They were  
13 doing exactly what many law enforcement agencies do but  
14 what we said was inappropriate.

15 MR. WEBER: Was there any discussion similar  
16 in substance to the following, you know, they've done  
17 it to us again? They gave us information in late March  
18 and now they're giving us information late in April.

19 THE WITNESS: I don't recall but keep in mind  
20 I wasn't involved in getting information from the State  
21 Police. I just wasn't at any point, as I testified  
22 last week, in that process of negotiating or discussing  
23 or getting from them information.

24 MR. WEBER: How did you go about providing  
25 Ms. Boyle with the information that was presented at

1 the April 13th meeting?

2 THE WITNESS: I believe what I did is I  
3 called her and told her to get the information.

4 MR. WEBER: Go off the record for a second.  
5 (Off the record)

6 MR. WEBER: Mr. Susswein, did you attend a  
7 meeting on May 20th, 1997 with Attorney General  
8 Verniero and others concerning the Department of  
9 Justice's inquiry and more generally the issue of  
10 racial profiling?

11 THE WITNESS: No. I had no involvement in  
12 the -- in that time frame or in the Justice Department  
13 -- I read about it later.

14 MR. WEBER: You don't remember being at a  
15 meeting with Colonel Williams and Sergeant Gilbert and  
16 Mr. Waugh and then Attorney General Verniero?

17 THE WITNESS: No.

18 MS. GLADING: I want to clarify something  
19 about these numbers I was asking you about earlier.

20 In your testimony last week, you indicated  
21 that originally you wanted to have something by June  
22 and "At some point when the time period was pushed up  
23 and the consent compilations we had these materials, I  
24 told her to stop crunching individual reports, that we  
25 already had enough aggregate statistics to get a feel

1 for what was going on." And then Mr. Weber asked you,  
2 "Did you already have the information about the consent  
3 to search data that Mr. Zoubek received from Mr.  
4 Gilbert on March 15th at that point in time?" And you  
5 say, "At what point in time?" Let me get to the point.  
6 And then he said, "The point in time where you told  
7 Chris to stop crunching numbers." And you said, "Well,  
8 I told her to stop after we had these consent numbers  
9 and it was duplicative. The numbers that she was  
10 coming up, what she reported to me was for stops, for  
11 example, they were consistent with the aggregate  
12 compilations that we were receiving. In other words,  
13 it was verifying that what the State Police had  
14 compiled was accurate. That being so, there's a  
15 diminishing returns argument in terms of continuing to  
16 crunch individual patrol logs." Do you recall saying  
17 that?

18 THE WITNESS: Yes.

19 MS. GLADING: Okay. When Christine Boyle was  
20 in the process of crunching these numbers and you said  
21 you can stop, we've got what we need, did she inform  
22 you where she was at in her process? What months she  
23 had done, what years she had covered?

24 THE WITNESS: No, but let me just clarify.  
25 She never stopped crunching numbers. There's a

1 distinction between reviewing compilations and putting  
2 compilations -- compiling compilations and looking at  
3 raw data such as actual patrol charts, getting  
4 information, then making raw data charts and then  
5 compiling that. At some point, once we started  
6 receiving compilations from the State Police, there was  
7 no need for that, it already had been done.

8 MS. GLADING: Let me clarify my question. At  
9 that point when you started receiving compilations from  
10 the State Police, did you instruct Christine Boyle that  
11 she could stop looking at the raw data at that point?

12 THE WITNESS: Those patrol charts, yes.

13 MS. GLADING: Okay. Did she inform you at  
14 that time what months she had covered, what years she  
15 had covered?

16 THE WITNESS: No, I didn't ask her.

17 MS. GLADING: Were you curious about that?

18 THE WITNESS: No. What months she happened  
19 to have gone through?

20 MS. GLADING: What analysis she had conducted  
21 up until that point.

22 THE WITNESS: She told me that once we got  
23 the compilations, the numbers were all consistent. I  
24 didn't ask her which month against which month.

25 MS. GLADING: Okay. She told you Sergeant

1 Gilbert's numbers were consistent with the numbers she  
2 had developed to that date -- to that point?

3 THE WITNESS: No. Numbers she was getting  
4 from State Police. Again, you have to understand, I  
5 wasn't ferrying the information to her, I didn't see  
6 the information that she was getting, so I don't know  
7 exactly -- she's not in the building that I'm in, and I  
8 didn't micro-manage her page-by-page as to what numbers  
9 she was compiling.

10 MS. GLADING: All right, let's clarify. The  
11 numbers -- you just testified that she informed you  
12 that her numbers were consistent with what you were  
13 getting from State Police.

14 THE WITNESS: That's right.

15 MS. GLADING: By what you were getting from  
16 State Police do you mean the Sergeant Gilbert  
17 compilations?

18 THE WITNESS: Whatever compilations she was  
19 getting.

20 MS. GLADING: Well, was she getting  
21 compilations directly from State Police that you were  
22 not getting?

23 THE WITNESS: I said many times, I was  
24 getting nothing, she was getting, I thought through DAG  
25 LoGalbo, but I'm not even sure of that, she was getting

1 her information from somewhere, ultimately from State  
2 Police. Through the exact chain-of-command, I'm not  
3 exactly sure.

4 MS. GLADING: She was getting what from State  
5 Police?

6 THE WITNESS: Information. Compilations or  
7 whatever. Whatever information she had had to come  
8 ultimately -- not ultimately, but originally from the  
9 State Police. Whether they were Detective Gilbert's  
10 numbers or someone else's numbers, I have no idea.

11 MS. GLADING: All right. Your testimony last  
12 week was, "And the numbers that she was coming up, what  
13 she reported to me was for stops, for example, they  
14 were consistent with the aggregate compilations that we  
15 were receiving. In other words, it was verifying that  
16 what the State Police had compiled was accurate. That  
17 being so, there's a diminishing returns argument in  
18 terms of continuing to crunch individual patrol logs."

19 THE WITNESS: That's right.

20 MS. GLADING: I understood that to mean that  
21 you had received this information from Mr. Zoubek on  
22 March 15th.

23 THE WITNESS: Again, I didn't give Chris any  
24 numbers, she was getting them from State Police through  
25 someone.

1 MS. GLADING: Okay. When Mr. Zoubek told you  
2 about these numbers, these compilations that appear on  
3 March 15th --

4 THE WITNESS: Um-hmm.

5 MS. GLADING: -- did you call up Chris Boyle  
6 and tell her we've got some numbers, you're not going  
7 to believe it?

8 THE WITNESS: I don't know that I said --

9 MS. GLADING: Did you say something to that  
10 effect?

11 THE WITNESS: I don't think I said you're not  
12 going to believe it.

13 MR. WEBER: Its substance.

14 THE WITNESS: Well, certainly at some point  
15 communicated with Chris that we had a new batch of  
16 numbers for her to put together.

17 MS. GLADING: Good. Did you give her those  
18 numbers?

19 THE WITNESS: Did I personally?

20 MS. GLADING: Yeah.

21 THE WITNESS: I don't know whether it was me  
22 or Paul or LoGalbo.

23 MS. GLADING: Did you make sure she got those  
24 numbers?

25 THE WITNESS: I know she got them.

1 MS. GLADING: And is this the point in time  
2 when you told her to stop doing her crunching of patrol  
3 logs?

4 THE WITNESS: More or less.

5 MS. GLADING: And why did you tell her to  
6 stop doing that?

7 THE WITNESS: Because that was very work-  
8 intensive and there were obvious diminishing returns  
9 since now we had learned that someone else had compiled  
10 raw data. The idea of going through -- I don't know if  
11 you know what a patrol chart looks like, but the idea  
12 of going through an individual patrol chart trying to  
13 read handwriting to figure out whether there was a  
14 consent search on this particular incident --

15 MS. GLADING: I've gotten a ticket or two in  
16 my time, I know what they look like.

17 (Laughter)

18 THE WITNESS: That's a very labor-intensive  
19 and if someone had already done it and there was no  
20 reason to believe that the information we were getting  
21 from the State Police was in any way inaccurate or  
22 inappropriately compiled, she had other things to do on  
23 this project than to sit there and read thousands of  
24 pages of raw patrol charts.

25 MS. GLADING: Okay. So did you instruct her

1 or talk with her or discuss with her the idea of  
2 aggregating the numbers, these new numbers from  
3 Sergeant Gilbert with what she had produced?

4 THE WITNESS: Well, again, I don't know that  
5 they were from Sergeant Gilbert or what numbers she  
6 had. I did tell her her assignment I wanted for the  
7 report tables just like the ones we had that dropped  
8 footnotes, because Chris would insist on that to  
9 explain the time periods. But I wanted to have as  
10 thorough a single easy-to-see picture of these numbers.

11 MS. GLADING: Okay. At what point did  
12 Christine Boyle -- is her name Christine?

13 THE WITNESS: Yes.

14 MS. GLADING: At what point did Christine  
15 Boyle inform you of what the numbers were looking like?

16 THE WITNESS: I probably was speaking to her  
17 on a daily basis. What do you mean looking like,  
18 meaning that they were consistent with Soto or  
19 consistent with -- I'm not sure what you mean, what  
20 they were looking like.

21 MS. GLADING: When did you, based upon  
22 Christine Boyle's analysis, reach the conclusion that  
23 racial profiling was taking place in New Jersey based  
24 upon statistical evidence?

25 THE WITNESS: When I first saw it, and I

1 didn't need Chris to compile that, when I first saw the  
2 compilation on or about March 15th with the consent  
3 numbers, I thought that those numbers were, and I used  
4 this phrase in an earlier draft, I'm sure you're going  
5 to get to it, my phrase was "res ipsa loquitur." The  
6 burden would have shifted to us to explain it because  
7 we were looking at 80 or 85 percent minority. And  
8 that's a very different order of magnitude than the 35  
9 to 40 percent stop numbers that were presented in the  
10 Soto litigation.

11 MS. GLADING: So you reached the conclusion  
12 that there was statistical evidence of racial profiling  
13 only when you saw the numbers on March 15th?

14 THE WITNESS: Yes. I would have had a very  
15 difficult time reaching these conclusions that I wrote  
16 in this report without the consent numbers.

17 MS. GLADING: Christine Boyle had been  
18 conducting her own analysis of consent charts, right --  
19 consent forms, right?

20 THE WITNESS: Yes. That was that patrol  
21 chart, raw data crunching.

22 MS. GLADING: I wonder if we can clarify that  
23 the patrol chart -- my understanding is the patrol  
24 chart is a different document from a consent to search  
25 form, is that your understanding?

1 THE WITNESS: Yes, it's a different document.  
2 I think, but I might be wrong, that the patrol chart  
3 records whether there's a consent to search form. I  
4 did not watch her crunch numbers, so I don't know  
5 exactly what she was looking at.

6 MS. GLADING: Do you know if she was looking  
7 at radio logs?

8 THE WITNESS: I believe so, but to be honest  
9 with you, I'm not sure I'd know the difference between  
10 a radio log and a patrol chart.

11 MS. GLADING: So March 15th you see these  
12 numbers and these documents that Mr. Zoubek shows you  
13 and you realize that you have a -- that what you  
14 suspected is true, there is racial profiling, is that  
15 correct?

16 THE WITNESS: At that point I believed that  
17 race clearly seemed to -- depending on your definition  
18 of profiling, by the way.

19 MS. GLADING: Um-hmm.

20 THE WITNESS: Given my broad definition,  
21 which goes well beyond intentional discrimination under  
22 the Equal Protection clause, it struck me that race  
23 seemed to be playing a role in that particular  
24 discretionary decision, which was to ask for consent to  
25 search.

1 MS. GLADING: And you had not had any  
2 conversations with Christine Boyle prior to that  
3 date --

4 THE WITNESS: I probably talked with --

5 MS. GLADING: -- about the statistics that  
6 she was finding?

7 THE WITNESS: I have -- I'm sorry. Would you  
8 repeat that?

9 MS. GLADING: Christine Boyle, your testimony  
10 last week was that Chris Boyle in February starts this  
11 monumental project of going through documents. And  
12 this is going to be the basis for the book that you  
13 write ultimately.

14 THE WITNESS: Um-hmm.

15 MS. GLADING: And so she's now been in this  
16 process of analysis for a month, at least. Had you had  
17 any conversations during that month with Chris Boyle  
18 about what she was finding in terms of consent to  
19 search numbers, stop numbers, anything?

20 THE WITNESS: No, I don't believe so.

21 MS. GLADING: Um-hmm.

22 THE WITNESS: No.

23 MS. GLADING: So as of March 15th you were  
24 still basically a tabula rasa as to statistics on  
25 racial profiling.

1 THE WITNESS: I'm sorry, I missed the word --

2 MS. GLADING: "Tabula rasa." Well, you say  
3 res ipsa loquitur, I figured --

4 (Laughter)

5 MS. GLADING: You were still a blank slate on  
6 March 15th in terms of racial profiling statistics.

7 THE WITNESS: I would have had difficulty  
8 writing a conclusion in the marching orders where we  
9 had to be able to document and justify our conclusions.  
10 And the numbers that we had to this point were the Soto  
11 numbers essentially. They were consistent.

12 MS. GLADING: Okay. And just so that we're  
13 very clear. The numbers in Table 2 represent Chris  
14 Boyle's work in terms of looking at raw materials,  
15 patrol charts or --

16 THE WITNESS: I do not know that.

17 MS. GLADING: -- consent to search forms?

18 THE WITNESS: They are some compilations. I  
19 do not know exactly whether she was using compilations  
20 or her own raw numbers.

21 MS. GLADING: I wonder if I can finish my  
22 question.

23 THE WITNESS: I'm sorry.

24 MS. GLADING: The numbers represented in  
25 Table 2 are her work in terms of her own raw numbers as

1 well as compilations that she incorporated into it once  
2 you received -- once the department received them from  
3 the State Police?

4 THE WITNESS: I do not know whether her own  
5 raw numbers are in there or not.

6 MS. GLADING: Oh, okay. Huh. So it could be  
7 exclusively State Police-generated numbers in this  
8 table.

9 THE WITNESS: I don't know what the numbers  
10 are.

11 MS. GLADING: Okay.

12 MR. WEBER: Could we go back to the interim  
13 report for a moment? Actually, before we go back to  
14 the interim report, let's -- I want to wrap up the  
15 April 13th meeting.

16 After the April 13th meeting, are you aware  
17 that the State Police were advised that the analysis  
18 they presented at the April 13th meeting was not to be  
19 shared with the public or the press?

20 THE WITNESS: I don't recall that.

21 MR. WEBER: Whose decision would it have been  
22 at the Attorney General's Office that the State Police  
23 were not to share their April 13th analysis with the  
24 public or the press? And who would have likely  
25 communicated that order to the State Police?

1 THE WITNESS: Likely communicated? Someone  
2 above me, so one would presume it would be Paul Zoubek  
3 or higher but --

4 MR. WEBER: Did you have any discussions with  
5 Mr. Zoubek about making sure that the numbers presented  
6 by the State Police at the April 13th meeting were not  
7 made public and not made available to the press?

8 THE WITNESS: I wasn't involved in that, no.

9 MR. WEBER: Let's take a look at the interim  
10 report, Footnotes 2 and 3. Actually it's Footnote 3.  
11 Footnote 3 states, "We have recently received from  
12 State Police preliminary tabulations for a more  
13 complete data set of Turnpike consent searches for the  
14 years 1997 and 1998. Analysis to date is incomplete  
15 with respect to the identification of Hispanic  
16 ethnicity among those in the data set. The analyses  
17 completed to date are, however, generally consistent  
18 with those reported in this section." It says nothing  
19 though about the conclusions of the State Police's  
20 analyses, does it?

21 THE WITNESS: No, the footnote says what it  
22 says.

23 MR. WEBER: Okay. And I take it that the  
24 footnote means that the methods used in the analyses in  
25 the interim report and the methods used in the analyses

1 in the State Police report are the same, or virtually  
2 the same, correct?

3 THE WITNESS: Or to use Chris' phrase,  
4 "generally consistent."

5 MR. WEBER: Generally consistent, right.

6 But it states nothing about the conclusions  
7 in the interim report versus the conclusions that were  
8 made in connection with the April 13th State Police  
9 analysis, does it?

10 THE WITNESS: Which conclusions are you  
11 referring to?

12 MR. WEBER: Well, it says nothing about the  
13 ultimate numbers, does it?

14 THE WITNESS: I interpret the phrase  
15 "generally consistent" meaning the ultimate numbers are  
16 generally consistent.

17 MR. WEBER: Okay. So meaning that the  
18 conclusions are generally consistent.

19 MR. MILLER: Mr. Weber, I'm going to object  
20 to the question, just because conclusions kind of leads  
21 to the assumption that you're talking about a word  
22 conclusion. In other words, that these --

23 MR. WEBER: No, I --

24 MR. MILLER: -- numbers lead to this  
25 conclusion, which is whether racial profiling is

1 occurring or not. I don't know if you're asking about  
2 that type of conclusion or whether or not you're  
3 talking about the numbers.

4 MR. WEBER: I'm talking about the conclusions  
5 -- the numbers. The ultimate determinations of the  
6 analyses.

7 THE WITNESS: I'm not -- maybe I'm being --

8 MR. WEBER: Let me bring you to Footnote  
9 Number 4. Footnote Number 4 states, "We note that the  
10 sample size relied upon in determining this proportion  
11 of 'positive finds' is too small to permit general  
12 conclusions to be drawn." So there is a recognition in  
13 Footnote Number 4 about there possibly being a  
14 difference in conclusions, correct?

15 THE WITNESS: I would not use from my  
16 knowledge of how to use statistics, I would not use the  
17 word "conclusion" at that point.

18 MR. WEBER: Well, it's used here in  
19 Footnote --

20 THE WITNESS: For the reasons that Jeff  
21 just --

22 MR. WEBER: It's used in Footnote Number 4,  
23 right?

24 THE WITNESS: The numbers are either  
25 consistent or they're not. It's not a conclusion.

1 It's a number and the number is equal or not.

2 MR. WEBER: Footnote Number 3 says nothing  
3 about numbers being generally consistent. It says,  
4 "the analyses are generally consistent," correct?

5 THE WITNESS: Analyses in this case, since  
6 this was written by Chris, is a statistical analysis.

7 MR. WEBER: "Including the ultimate  
8 conclusion of this statistical analysis," the ultimate  
9 final numbers, correct?

10 THE WITNESS: If you -- which I wouldn't  
11 characterize, but if you want to say that ultimate  
12 conclusion means final number, yes.

13 MR. WEBER: Okay. So your understanding of  
14 Footnote Number 3 is that both the methodology employed  
15 in the analysis in the interim report and the  
16 methodology employed in the April 13th analysis were  
17 generally consistent, correct?

18 THE WITNESS: Yes.

19 MR. WEBER: Okay. Equally, you take Footnote  
20 Number 3 to mean that the final numbers in the interim  
21 report were generally consistent with the final numbers  
22 in the State Police's April 13th presentation?

23 THE WITNESS: Yes.

24 MS. GLADING: Are you done with that  
25 footnote?

1 MR. WEBER: Yeah.

2 MS. GLADING: I have a question I want to ask  
3 about it.

4 In Detective Sergeant Serrao's testimony  
5 yesterday, he indicated that in his presentation it  
6 included analysis of 1,000 consent searches conducted  
7 by Troop D in 1998 and '99. And there was a 30 percent  
8 find rate. You alluded to some disagreement -- earlier  
9 in your testimony you alluded to some discussion about  
10 whether the find rate was 20 percent or 30 percent, is  
11 that correct?

12 THE WITNESS: Yes. Right.

13 MS. GLADING: Okay. A find rate would not be  
14 -- have any -- well, let me back up.

15 This Footnote 4 indicates that your find rate  
16 analysis is based on an audit of 39 searches by  
17 Moorestown and Cranbury barracks troopers in May '97  
18 and 39 searches by troopers assigned to these stations  
19 in various dates in '95 and '96. Mr. Serrao presented  
20 an analysis of 1,000 searches. Can you explain why you  
21 didn't ask him once you identified the lack of Hispanic  
22 identification, why you didn't ask him to go back  
23 through those reports and supplement it, break out  
24 Hispanics, so that you would have a much more  
25 comprehensive analysis in the interim report?

1 THE WITNESS: Frankly, the find rate isn't  
2 that important.  
3 MS. GLADING: Um-hmm. Why did you include  
4 it?  
5 THE WITNESS: Why didn't we include what?  
6 MS. GLADING: Why did you --  
7 MR. WEBER: Why did you include the find  
8 rate --  
9 MS. GLADING: Why did you include a find rate  
10 if it wasn't important?  
11 MR. WEBER: -- if it's not that important?  
12 THE WITNESS: Well, because there was a --  
13 there is an action step. There was a question during  
14 the development of the action steps whether or not to  
15 do away with the consent doctrine, which I personally  
16 was opposed to. And the question there was, and it's  
17 still a question to this day, are the costs associated  
18 with the application of the consent to search doctrine  
19 not worth it? And that's talked about later in the  
20 report where we talk about in the action steps. This  
21 was the only empirical information we had about the  
22 utility. And one of the action steps was to conduct  
23 some further analysis of whether or not the use of the  
24 consent doctrine is worth retaining, which it is, but  
25 that was a question in one of the action steps.

1 MR. WEBER: Who drafted the language in  
2 Footnotes 3 and 4?  
3 THE WITNESS: That would have been Chris and  
4 me. Chris making certain that I was statistically  
5 accurate.  
6 MR. WEBER: Let's take a five-minute break.  
7 Off the record.  
8 (Off the record)  
9 MS. GLADING: Mr. Susswein, I'm going to show  
10 you a document. It's the March 2nd, 1999 draft of the  
11 outline of proposed State Review Team --  
12 THE WITNESS: Yes.  
13 MS. GLADING: -- State Police Review Teams.  
14 It's OAG1368 through 1373. Have you seen this before?  
15 THE WITNESS: I know I've seen it before,  
16 recently.  
17 MS. GLADING: Were you getting these at the  
18 time?  
19 THE WITNESS: I just want to -- because  
20 there's so many that look just like this, I wanted to  
21 see which one...  
22 I did receive this or something very much  
23 like this in that time period.  
24 MS. GLADING: Okay. Do you remember any  
25 discussion at this point in time about the Department

1 of Justice inquiry?

2 THE WITNESS: No, not specifically, I wasn't  
3 involved in that.

4 MS. GLADING: Do you remember any discussion  
5 at this point in time about George Rover having  
6 gathered raw materials such as patrol charts and radio  
7 logs for the Department of Justice?

8 THE WITNESS: At some point during this time  
9 frame, I'm not sure it was March 2nd, I did first learn  
10 that George was involved in that process.

11 MS. GLADING: Okay. Did you ask him then to  
12 provide you with everything he had given Justice?

13 THE WITNESS: I did not. I believe someone  
14 else did.

15 MS. GLADING: Do you know who that was?

16 THE WITNESS: I assume, and maybe I shouldn't  
17 make an assumption, I assume it was Paul Zoubek.

18 MS. GLADING: Do you remember what was  
19 provided?

20 THE WITNESS: Not specifically. I think it  
21 was whatever was given to Justice.

22 MS. GLADING: Do you recall what that was?

23 THE WITNESS: Not specifically, no.

24 MS. GLADING: Did you pass any of that on to  
25 Christine Boyle?

1 THE WITNESS: No, it didn't go through me.

2 MS. GLADING: Okay. If you look at page -- I  
3 note that this is a March 2nd, 1999 document, if you  
4 look at the fourth page, which is numbered OAG1371 --

5 THE WITNESS: Yes.

6 MS. GLADING: -- under statistical data,  
7 would this have been an area that you were concerned  
8 about?

9 MR. MILLER: By that do you mean was this his  
10 responsibility or --

11 MS. GLADING: Yeah. I'm looking actually at  
12 the top of the previous page under racial profiling.  
13 Mr. Susswein is listed right under Zoubek. He's listed  
14 as the lead for racial profiling. I'm trying to  
15 determine, in determining what the evidence available  
16 to us is today under statistical data, was that part of  
17 your responsibilities in drafting the interim report?

18 THE WITNESS: Not my personal  
19 responsibilities, it might have fallen in part to Chris  
20 Boyle who works form e.

21 MS. GLADING: Okay. I don't see Chris Boyle  
22 on this outline anywhere. So would you have been  
23 filling -- would you have been responsible for  
24 connecting the Review Team to Chris Boyle in terms of  
25 responsibilities or would somebody else on the Review

1 Team have been instructing Chris Boyle directly?

2 THE WITNESS: I would be one of the persons  
3 that would be involved. The Director could certainly  
4 speak to her himself.

5 MS. GLADING: Okay. When this outline was  
6 put together on March 2nd, 1999, did you have a role in  
7 collecting existing compilations by troop, barracks,  
8 unit or trooper?

9 THE WITNESS: Personally, no.

10 MS. GLADING: Okay, who did?

11 THE WITNESS: Eventually it would fall to  
12 compile that to Chris Boyle.

13 MS. GLADING: Okay. Who told Chris Boyle to  
14 collect all existing compilations?

15 THE WITNESS: I don't know. It would have  
16 been Zoubek presumably, but...

17 MS. GLADING: Okay. So Zoubek directly  
18 instructed Chris Boyle on her responsibilities? I was  
19 under the misunderstanding that you were instructing  
20 Chris Boyle on --

21 THE WITNESS: Anyone could have. I mean this  
22 is not quite that compartmentalized or chain-of-command  
23 to shop.

24 MS. GLADING: But at a certain point in time  
25 when you had statistics compilations after March 15th

1 your testimony last week indicated you told her to stop  
2 crunching numbers. So you did direct her at which  
3 point to stop crunching patrol charts? Let me clarify.

4 THE WITNESS: Right.

5 MS. GLADING: Okay. So you did have some  
6 kind of supervisory capacity over the work she was  
7 doing, is that correct?

8 THE WITNESS: Oh, yeah, I was her direct  
9 supervisor.

10 MS. GLADING: Okay. Okay. So when the  
11 statistical data needed to be collected, your testimony  
12 is that that responsibility fell on Chris Boyle?

13 THE WITNESS: She was working I think with  
14 DAG LoGalbo and there was boxes of material that were  
15 being sent over to her office over at Front Street.

16 MS. GLADING: Okay. Do you know why there  
17 was an understanding that there were compilations that  
18 were pre-Soto, Soto, post-Soto material provided to  
19 Justice, 7A Turnpike and State Police audits in the  
20 wake of 7A? Do you know where that information came  
21 from that such compilations existed?

22 THE WITNESS: I don't know that there -- I'm  
23 not sure that I read it that way. I don't know that  
24 there were compilations for all those.

25 MS. GLADING: Okay. Did you ever ask Mr.

1 Zoubek when you saw this outline of responsibilities,  
2 did you ever ask him do we know that there are  
3 compilations?

4 THE WITNESS: No, but I think -- did I ever  
5 ask him -- no, I don't think this is a list of  
6 compilations.

7 MS. GLADING: Okay.

8 THE WITNESS: This is a list of possible  
9 areas that someone has to look into. This is like a  
10 very early --

11 MS. GLADING: Okay. Let's look at item  
12 number two under it. It says, "What additional data  
13 analysis is needed?"

14 THE WITNESS: Um-hmm.

15 MS. GLADING: Does that suggest that there  
16 was existing data analysis and we may need additional  
17 data and analysis?

18 THE WITNESS: Yeah, it's a question. "What  
19 additional data do we need?"

20 MS. GLADING: Okay. So what existing data  
21 was there? What was going to be supplemented? What  
22 was going to be supplemented by additional data?

23 THE WITNESS: I'm sorry, I don't -- all the  
24 information we've been talking about for a week that  
25 had been going over to Chris. There was material that

1 apparently had been given to Justice. There was her  
2 access to the CCH system.

3 MS. GLADING: Okay. This is an outline and  
4 the first item in the outline is, "What's the evidence  
5 available to us?" And it says, "We need to collect all  
6 existing compilations." And then it lists possible  
7 existing compilations. Would you say that's a fair  
8 reading of that item?

9 THE WITNESS: It's what it says, yes.

10 MS. GLADING: Okay. And then it says, "What  
11 additional analysis is needed?" So my question to you  
12 is, on March 2nd when you're charged with this  
13 responsibility of finding out -- of drafting this  
14 report and the report is going to be based upon largely  
15 the numbers in Tables 1, 2 and 3, the conclusions of  
16 the report, this information was pretty critical,  
17 wasn't it, at that point in time, in your mind?

18 THE WITNESS: I'm not sure what you're  
19 pointing at. Which information?

20 MS. GLADING: I'm sorry. The statistical  
21 data that might already be existing was pretty critical  
22 to you, right?

23 THE WITNESS: Certainly.

24 MS. GLADING: So did you ask to see what  
25 compilations do we have? What are the numbers?

1 THE WITNESS: Did I?

2 MS. GLADING: Yeah.

3 THE WITNESS: No.

4 MS. GLADING: Okay. Why not?

5 THE WITNESS: I'm not a numbers cruncher and  
6 I'm not that kind of micro-manager. Chris had an  
7 assignment to get all the information that was  
8 available to compile it.

9 MS. GLADING: Okay. And you testified before  
10 you didn't know really until you saw the March 15th  
11 documents, the documents that showed up on March 15th,  
12 you didn't really know with statistical proof, there  
13 was no statistical proof in your realm of awareness at  
14 that point, two weeks later after this is written --

15 THE WITNESS: Oh, no, that's certainly not --  
16 there had been Soto litigation with lots of  
17 statistics --

18 MS. GLADING: Okay.

19 THE WITNESS: -- that had gone on. What I  
20 first learned on March 15th was the existence of  
21 consent search. That's the first time I ever saw  
22 consent search numbers. We had a lot of stop data  
23 because we had the Soto litigation, including Judge  
24 Francis' opinion.

25 MS. GLADING: Okay. Well, with all due

1 respect, Judge Ciancia characterized the Soto data as  
2 junk science. And the State was appealing Soto at this  
3 point in time.

4 THE WITNESS: That's right.

5 MS. GLADING: Because it thought the data was  
6 inadequate.

7 THE WITNESS: Thought the benchmark was  
8 inadequate.

9 MS. GLADING: Okay. We won't get into  
10 benchmark questions.

11 THE WITNESS: But it was our -- I mean the  
12 data on actual stops had been provided in Soto by the  
13 State Police. I don't think that was the question. It  
14 was what was the meaning of that information.

15 MS. GLADING: Um-hmm. Okay. Maybe I  
16 misunderstood your testimony earlier. On March 15th  
17 when you became aware of these new documents, it was my  
18 understanding you indicated that those statistics,  
19 those compilations, confirmed for you that racial  
20 profiling was, in fact, statistically proven.

21 THE WITNESS: I don't know that "confirmed"  
22 is the right word. It certainly corroborated the idea  
23 that race was somehow involved in the exercise --

24 MS. GLADING: Okay.

25 THE WITNESS: -- of police discretion.

1 MS. GLADING: Now, what did it corroborate?  
2 What statistics in your mind did it corroborate?  
3 THE WITNESS: They were statistics.  
4 MS. GLADING: Yeah.  
5 THE WITNESS: I'm misunderstanding the  
6 question.  
7 MS. GLADING: It corroborated the idea. What  
8 was the idea based upon?  
9 THE WITNESS: That racial stereotypes could  
10 influence the exercise of police discretion.  
11 MS. GLADING: Why did you think that before  
12 March 15th?  
13 THE WITNESS: Why did I think that before  
14 March 15th?  
15 MS. GLADING: On what basis did you think  
16 that?  
17 THE WITNESS: Having lost Soto, having read  
18 numerous *Law Review* articles and articles that this was  
19 an issue throughout the country. The phenomenon of  
20 driving while black.  
21 MS. GLADING: Okay. Was there any  
22 statistical basis?  
23 THE WITNESS: No, I didn't have a statistical  
24 basis before the consent numbers.  
25 MS. GLADING: Okay. So let's go back to this

1 outline, to the fourth page, statistical data.  
2 THE WITNESS: Um-hmm.  
3 MS. GLADING: "What is the evidence available  
4 to us today? We need to collect all existing  
5 compilations." If you didn't have any statistical data  
6 on March 2nd when you saw this, did you say what do we  
7 have? We have compilations? I mean I've got Christine  
8 Boyle sitting in a room crunching patrol charts. What  
9 do we have?  
10 THE WITNESS: Is that a question? I'm --  
11 MS. GLADING: Yeah, that's a question. Did  
12 you have a reaction to seeing that there were existing  
13 compilations pre-Soto, Soto, post-Soto? Material  
14 provided to Justice, 7A Turnpike?  
15 THE WITNESS: First of all, I didn't write  
16 this. I don't know exactly what the existing  
17 compilations it's referring to. There was the Soto  
18 litigation. We had some information.  
19 MS. GLADING: All right. And this says  
20 there's pre-Soto compilations.  
21 THE WITNESS: Right.  
22 MS. GLADING: There's Soto compilations and  
23 there's post-Soto compilations.  
24 THE WITNESS: Right.  
25 MS. GLADING: We don't know what those are.

1 It says, "All material provided to Justice."

2 THE WITNESS: Right.

3 MS. GLADING: 7A Turnpike information.

4 THE WITNESS: Right.

5 MS. GLADING: And State Police audits in the  
6 wake of 7A. So apparently there's a -- the writer of  
7 this document indicates that there are existing,  
8 extensive existing compilations. What was your  
9 understanding of what those compilations were at this  
10 time?

11 THE WITNESS: I can't answer that question,  
12 what was my understanding then of what compilations  
13 were available. I've said ten times I was not involved  
14 in looking at the compilations or the data. It was  
15 assigned to someone who worked under me.

16 MS. GLADING: Okay, but aside --

17 MR. WEBER: Did you have --

18 MS. GLADING: -- from *Law Review* articles and  
19 driving while black articles and the Soto data, which  
20 the State at that point was still contesting in court,  
21 aside from all those things, you didn't have any  
22 statistical basis -- aside from those things, you did  
23 not have a statistical basis on March 2nd in which to  
24 base the conclusion of this April 20th report, right?

25 THE WITNESS: I think that's a fair

1 statement, yes.

2 MS. GLADING: Okay. And the suggestion that  
3 existing compilations might be available to you, you  
4 didn't want to find out what those were?

5 THE WITNESS: Oh, that's not a fair -- that's  
6 an unfair characterization. I wanted very much to get  
7 to the truth. I wrote memos which we talked about last  
8 week that outlined the kind of data that I wanted to  
9 get my hands on so I could understand whether this  
10 problem existed and the scope of it. And we went  
11 through them last week. I did not know at that time  
12 that I wrote it that there were already some  
13 compilations of that.

14 MS. GLADING: But you knew it here.

15 THE WITNESS: No, I don't know it from here.  
16 I would not have read this, even assuming I got this  
17 particular version. There were other versions with my  
18 assignments more specifically addressed. I'm not  
19 denying I got it, but there were many different things  
20 that looked like this. I did not read that to say  
21 ah-hah, there were compilations out there already.

22 MS. GLADING: You know, I'm going to stop  
23 there before I'm accused of badgering.

24 Please ask him questions.

25 MR. WHEELER: As Chris Boyle's direct

1 supervisor, did assignments typically have to go  
2 through you?

3 THE WITNESS: The conclusions, I am not a  
4 statistician, I don't even understand half of what she  
5 does.

6 MR. WHEELER: No, no, assignments. Just  
7 generally speaking, assignments from other people in  
8 the Attorney General's Office.

9 THE WITNESS: Historically, actually not.  
10 The Director tends to use Chris Boyle, and the previous  
11 directors, speak to her at will.

12 MR. WHEELER: Would Chris Boyle have any  
13 obligation to at least inform you as to any penny  
14 assignments from other people in the Attorney General's  
15 Office?

16 THE WITNESS: I knew she had this assignment.

17 MR. WHEELER: But just generally speaking.

18 THE WITNESS: Sure. She keeps me up-to-date.  
19 She might not tell me what page or what document she's  
20 crunching at the moment.

21 MR. WHEELER: No, but she would just say,  
22 Ron, I was given this assignment by Mr Zoubek?

23 THE WITNESS: If I didn't already know it,  
24 she would always keep me informed. I knew about this  
25 assignment.

1 MS. GLADING: Okay. I've handed the witness  
2 a document.

3 THE WITNESS: 2487?

4 MS. GLADING: It's OAG2487 and it's --

5 MR. WEBER: Through 2618.

6 Mr. Susswein, can you identify this document  
7 for the record, please?

8 THE WITNESS: It's one of two drafts that I  
9 know were dated April 7th, 1999. Very early draft of  
10 the interim report.

11 MS. GLADING: Okay.

12 THE WITNESS: I'm not sure which one. There  
13 were two. It was a mistake that I apparently made.

14 MS. GLADING: You know, let me explain what  
15 this is actually. This is excerpts --

16 THE WITNESS: Um-hmm.

17 MS. GLADING: -- from the draft, one of the  
18 April 7 drafts of the interim report.

19 MR. MILLER: And the numbers are not  
20 sequential in the exhibit.

21 MS. GLADING: That's correct.

22 MR. WEBER: Well, why don't we just, for the  
23 record though is laborious, identify each of the pages  
24 that are part of the excerpt?

25 MS. GLADING: We can do that now or we can do

1 it as I go through each -- I've only put in the pages  
2 that I had relevant -- that I had questions --

3 MR. WEBER: Oh, okay. Then that's fine.

4 MS. GLADING: On the second page, it's Page  
5 Number 2, OAG2608, of this April 7th draft. I'll ask  
6 you if you remember this page.

7 THE WITNESS: If I could read it and refresh  
8 my --

9 MS. GLADING: Okay.

10 THE WITNESS: I wrote it.

11 MS. GLADING: Sure.

12 (Pause)

13 Okay. Did you have an opportunity to look at  
14 that?

15 THE WITNESS: Yeah.

16 MS. GLADING: Okay. The beginning in the  
17 sentence, "The command structure of the New Jersey  
18 State Police will be held fully accountable for  
19 implementing these reforms in accordance with the time  
20 table set forth in this interim report." Well, I'll  
21 represent to you that that sentence was deleted from  
22 the final report.

23 THE WITNESS: Okay.

24 MS. GLADING: Okay. Can you tell me why that  
25 was deleted?

1 THE WITNESS: I don't recall specifically.

2 MS. GLADING: Do you recall generally why it  
3 might have been deleted?

4 THE WITNESS: Someone asked me to delete it.  
5 I don't know exactly why that particular sentence was  
6 deleted.

7 MS. GLADING: All right. Who would have  
8 edited this report?

9 THE WITNESS: Principally Paul Zoubek and I  
10 were the ones working most closely on this.

11 MS. GLADING: Okay. So any deletions from  
12 the original draft would have come from Paul Zoubek, or  
13 explain to me the process you undertook in writing this  
14 report.

15 THE WITNESS: I did -- actually I didn't  
16 write the initial draft, Deb Stone had written what  
17 might be described as the very first draft. It was  
18 called a partial outline or partial draft.

19 MS. GLADING: Um-hmm.

20 THE WITNESS: I got the assignment then to  
21 become the draftsman. I dictated an initial draft.  
22 Submitted it initially to a few people; Deb Stone,  
23 Wayne Fisher, Paul Zoubek.

24 MS. GLADING: Um-hmm.

25 THE WITNESS: Got back some comments. In

1 ensuing drafts, I was working mostly with Paul.

2 MS. GLADING: And material would be removed  
3 by Paul's instruction?

4 THE WITNESS: Removed or added or amended or  
5 moved to different places in the report.

6 MS. GLADING: Okay. The paragraph, "We feel  
7 constrained to comment that some of the statistical  
8 information we rely upon, including particularly  
9 revealing data concerning consent searches, were only  
10 recently disclosed by the State Police to the Office of  
11 the Attorney General. Certain internal audits and  
12 audits prepared at the request of the Superintendent  
13 were not made known to the Deputy Attorneys General who  
14 were representing the State in the Soto litigation.  
15 This circumstance has seriously compromised the State's  
16 litigation posture and also has needlessly delayed  
17 initiating appropriate remedies and reforms."

18 Do you recall writing that?

19 THE WITNESS: Yes, it's based on some of the  
20 material that Deb had written, but I did write that.

21 MS. GLADING: The -- Page 20 --

22 THE WITNESS: Page 20, is that where you're  
23 turning me to?

24 MS. GLADING: No, no. Do you recall how you  
25 ultimately changed that language in the final version

1 of the interim report?

2 THE WITNESS: I went through, I believe, this  
3 concept of number of iterations.

4 MS. GLADING: Hmm?

5 THE WITNESS: Went through a number of  
6 different changes or different versions of this.

7 MS. GLADING: Do you remember toning that  
8 language down significantly?

9 THE WITNESS: Yes.

10 MS. GLADING: Why did you do that?

11 THE WITNESS: This was something that Paul  
12 edited. I don't know -- at the time I did not know  
13 why.

14 MS. GLADING: Okay. Did you ask him?

15 THE WITNESS: No, not on this, no.

16 MS. GLADING: When you wrote this on April  
17 7th -- well, let me ask you that. Did you write this  
18 on April 7th?

19 THE WITNESS: Yeah, thereabouts. It might  
20 have been a day or two earlier.

21 MS. GLADING: Okay. When you wrote it, to  
22 the best of your knowledge was that information  
23 completely accurate?

24 THE WITNESS: Yes, that was -- I wrote that  
25 because I thought that was true.

1 MS. GLADING: Okay. Where had you learned  
2 that from?

3 THE WITNESS: Partly again from a version  
4 that Deb Stone had written and, frankly, from my own  
5 reaction at the March 15th meeting.

6 MS. GLADING: Um-hmm. Did you talk with Mr.  
7 Fahy about it?

8 THE WITNESS: No, no, not at all.

9 MS. GLADING: So how did you know that the  
10 State's litigation posture had been needlessly -- had  
11 been seriously compromised?

12 THE WITNESS: I believe that's a comment that  
13 Deb had made because she was in charge of the Appellate  
14 Bureau.

15 MS. GLADING: In what way was it compromised?

16 THE WITNESS: I believe she was talking about  
17 that there were ongoing discovery obligations.

18 MS. GLADING: Okay. Is it your understanding  
19 that those discovery obligations had been violated?

20 THE WITNESS: No, because I don't know what  
21 had been discovered, but I wasn't involved in the Soto  
22 litigation but I can certainly see how -- I know the  
23 law of discovery and that the State is a monolithic  
24 entity.

25 MS. GLADING: Okay. You said that Deb Stone

1 wrote the original draft. Did she write that language  
2 specifically?

3 THE WITNESS: Not the specific language.

4 MS. GLADING: Okay.

5 THE WITNESS: There was some basis for it.

6 MS. GLADING: So to clarify, you based your  
7 writing of this language on something she had told you?

8 THE WITNESS: In part. And I also -- I also  
9 believe that the specific point about the compromising  
10 the litigation, that would have come from Deb because I  
11 wasn't involved in the litigation.

12 MS. GLADING: Um-hmm.

13 THE WITNESS: Either a comment that she made  
14 or something she would have written.

15 MS. GLADING: Did you know anything else  
16 about the State's litigation posture in Soto at that  
17 point?

18 THE WITNESS: No, I really wasn't involved in  
19 the litigation other than as a witness back when it was  
20 in the trial court.

21 MS. GLADING: Okay. If you could turn to the  
22 next page in the document I've given you. It's  
23 Page 8 --

24 THE WITNESS: Mine says three.

25 MS. GLADING: It's supposed to be Page 8.

1 Yeah, it does say three, doesn't it?

2 THE WITNESS: The next one after that is  
3 eight.

4 MS. GLADING: You know what? No, let's go to  
5 Page 3, OAG2491. The second sentence -- well, the  
6 first sentence. "This interim report is just that, an  
7 initial statement of the problem. It is not meant to  
8 be the final word on the subject, nor are we naive  
9 enough to think that the issuance of a report, even a  
10 sternly-worded one, will be sufficient to solve a  
11 complex multi-faceted problem that is not of recent  
12 vintage." The phrase, "even a sternly-worded one,"  
13 that deleted, was that your decision or Mr. Zoubek's?

14 THE WITNESS: I believe that was Paul's.

15 MS. GLADING: Okay. Now, we can go to Page  
16 8.

17 MR. WEBER: This is what --

18 MS. GLADING: Yeah.

19 MR. WEBER: What's the page number for the  
20 record?

21 MS. GLADING: Page Number OAG2496.

22 I'd ask you to look at the second full  
23 paragraph beginning, "We also note that many of the  
24 problems described more fully in this interim report  
25 can be traced to surprisingly lax guidance and

1 supervision provided..." --

2 THE WITNESS: I'm sorry, I missed --

3 MR. MILLER: Ms. Glading, we're not following  
4 you. The first full --

5 THE WITNESS: Yeah, I'm not following.

6 MR. WEBER: OAG2496.

7 MS. GLADING: The second full paragraph.

8 MR. MILLER: The second full? Okay.

9 MS. GLADING: Oh, I'm sorry, did I say first?  
10 I apologize.

11 MR. MILLER: I thought you said first, yeah.

12 THE WITNESS: I'm sorry. And I started to  
13 read the first and it said "We," and I --

14 MS. GLADING: We would be remiss if we read  
15 the first.

16 THE WITNESS: Okay.

17 MS. GLADING: I mean the second.

18 THE WITNESS: I'm sorry to interrupt.

19 MS. GLADING: "We also note that many of the  
20 problems described more fully in this interim report  
21 can be traced to surprisingly lax guidance and  
22 supervision provided to officers on patrol. Throughout  
23 its proud history, the New Jersey State Police, owing  
24 to its paramilitary structure and philosophy, has  
25 developed a well-earned reputation for going by the

1 book. With respect to highway stops, as it turns out,  
2 there are many missing pages to that book."

3 Did you write that?

4 THE WITNESS: Yeah, I wrote this whole draft.

5 MS. GLADING: That paragraph was deleted from  
6 the final version of the interim report. Can you tell  
7 me why?

8 THE WITNESS: I don't know exactly why. I  
9 guess it was maybe because it was an overstatement. A  
10 little too much soaring rhetoric.

11 MS. GLADING: Um-hmm.

12 MR. WEBER: We haven't seen that before.

13 (Laughter)

14 MS. GLADING: Do you know who wanted to  
15 delete it?

16 THE WITNESS: I think that was Paul.

17 MS. GLADING: And on what did you base this  
18 information when you wrote it?

19 THE WITNESS: The first sentence was  
20 something I had gotten out of something written by Deb  
21 Stone. The second sentence, frankly, was my attempt at  
22 soaring rhetoric. This is rather a clever pun on the  
23 Navy regs.

24 MS. GLADING: Didn't you provide search and  
25 seizure training for State Police?

1 THE WITNESS: Yes. Still do.

2 MS. GLADING: So you were teaching the book  
3 basically, right?

4 THE WITNESS: I suppose you could say that,  
5 yes.

6 MS. GLADING: Okay. Were you aware when you  
7 were teaching it that there were missing pages to the  
8 book?

9 THE WITNESS: Yes. You can only do so much  
10 in your training. We discussed this in the last -- my  
11 personal belief, I like what I call positive training,  
12 not only what you can do and what you can't do, you  
13 have to do what you can't do, but what you should do, I  
14 like restricting discretion by giving -- by giving  
15 models.

16 MS. GLADING: Um-hmm. Okay. If you could  
17 turn to the next page. It's number -- actually it's  
18 nine, but it shouldn't be. Go to number ten.

19 THE WITNESS: Okay.

20 MS. GLADING: OAG2498. I'm looking at the  
21 first full paragraph on that page. Specifically the  
22 sentence that reads, "Our review reveals that  
23 notwithstanding the military chain-of-command  
24 philosophy of the New Jersey State Police, there has  
25 been comparatively little direct supervision of the

1 day-to-day activities of officers assigned to routine  
2 patrol on the State's major highways. Although the  
3 extent of supervision seems to vary from station to  
4 station, for practical purposes many officers are  
5 essentially on their own, free to pursue their own  
6 approach to law enforcement."

7 In the final version of the interim report,  
8 that passage -- the passage ending at "practical  
9 purposes" is deleted. And the sentence simply begins,  
10 "Many officers are essentially on their own, free to  
11 pursue their own approach to law enforcement."

12 Can you tell me why -- first of all, did you  
13 write that language?

14 THE WITNESS: Yes, I wrote all of this.

15 MS. GLADING: Okay. Can you tell me what you  
16 based that on?

17 THE WITNESS: Again, Deb Stone had done a  
18 memo that articulated lax supervision.

19 MS. GLADING: Her memo is based upon the  
20 interviews, the anonymous interviews you made?

21 THE WITNESS: I assume so, yes. There were  
22 two memos that she wrote, one was called an interview  
23 with a trooper. And there was something else called  
24 "Problems" or something of that nature.

25 MS. GLADING: Would you describe those as

1 anecdotal?

2 THE WITNESS: As opposed to empirical, yes.

3 MS. GLADING: Did you seek any empirical  
4 evidence analyzing the adequacy or inadequacy of  
5 supervision of patrol officers?

6 THE WITNESS: No. I wouldn't even know how  
7 to do that.

8 MS. GLADING: So you wrote that based on  
9 those two memos only?

10 THE WITNESS: Yes.

11 MS. GLADING: Why was it deleted? Who  
12 deleted it?

13 THE WITNESS: A lot of this was kept -- I'm  
14 not sure what was -- I mean you would know better. You  
15 actually told me and I wasn't following what phrase was  
16 deleted. Because some of this is in the final report.

17 MS. GLADING: The words beginning, "Our  
18 review reveals that notwithstanding the military chain-  
19 of-command philosophy." All the way up to the words  
20 "practical purposes." So the discussion of  
21 "comparatively little direct supervision of the day-to-  
22 day activities of officers assigned to routine patrol."  
23 That was deleted.

24 THE WITNESS: I'm not sure about that. It  
25 may have been put in another place or in a -- there was

1 a list of factors that contributed or fostered.

2 MS. GLADING: Okay, I'll take a look.

3 Okay. If you can go to Page 72.

4 MR. WEBER: OAG2617.

5 MS. GLADING: I'm looking at the first full  
6 paragraph that's circled and marked. And I'd ask you  
7 first if you recognize the handwriting?

8 THE WITNESS: That's mine.

9 MS. GLADING: Okay. Should I read this into  
10 the record, Scott?

11 MR. WEBER: If you'd like.

12 MS. GLADING: All right. This paragraph  
13 reads, "Specifically, an audit of State Police motor  
14 vehicle stops recorded on the Moorestown station radio  
15 logs between May 1, '96 and July 31st, '96, shows that  
16 34.3 percent of the 3,524 stops that were conducted by  
17 non-minority troopers involved minority motorists.  
18 Unessentially identical proportion, 33.3 percent of the  
19 1,751 total stops that were conducted by minority  
20 troopers involved minority motorists. (We note,  
21 however, that minority troopers appear to be more  
22 diligent than their non-minority colleagues in  
23 complying with the standard operating procedure that  
24 requires troopers to call in the race of a detained  
25 motorist.) The fact that some minority motorists may

1 have also relied upon subtle or not so subtle  
2 stereotypes, while cited by some as a defense to the  
3 recent criticisms of the State Police, is actually more  
4 properly viewed as evidence of the widespread scope,  
5 complexity and entrenchment of the problem that must  
6 now be addressed."

7 Did you write that?

8 THE WITNESS: Yes.

9 MS. GLADING: And what did you base that?

10 THE WITNESS: The numbers or the conclusion  
11 or what?

12 MS. GLADING: Both. The entire paragraph.

13 THE WITNESS: Well, the numbers were given to  
14 me, so I'm assuming the numbers are accurate. The  
15 argument I was trying to make there is consistent with  
16 the theme you do not have to be a racist to engage in  
17 racial profiling, which is why racial profiling is not  
18 synonymous with an equal protection violation. That  
19 anyone can get drawn into the use of racial or ethnic  
20 stereotypes in exercising discretion.

21 MS. GLADING: The handwritten -- well, let me  
22 ask you this. The numbers were given to you by whom?

23 THE WITNESS: I don't know specifically. I'm  
24 going to assume Chris Boyle, but I didn't make them up.

25 MS. GLADING: Do you know if they were based

1 on her own analysis?

2 THE WITNESS: I don't know.

3 MS. GLADING: Did you keep a record of those  
4 numbers as you were writing this report? Did you keep  
5 a record of the information on which you based those  
6 numbers, as you put it?

7 THE WITNESS: No.

8 MS. GLADING: You didn't? You kept every  
9 draft but you didn't keep a record of it, of the  
10 numbers?

11 THE WITNESS: There's different reasons for  
12 keeping a draft than keeping when someone gives me  
13 numbers. They're just numbers. I put them in the  
14 draft.

15 MS. GLADING: Okay. Do you recall what the  
16 numbers looked like? If was Chris Boyle's, if it was  
17 on her letterhead. If it was an internal OAG memo. If  
18 it was a State Police memo.

19 THE WITNESS: I have no recollection of where  
20 I got those particular numbers.

21 MS. GLADING: Okay. And the handwritten  
22 notation indicates moved to Page 90, but this is  
23 ultimately deleted from the final version of the  
24 interim report.

25 THE WITNESS: I believe there's an -- and I'm

1 not sure where, there's a very brief -- it's been  
2 shortened to a parenthetical reference at one point in  
3 the final report.

4 MS. GLADING: Oh, where?

5 THE WITNESS: I don't know where, I'd have to  
6 go through the whole report. Definitely this whole  
7 phraseology did eventually get deleted.

8 MS. GLADING: Okay. And then I put Page 90  
9 on there just for a point of reference. Let's see.  
10 I'm looking at Page 90, OAG2618. And I'm looking at  
11 the material that was crossed out which reads -- well,  
12 first of all, I'm referring to the material that we  
13 just covered that had been on Page 72.

14 THE WITNESS: Okay. Let me just read this  
15 for a second.

16 MS. GLADING: Um-hmm.

17 THE WITNESS: Yeah, it's the same argument.

18 MS. GLADING: Okay. The passage here that's  
19 crossed out indicates, "This finding by no means  
20 implies that selective enforcement of the motor laws  
21 did not occur. As noted throughout this report, one  
22 need not engage in overt racism to violate the equal  
23 protection clause and the fact that minority troopers  
24 may also have relied upon impermissible racial  
25 stereotypes shows the breadth and depth of the problem

1 we now confront."

2 Did you write that?

3 THE WITNESS: Yes, I did.

4 MS. GLADING: I represent to you, based upon  
5 our line-by-line analysis of the interim report, we  
6 couldn't find that language anywhere in the final  
7 version of the interim report. Can you tell me why it  
8 was deleted?

9 THE WITNESS: Part of this was my decision  
10 because it was inartfully written and actually  
11 inconsistent with some of my legal arguments in terms  
12 of -- and this sentence, I'm embarrassed to admit,  
13 confuses again 14th Amendment violations with racial  
14 profiling. It was inconsistent with the themes I was  
15 trying to write. That's what happens when you dictate  
16 sometimes. And I looked at this and said I'm just  
17 being inconsistent with the legal argument I'm making,  
18 which is that one can engage in racial profiling as  
19 distinguished from selective enforcement, which is a  
20 term of art in the law to refer to intentional  
21 discrimination under the 14th Amendment.

22 MS. GLADING: Okay. So it was deleted  
23 because it was legally inaccurate, is that -- or  
24 misleading?

25 THE WITNESS: I believe I deleted this

1 because when I read it, after having dictated it, it  
2 was inconsistent with the arguments I was trying to  
3 make and I tried to fix it.

4 MS. GLADING: Okay. Thanks.

5 All right. I'm going to give you another set  
6 of pages from one of the many drafts of this interim  
7 report. And this is also dated April 7th. I'm not  
8 really sure why.

9 THE WITNESS: I believe that was my mistake  
10 in terms of -- the very earliest drafts would have been  
11 almost dictated but not read, and they were not going  
12 to anyone but to me. I start dating drafts when I'm  
13 going to be giving them to my superiors, and for  
14 whatever reason, I didn't change the date. So there  
15 are two April 7s.

16 MS. GLADING: Okay. Do you know if this is a  
17 later or earlier version?

18 THE WITNESS: Because of the way you excised  
19 it, I cannot tell. I know from looking --

20 MS. GLADING: Okay.

21 THE WITNESS: But here's the cue so you can  
22 look up. The version that's the later version has a  
23 table of contents.

24 MS. GLADING: Okay. I don't think it's that  
25 relevant to what I'm going to -- oh, you know what?

1 This version is the one that has the table of contents.  
2 So this is the later version, okay?

3 THE WITNESS: That would have been one that I  
4 would have actually shared with Paul Zoubek and others.  
5 The earlier one is literally, I believe, because there  
6 is my own handwriting, a dictated but not read type of  
7 version, one that I did not intend to share with my  
8 superiors.

9 MS. GLADING: Okay. I bet you didn't intend  
10 for us to read it someday either.

11 THE WITNESS: I had no thinking along those  
12 lines at the time.

13 THE WITNESS: Okay. I am not going to cover  
14 the information we've already covered in the first  
15 draft, the passages, but I will -- so I'll ask you to  
16 turn to -- what I've given the witness is pages from  
17 the later version, the later version of the April 7th  
18 drafts. And this is OAG2619. It begins -- that draft  
19 does. And these are non-consecutive selected pages  
20 from that draft. If you can turn to Page 13, which  
21 is OAG2636.

22 THE WITNESS: Yes, ma'am.

23 MS. GLADING: The paragraph begins in the  
24 middle of a paragraph. The sentence, six lines down, I  
25 want to read that and ask you about it. It's in a

1 general discussion about the Attorney General's  
2 responsibility to ensure uniform and efficient  
3 enforcement of criminal law. And you wrote -- did you  
4 write this paragraph?

5 THE WITNESS: Yes. Yes, I did.

6 MS. GLADING: You wrote, "In the  
7 circumstances, we need not wait for a court to approve  
8 a consent order before we take those steps we deem to  
9 be necessary and appropriate to ensure strict  
10 compliance with all constitutional rights and to  
11 enhance the professionalism of the New Jersey State  
12 Police. While the positions taken in recent years by  
13 the Attorney General's Office in the course of  
14 litigation may have been misunderstood and  
15 misinterpreted as turning a blind eye to the problem of  
16 the disparate treatment of minorities, we think it  
17 appropriate now to go well beyond the rulings of courts  
18 in New Jersey and other jurisdictions."

19 Can you tell me what you based that passage  
20 on? What information and knowledge you had about --  
21 well, let me ask you first about a possible consent  
22 order.

23 THE WITNESS: Well, I know that there was  
24 negotiations going on with the Justice Department at  
25 that time.

1 MS. GLADING: You do? Okay.

2 THE WITNESS: Yes, certainly.

3 MS. GLADING: How do you know that?

4 THE WITNESS: I was eventually very shortly  
5 after this became involved in that, directly involved  
6 with the negotiations.

7 MS. GLADING: When did that occur?

8 THE WITNESS: March, April of that year.

9 MS. GLADING: Well, this is dated April 7th,  
10 1999. Were you involved at this point?

11 THE WITNESS: This was my assignment, so this  
12 was a pretty full-time thing. But I was certainly  
13 aware that there were negotiations going on with the  
14 Justice Department.

15 MS. GLADING: Okay. Were those negotiations  
16 about the possibility of a consent decree?

17 THE WITNESS: Yes.

18 MS. GLADING: And why was the State  
19 considering entering into a consent decree at this  
20 point?

21 THE WITNESS: I'm not sure I'm qualified to  
22 give all the reasons why one would enter -- why one  
23 would try to avoid litigation.

24 MS. GLADING: Okay. On what basis did the  
25 State think that it -- what did the State think its

1 position -- what did the State think the strength of  
2 its position would be if it did come to litigation?

3 THE WITNESS: I'm not sure I understand. The  
4 strength of --

5 MS. GLADING: All right. Let me ask it more  
6 directly.

7 Why did the State want to avoid litigation?

8 THE WITNESS: Litigation, protracted  
9 litigation of this kind would be wrenching. It would  
10 be very difficult for all parties.

11 MS. GLADING: Did the State --

12 THE WITNESS: That's why the Justice  
13 Department wanted to avoid it too.

14 MS. GLADING: You're in the middle of writing  
15 a book about racial profiling at this point.

16 THE WITNESS: A book? Or this you mean?

17 MS. GLADING: The interim report.

18 THE WITNESS: Yes, okay.

19 MS. GLADING: Was it your view or the view of  
20 others that the State's position was defensible or  
21 indefensible at this point?

22 THE WITNESS: Again, the consent decree is  
23 based on a federal statute and equal protection issues  
24 and we were moving beyond that. Our definition of  
25 racial profiling wasn't necessarily synonymous with

1 what federal law would have required.

2 MS. GLADING: It's more expansive, right?

3 THE WITNESS: It's more expansive.

4 MS. GLADING: Okay. So if -- did you think  
5 at this point that the Department of Justice had a  
6 valid basis for even raising the idea of a consent  
7 decree?

8 THE WITNESS: Well, I know that they had been  
9 investigating us by this point. I had learned of that.  
10 I'm not sure I'm qualified to answer the question of  
11 the strength of the Justice Department's case.

12 MS. GLADING: Okay. Let me ask you this way.  
13 You at some point became involved in negotiations over  
14 a consent decree.

15 THE WITNESS: Yes.

16 MS. GLADING: Okay. So at that point did you  
17 have any familiarity with the strength or weaknesses of  
18 the State's position in those negotiations with the  
19 Department of Justice?

20 THE WITNESS: My role was not actually in  
21 terms of preparing or anticipating litigation risks.  
22 It was more the nature of how to negotiate an  
23 acceptable consent decree and the action steps we would  
24 be taking.

25 MS. GLADING: Okay. Do you recall any

1 conversations with Mr. Zoubek or Mr. Verniero about the  
2 prospect of a consent decree at this point in time?  
3 I'm talking early April.

4 THE WITNESS: I know that there was  
5 discussions. I never discussed this with Attorney  
6 General Verniero, but I know that there were  
7 discussions that I had with Paul about the negotiations  
8 with the Justice Department.

9 MS. GLADING: And what did he tell you that  
10 what the State's position was on the prospect of a  
11 consent decree?

12 THE WITNESS: I'm not sure I'm going to  
13 answer where you're heading, but he told me that both  
14 sides wanted very much to amicably resolve the issue.

15 MS. GLADING: And how did he characterize the  
16 issue?

17 THE WITNESS: The threat or prospect of the  
18 Justice Department suing us.

19 MS. GLADING: Suing for what?

20 THE WITNESS: I forget the name of the  
21 statute, suing for whatever their authorizing statute  
22 that's effectively a Civil Rights violation.

23 MS. GLADING: On what basis? On what basis  
24 was this threat of a Department of Justice lawsuit  
25 considered a real threat based on what Mr. Zoubek told

1 you?

2 THE WITNESS: I don't understand. On what  
3 basis? The Justice Department was investigating us. I  
4 don't know all the facts that they had.

5 MS. GLADING: Okay. And you learned the  
6 Justice Department was investigating how?

7 THE WITNESS: I was told.

8 MS. GLADING: By whom?

9 THE WITNESS: I got involved in the project.

10 MS. GLADING: Who told you there was an  
11 investigation underway?

12 THE WITNESS: Paul Zoubek.

13 MS. GLADING: Okay. Did he tell you what  
14 they were looking at?

15 THE WITNESS: Racial profiling.

16 MS. GLADING: Did he tell you how long it had  
17 been going on for?

18 THE WITNESS: I don't know that that came up  
19 specifically, no. I mean he may have, I don't --  
20 that's not something that would have stuck in my mind.

21 MS. GLADING: Did he tell you that the issue  
22 of a consent decree had been raised?

23 THE WITNESS: Yeah. I was involved -- as  
24 soon as I finished writing this project, took a night  
25 off, and then began working on the consent decree.

1 MS. GLADING: I'm sorry. I'm asking you  
2 about -- I want to be clear, I'm asking you about this  
3 period of April 7th when you wrote the words, "We need  
4 not wait for a court to approve a consent order." So  
5 at that point in time, the possibility of a consent  
6 decree was in your mind, is that correct?

7 THE WITNESS: Absolutely.

8 MS. GLADING: Okay. So it was in your mind  
9 before you finished writing the interim report which  
10 happened several weeks later, is that correct?

11 THE WITNESS: Yeah.

12 MS. GLADING: Okay. When Mr. Zoubek -- when  
13 you knew that there was a possibility of a consent  
14 decree, did Mr. Zoubek or anyone else represent to you  
15 who had raised the idea of a consent decree? What  
16 stage the discussions were at at that point?

17 THE WITNESS: No, not in that specific  
18 context. I don't know how long they had been  
19 negotiating.

20 MS. GLADING: Okay.

21 THE WITNESS: I came into it a little late in  
22 the process because this assignment sort of preoccupied  
23 me.

24 MS. GLADING: Okay. The sentence beginning  
25 in the passage that I read you a while ago, that "The

1 positions in recent years by the AG's Office in the  
2 course of litigation may have been misunderstood and  
3 misinterpreted as turning a blind eye to the problem of  
4 disparate treatment of minorities." What was that  
5 based upon?

6 THE WITNESS: You mean what I was trying to  
7 say? Because again --

8 MS. GLADING: Um-hmm.

9 THE WITNESS: -- I think that was edited out.

10 MS. GLADING: I'll represent this entire --  
11 everything I've read from this page, OAG2636, was  
12 deleted from the final version.

13 THE WITNESS: Right. A major issue here, and  
14 it all gets down ultimately to what is the definition  
15 of racial profiling, is that were we in denial. And  
16 the other problem was in the factors that I list,  
17 either in this or subsequent versions, that fostered  
18 disparate treatment --

19 MS. GLADING: Um-hmm.

20 THE WITNESS: -- talks about sending  
21 conflicting messages, lax supervision. This were all  
22 things that would look like it was our official  
23 position that we didn't care about these issues and it  
24 wasn't true.

25 MS. GLADING: Okay.

1 THE WITNESS: At least in my opinion when I  
2 wrote this.

3 MS. GLADING: What litigation were you  
4 referring to when you said this -- when you referred to  
5 positions taken by the AG's Office in the course of  
6 litigation?

7 THE WITNESS: Soto.

8 MS. GLADING: Okay. So did you write this  
9 because you believed the State was in denial about the  
10 problem of racial profiling while it maintained the  
11 Soto appeal?

12 THE WITNESS: To some extent, yes. But my  
13 real concern was that there would be people who would  
14 think that we were "turning a blind eye," which in the  
15 case law could be construed as what's called a defacto  
16 policy. Which is pretty much what Judge Francis had  
17 found in his Soto decision. That the official policy  
18 was no discrimination, but that the defacto policy and  
19 that we had failed to take adequate steps to prevent  
20 it.

21 MS. GLADING: Why would these two sentences,  
22 the sentence concerning consent order and the sentence  
23 concerning whether or not the State had been turning a  
24 blind eye to the problem? Why were these two sentences  
25 deleted from the final version of the interim report?

1 THE WITNESS: That I don't know specifically.

2 MS. GLADING: Who deleted them?

3 THE WITNESS: Well, I -- all deletions, I  
4 made all -- I'm responsible for all changes that would  
5 have been at Paul's request or instructions.

6 MS. GLADING: Did you ask him about why he  
7 wanted that deleted?

8 THE WITNESS: No.

9 MS. GLADING: Okay. We're getting there.

10 If you could turn to Page 75. It's the next  
11 page on the document I gave you. It's OAG2698.

12 THE WITNESS: Yes.

13 MS. GLADING: The second -- the first full  
14 paragraph, the second sentence reads, "The State Police  
15 nonetheless remain skeptical and fiercely defensive  
16 about charges of impermissible profiling."

17 On what did you base that -- did you write  
18 that?

19 THE WITNESS: Yes, I did.

20 MS. GLADING: Okay. And what did you base  
21 that when you wrote it?

22 THE WITNESS: Again, that was coming from one  
23 or both of Deb Stone's memos and/or her initial draft,  
24 that partial draft.

25 MS. GLADING: Okay. And did you have any

1 other independent knowledge, aside from those memos,  
2 that this was, in fact, the case?

3 THE WITNESS: No, I had no personal  
4 experience with the whole Internal Affairs process so  
5 I --

6 MS. GLADING: Okay.

7 THE WITNESS: -- was getting it from her.

8 MS. GLADING: And why did you delete this  
9 from the final draft?

10 THE WITNESS: I don't know. I was requested  
11 to do so, but I don't know what the reason was.

12 MS. GLADING: You were requested by whom?

13 THE WITNESS: Again, Paul Zoubek was the  
14 editor, as it were.

15 MS. GLADING: Okay. Was there any interest  
16 in toning down the criticism of the State Police?  
17 Because several of the issues I've raised here involve  
18 passages that were very critical of the State Police  
19 and then are significantly toned down or they  
20 disappear.

21 THE WITNESS: I think there was a general  
22 toning down, not only of criticisms but of all the,  
23 again, the phrase that I used, "the soaring rhetoric."

24 MS. GLADING: Um-hmm. Getting the flowers  
25 out of it?

1 THE WITNESS: Yeah, exactly. I mean you  
2 dictate, you overwrite sometimes. Sometimes it's  
3 flowery. Sometimes it's redundant. And sometimes it's  
4 just imprecise.

5 MS. GLADING: Okay. The paragraph below that  
6 beginning, "We have also learned of instances where  
7 neither the Division of Criminal Justice nor the  
8 appropriate county prosecutor was advised when an  
9 internal investigation revealed that a trooper had  
10 falsified information in a report. This is a serious  
11 problem." Serious is underlined. "One that not only  
12 directly affects the integrity of the organization, but  
13 also implicates the ethical and discovery obligations  
14 of prosecutors. These matters will be fully addressed  
15 as part of the comprehensive review of State Police  
16 management practices."

17 Did you write that?

18 THE WITNESS: Yes.

19 MS. GLADING: Okay. Do you recall if that  
20 stayed in the final report, the final version of the  
21 interim report?

22 THE WITNESS: I believe that what I was told  
23 is delete that and that would be appropriately the  
24 subject for the "final" report.

25 MS. GLADING: Okay. I'm not sure where to go

1 now with this.

2 On what did you base that?

3 THE WITNESS: Again, this is from one of  
4 Deb's memos or drafts.

5 MS. GLADING: Okay. What county did it  
6 involve?

7 THE WITNESS: Do you know, I don't know.

8 MS. GLADING: Um-hmm. Okay. This was based  
9 on one of Deb Stone's two memos or on the original  
10 draft she wrote, is that correct?

11 THE WITNESS: Yes. It's based -- I think it  
12 was one of the memos, the "Problems" memo.

13 MS. GLADING: Okay.

14 THE WITNESS: This was one of the problems.

15 MS. GLADING: And why was the decision made  
16 to delete it from the interim report?

17 THE WITNESS: This one I recall is that this  
18 particular issue was more appropriate for the subject  
19 of the final report, which is dealing with the process  
20 of Internal Affairs and how one investigates  
21 complaints.

22 MS. GLADING: So was records falsification  
23 not viewed as connected with the racial profiling  
24 problem?

25 THE WITNESS: I think they're all connected.

1 It's just that someone made a decision that this  
2 particular issue required its own report or belonged in  
3 the final report.

4 MS. GLADING: Okay. What knowledge did you  
5 have at that point in time about records falsification?

6 THE WITNESS: You mean in that particular  
7 case?

8 MS. GLADING: Um-hmm.

9 THE WITNESS: I don't even know what case it  
10 is.

11 MS. GLADING: Did you have any knowledge of  
12 records falsification being an issue in other cases?

13 THE WITNESS: No. No personal knowledge of  
14 that.

15 MS. GLADING: Hmm?

16 THE WITNESS: No personal knowledge of that,  
17 no.

18 MS. GLADING: You can go to Page 88, this  
19 next page, it's OAG2711. I'm looking under missing  
20 data about racial characteristics of detained  
21 motorists. There is a sentence beginning about halfway  
22 down that paragraph. It's OAG2711. I guess I'll just  
23 read it for the record.

24 "Notwithstanding the foregoing efforts in a  
25 distressingly high percentage of cases, this

1 information was not recorded. And so far as we have  
2 been able to determine, troopers, dispatchers and  
3 supervisors were rarely, if ever, formally disciplined  
4 for failing to comply with this important safeguard.  
5 We are also concerned with the marked difference in the  
6 proportions of missing data in the various State Police  
7 stations along the Turnpike, since this suggests  
8 differing levels of supervision in efforts to ensure  
9 compliance with the standard operating procedure that  
10 required troopers to call in the race of a detained  
11 motorist."

12 The next sentence beginning,  
13 "...characterized," that sentence remained in the  
14 interim report. I think it was slightly rewritten.  
15 But the passage I just read you was deleted. Can you  
16 tell me why it was deleted?

17 THE WITNESS: No, I don't know why it was  
18 deleted.

19 MS. GLADING: Do you know at whose  
20 instruction it was deleted?

21 THE WITNESS: That would have been on Paul's.

22 MS. GLADING: Hmm?

23 THE WITNESS: On Paul's.

24 MS. GLADING: Paul Zoubek?

25 THE WITNESS: Yes.

1 MS. GLADING: Okay. Was it your  
2 understanding that, in fact, this was information that  
3 had been presented to the Department of Justice in 1997  
4 as evidence of post-Soto reforms?

5 THE WITNESS: I missed that. What had been  
6 presented to him?

7 MS. GLADING: The information that there was  
8 an -- I'm sorry. Let me clarify.

9 That there was an effort to improve the  
10 collection of data and make sure that race was called  
11 in as part of the stop. Missing racial data that had  
12 been a problem in Soto, that there were steps to  
13 address that issue following Soto.

14 THE WITNESS: Yeah, I think that's what it  
15 says here.

16 MS. GLADING: Okay. Why would this have been  
17 deleted if it was just --

18 THE WITNESS: I told you, I don't know why  
19 this particular --

20 MS. GLADING: What did you based this --

21 THE WITNESS: It was shortened anyway, but I  
22 don't know why those phrases --

23 MS. GLADING: Right.

24 THE WITNESS: -- were deleted.

25 MS. GLADING: What did you base this

1 information on when you wrote it?

2 THE WITNESS: Again, it would have been  
3 material given to me either by Deb or Wayne; probably  
4 Deb. Now, I do know, and as I said last week, from  
5 reading the Soto decision by Judge Francis, missing  
6 data is a very important issue. That's something that  
7 had to be -- had to be addressed.

8 MS. GLADING: Had you seen any audits showing  
9 that missing data was an improving or worsening problem  
10 following Soto?

11 THE WITNESS: I do believe that as part of  
12 this process we did have -- we did have data showing  
13 improvements. And I think there's a brief reference in  
14 the final interim report, the April 20th version, that  
15 talks about that although there have been -- I might be  
16 wrong now, but I think it says something like marked  
17 improvements.

18 MS. GLADING: Um-hmm.

19 THE WITNESS: Something to that effect.

20 MS. GLADING: Okay. So why did you write at  
21 this time that there was a distressingly high  
22 percentage of cases that information about race was not  
23 being recorded? Notwithstanding all the foregoing  
24 efforts of the Superintendent to enforce F3, SOP F3.  
25 What did you base that on?

1 THE WITNESS: Again, information that was  
2 provided to me by Deb Stone.

3 MS. GLADING: Okay. In the final version you  
4 did say -- you're right, there's language about there  
5 being a marked improvement. Was it inaccurate that  
6 there was still a distressingly high percentage of  
7 cases where race was not being called in?

8 THE WITNESS: Well, keeping in mind that this  
9 is a draft. "Distressingly" is the kind of word that  
10 when you dictate and as part of the toning down, the  
11 more precise lawyering, sometimes adjectives come out.

12 MS. GLADING: Okay. But the final report  
13 seems to reach a different conclusion. It says that  
14 there's been a marked improvement in this area and, you  
15 know, this is a problem that's been addressed. So I'm  
16 just wondering why you had bad information that it was  
17 still a distressingly high percentage of cases where  
18 race was not being called in?

19 THE WITNESS: I don't recall specifically the  
20 discussions on the edits, but it's conceivable that  
21 what I'm writing at this early draft, and this is one  
22 of the earliest drafts, if not the earliest, is  
23 information that I had from Deb Stone's memos and what  
24 have you and then as we learn things -- I mean the  
25 marching orders were very clear, any statement has to

1 be founded on facts and supportable. And if, in fact,  
2 we learned -- they make a statement like this and it's  
3 not true or it's not fair, it's got to come out.

4 MS. GLADING: Well, you testified earlier  
5 that you had based information on Deb Stone's memos  
6 about the anecdotal accounts of troopers regarding the  
7 supervision, lax supervision. Was that based on facts  
8 in your mind or was that anecdotal accounts?

9 THE WITNESS: Anecdotes can be facts, but  
10 that's based on what Deb had said and written.

11 MS. GLADING: Okay.

12 THE WITNESS: I didn't verify it.

13 MS. GLADING: Okay. We're almost there.

14 (Pause)

15 Okay. I've just handed the witness another  
16 collection of excerpts. These from the April 9th draft  
17 of this interim report that he authored and it begins  
18 with OAG2753 and they are non-consecutive pages. And  
19 ask you to take a look at Page 16, the second page,  
20 it's OAG2773. And specifically, I'm looking at the  
21 last paragraph. "So too, we are especially disturbed  
22 by the fact that some troopers have actually falsified  
23 data concerning the race of the occupants of stopped  
24 vehicles." And then the next sentence reads, "At least  
25 two troopers who engage in this practice were

1 discovered during the course of an unrelated criminal  
2 investigation and have been prosecuted." This is, as I  
3 said, an April 9th draft. Did you write that?

4 THE WITNESS: Yes.

5 MS. GLADING: Okay. And on what did you base  
6 that information?

7 THE WITNESS: I'm not sure specifically. I  
8 was either told that or saw that somewhere.

9 MS. GLADING: Um-hmm. By whom?

10 THE WITNESS: I don't know specifically. It  
11 could have been either Paul or Deb.

12 MS. GLADING: Okay. Do you know who those  
13 troopers were?

14 THE WITNESS: I believe this is a reference  
15 to Troopers Hogan and Kenna.

16 MS. GLADING: And was it your understanding  
17 that at this point in time they have been prosecuted?

18 THE WITNESS: To be -- I wrote "Will  
19 be..." --

20 MS. GLADING: Hmm?

21 THE WITNESS: In my -- the version that I  
22 wrote says "Will be prosecuted." It's been changed by  
23 Paul to "Have been prosecuted."

24 MS. GLADING: Okay. That's Paul's  
25 handwriting?

1 THE WITNESS: Yeah. All the editorial  
2 revisions on this are Paul's in this version.

3 MS. GLADING: Okay. When did you get this  
4 back from Paul? How soon after giving it to him?

5 THE WITNESS: I don't know. One could maybe  
6 infer from the next draft.

7 MS. GLADING: Well, the next draft is April  
8 13th, so you would have gotten it back before then?

9 THE WITNESS: Yeah. It would have had to  
10 have been before the 13th. I don't know whether  
11 there's intervening weekends or --

12 MS. GLADING: Okay. So he made these edits  
13 at some point between April 9th and April 13th?

14 THE WITNESS: Yes.

15 MS. GLADING: Okay. And then you would  
16 incorporate the edits and give him another version, is  
17 that how it worked?

18 THE WITNESS: Yes.

19 MS. GLADING: Okay.

20 THE WITNESS: Exactly.

21 MS. GLADING: And why was this passage  
22 deleted from the final version of the interim report?

23 THE WITNESS: I don't know.

24 MS. GLADING: Who deleted it?

25 THE WITNESS: It would have been done at

1 Paul's request or instructions.

2 MS. GLADING: Okay. So just to be clear.  
3 You wrote these two troopers will be prosecuted. He  
4 changed it to they have been prosecuted. And then he  
5 instructed that this entire passage be deleted. And  
6 all this occurred sometime between April 9th, 1999 and  
7 April 13th, 1999, is that correct?

8 THE WITNESS: If that's what the April 13th  
9 version shows, yeah.

10 MR. MILLER: Yeah, you added something in  
11 there that I don't think the record reflects.

12 MS. GLADING: Oh, what was that?

13 MR. MILLER: That it was deleted --

14 THE WITNESS: In the 13th.

15 MR. MILLER: -- in that time period as well.

16 MS. GLADING: Let me check.

17 (Pause)

18 You know, I just will -- it's not that  
19 important actually for what I'm asking about, so I'll  
20 just take that -- acknowledge for the record that we  
21 don't know if it was deleted by the time of the April  
22 13th edition.

23 If you could turn to page -- the next page is  
24 17. It's OAG2774.

25 MR. WEBER: Go off the record for a second.

1 MS. GLADING: Yeah.

2 (Off the record)

3 MS. GLADING: Okay. If you can look at Page  
4 17, OAG2774, under stop, arrest and search data. I  
5 have tried to make heads or tails of this data and at  
6 this -- I'm trying to understand at this point in time  
7 what data you had that you based these numbers upon.  
8 And I'm specifically talking about the top set of  
9 numbers, the stop data for 9,970 stops between '95 and  
10 '96 for Cranbury, Moorestown, Belmar, Netcong,  
11 Perryville and Washington. What was the basis for that  
12 data?

13 THE WITNESS: I don't know, it was provided  
14 to me.

15 MS. GLADING: Hmm?

16 THE WITNESS: I don't know, it was provided  
17 to me.

18 MS. GLADING: By whom?

19 THE WITNESS: I assume Chris Boyle.

20 MS. GLADING: Okay. Why is this data not in  
21 the final report?

22 THE WITNESS: There was other data. I know a  
23 decision was made to limit the scope of this report to  
24 the Turnpike.

25 MS. GLADING: Okay. The decision was made by

1 whom?

2 THE WITNESS: Paul Zoubek.

3 MS. GLADING: Okay. Earlier you said that it  
4 wouldn't make, you know, you can't aggregate data  
5 because it's just imprecise.

6 THE WITNESS: Um-hmm.

7 MS. GLADING: Why was the data aggregated  
8 here?

9 THE WITNESS: It's imprecise and that's why  
10 it was changed.

11 MS. GLADING: Okay. Why did Christine Boyle  
12 aggregate the data -- well, let me ask you. Who  
13 aggregated the data?

14 THE WITNESS: I don't know where I got this  
15 particular data, all I know is that we replaced it with  
16 other data.

17 MS. GLADING: Okay. And when you replaced  
18 it, did you make the -- well, let me back up. You said  
19 Mr. Zoubek made the decision to limit the report to the  
20 Turnpike?

21 THE WITNESS: As far as I understand. I know  
22 that I didn't make the decision and I was told that we  
23 were going to limit this to the Soto, and more  
24 specifically, the southern portion of the Turnpike.

25 MR. WEBER: Cranbury, Moorestown.

1 THE WITNESS: Cranbury and Moorestown.

2 MS. GLADING: So that decision was made at  
3 some point after April 9th, the date of this report, is  
4 that correct?

5 THE WITNESS: Yeah. I think this is the  
6 first indication of that decision having been made.

7 MS. GLADING: I beg your pardon?

8 THE WITNESS: I think this is the first  
9 indication of that decision having been made.

10 MS. GLADING: Well, no. This decision  
11 includes Belmar, Netcong, Perryville and Washington.  
12 Those are not Turnpike stations, are they?

13 THE WITNESS: No. That's what I'm saying --

14 MS. GLADING: Okay.

15 THE WITNESS: -- the next draft --

16 MS. GLADING: Okay.

17 THE WITNESS: These are -- although this  
18 draft is dated April 9th, I don't know -- sometime  
19 between now and April 13th is when I would have  
20 received these comments.

21 MS. GLADING: Okay. So when Christine Boyle  
22 went off to look at data in February, was she looking  
23 at data for the entire state?

24 THE WITNESS: You know, I don't know exactly  
25 what the scope. She would know.

1 MS. GLADING: Okay. I thought you said the  
2 initial premise, I thought earlier you said the initial  
3 premise for the interim report, and the reason why it's  
4 Moorestown and Cranbury, the numbers are so heavily  
5 Moorestown and Cranbury, is because that was what you  
6 were looking at.

7 THE WITNESS: Well, it's true, but we also  
8 had certain other data and I threw it in. You know,  
9 Chris just gave me material and I threw it in. That's  
10 why these are drafts.

11 MS. GLADING: Did -- she threw it in so you  
12 told her to take it out? Is that how this happened?

13 THE WITNESS: At some point. Whether it was  
14 me or Paul or someone communicated that we were going  
15 to focus our numbers on Troop D.

16 MS. GLADING: Okay. And for the record, the  
17 stop numbers that you focused on are Troop D, Cranbury  
18 and Moorestown stations, right, not --

19 THE WITNESS: The southern portion, yes.

20 MS. GLADING: -- Newark? Okay.

21 And the consent search data that you focused  
22 on is Cranbury and Moorestown also, not Newark as well,  
23 right?

24 THE WITNESS: Yeah, there's one table in here  
25 where for whatever reason it does have Newark in there.

1 MS. GLADING: The arrest statistics has  
2 Newark.

3 THE WITNESS: Yeah. Actually I do know why  
4 the arrest statistics. It was very easy to get them,  
5 they were CCH, off a computer.

6 MS. GLADING: Okay. Do you know what  
7 Christine Boyle based these numbers on, what analysis?

8 THE WITNESS: No, it's the same answer to all  
9 of them. I don't know what numbers she had.

10 MS. GLADING: Okay. So earlier you said you  
11 didn't know if she had done it herself or if it was  
12 based on State Police compilations. The same answer  
13 goes for this?

14 THE WITNESS: Yes.

15 MS. GLADING: Okay. Does the same answer go  
16 for the numbers below that, the non-white stops,  
17 listings for Cranbury, Moorestown, Belmar and Netcong?

18 THE WITNESS: Yeah, I don't know exactly what  
19 the source is.

20 MS. GLADING: You know, it sort of puzzled  
21 me, and I wonder if you can explain it, the difference  
22 in minority stops between Cranbury at 40.5 percent and  
23 at Netcong for 21.4 percent is pretty stark. I wonder  
24 why -- can you explain why you deleted that?

25 THE WITNESS: Well, there were -- I do

1 understand -- there's legal arguments and -- first of  
2 all, the Netcong number I think is a very small number  
3 and there is an issue of whether the numbers are large  
4 enough to be able to be comparable. Whether you can  
5 draw general conclusions. So there was that issue.  
6 And frankly, we were cognizant at the time of the  
7 effects that this document once released would have on  
8 litigation. And we understood that -- and this has  
9 come to pass, that courts looking at this, the more we  
10 considered it beyond the southern end of the Turnpike,  
11 the more that this document could conceivably be viewed  
12 as a concession of the existence of a problem that  
13 would at least provide what's called the colorable  
14 basis for discovery requests in racial profiling  
15 claims.

16 So there was a decision and what Paul meant  
17 here by, "Define scope of the report," was an attempt,  
18 I think it has proved unavailing as it turns out in the  
19 courtrooms, but an attempt to limit the litigational  
20 effects of these statements on other pending criminal  
21 cases.

22 MS. GLADING: Hmm. So were you concerned  
23 about litigational effects growing out of Netcong and  
24 Belmar?

25 THE WITNESS: Here's the theory. If you

1 extend any of this report, putting aside why Newark  
2 stayed in there, I don't know, I take responsibility  
3 for not being consistent in applying Paul's  
4 instructions, but anytime you go beyond the southern  
5 portion of the Turnpike with a report that says the  
6 problem is real, not imagined, we anticipated that  
7 defense would argue and some courts might accept that  
8 as to the Netcong, Belmar and Perryville stations, that  
9 that provides a colorable basis to at least obtain  
10 discovery of all the statistics. So we wanted to  
11 circumscribe the scope of the report to what the  
12 problem really was in terms of the Soto litigation and  
13 not to have unanticipated, or at least unwanted  
14 litigational repercussions.

15 MS. GLADING: In terms of having to give  
16 discovery to defendants.

17 THE WITNESS: And in terms of a prima facie  
18 case or how ever this might be used by a defense  
19 attorney, to go to a Judge with a stop that was made  
20 from the Perryville station and to say that they've  
21 admitted racial profiling and they used data from  
22 Perryville so I'm entitled to get statistics and  
23 discovery.

24 MS. GLADING: Well, does that admit racial  
25 profiling in your mind?

1 THE WITNESS: Depending on the definition.  
2 It clearly admits racial profiling in the sense that it  
3 is real, not imagined.

4 MS. GLADING: Does that admit racial  
5 profiling for Belmar and Netcong, those numbers?

6 THE WITNESS: No.

7 MR. MILLER: What's the "that?" I think  
8 the --

9 MS. GLADING: 24.3 percent for Belmar.

10 MR. MILLER: Okay. I think you and the  
11 witness are talking at cross-purposes here.

12 MS. GLADING: Okay. Okay. The 24.3 percent  
13 for Belmar and 21.4 percent for Netcong, minority stop  
14 rates. Does that admit racial profiling in your mind  
15 for those stations?

16 THE WITNESS: No, I don't think any of these  
17 -- these are stop numbers. I don't think any of these  
18 numbers and stops admit racial profiling.

19 MR. WEBER: Just for the record, these are  
20 the numbers on OAG2774.

21 MS. GLADING: Um-hmm. The second set of  
22 numbers, correct?

23 THE WITNESS: Right. But just to clarify my  
24 answer. A decision was made without regard to what  
25 those numbers were, to limit the scope of the report to

1 the southern portion of the Turnpike.

2 MS. GLADING: Okay. And just to clarify your  
3 answer. That decision was made by Paul Zoubek?

4 THE WITNESS: Yeah.

5 MS. GLADING: Okay. Go to the next page,  
6 it's 18.

7 MR. WEBER: OAG2775.

8 MS. GLADING: You know what? Skip that.

9 Page 19, OAG2776 to 2777. I have -- I can  
10 represent to you that all of Page 19, 2776, in the  
11 first half of 2777, were deleted or significantly  
12 changed in some way. And my question to you is, these  
13 pages represent that consent search data is especially  
14 alarming. At what point did you make the decision that  
15 consent search data is especially alarming?

16 THE WITNESS: In my own mind?

17 MS. GLADING: Um-hmm.

18 THE WITNESS: I'm not sure I would use the  
19 word "alarming," by the way, that might be Deb's  
20 phrase, or "startling," whatever the word she used. I  
21 thought they were highly probative --

22 MS. GLADING: No, let me turn your attention  
23 to the top of Page 20.

24 THE WITNESS: Right.

25 MS. GLADING: OAG2777.

1 THE WITNESS: Right.

2 MS. GLADING: It indicates, "An internal  
3 audit conducted at the request of the Superintendent  
4 and not provided..." --

5 THE WITNESS: I'm sorry, where are you?

6 MS. GLADING: I'm on Page --

7 MR. WEBER: Bottom of 2776, Page 19.

8 MS. GLADING: Yeah.

9 THE WITNESS: Okay, thank you.

10 MR. WEBER: Then going on to the top of the  
11 next page.

12 MS. GLADING: Right. "An internal audit  
13 conducted at the request of the Superintendent and not  
14 provided to the Office of the Attorney General until  
15 recently, provides information about consent searches  
16 that are especially alarming."

17 I'll re-ask my question. When did you reach  
18 the decision that there was information about consent  
19 searches that were especially alarming? And what  
20 information was this based on?

21 THE WITNESS: The same information as before.  
22 This statement is similar to the one on Page 2 of the  
23 earlier draft, it just had moved, that we feel  
24 constrained. I first learned of the consent numbers on  
25 March 15th and I thought they were very powerful

1 numbers.

2 MR. WEBER: That's the undated Sergeant  
3 Gilbert memo, correct?

4 THE WITNESS: Yeah, whatever it is that we  
5 received on the 15th when I first saw compilations of  
6 consent numbers.

7 MS. GLADING: Um-hmm. And so the source of  
8 these numbers and the source of the numbers -- is it  
9 your recollection the source of the numbers discussing  
10 consent data represented on these pages came from  
11 Sergeant Gilbert?

12 THE WITNESS: It came from whatever came over  
13 in that period.

14 MR. WEBER: On March 15th.

15 THE WITNESS: Yeah -- or thereafter. There  
16 was continuing material coming over. I just don't know  
17 what the source was, other than it was the State  
18 Police.

19 MS. GLADING: Well, was it coming to you as  
20 you were writing this?

21 THE WITNESS: No, it was going to, probably  
22 to LoGalbo, to Chris Boyle, who collapsed things for  
23 me.

24 MS. GLADING: Okay.

25 THE WITNESS: Who put them into this kind of

1 format.

2 MS. GLADING: What kind of format? This is a  
3 narrative. You mean the --

4 THE WITNESS: Well, I'm not sure I recall  
5 that. I mean it's not a table, but I don't know that I  
6 would call that English either. It's a list of  
7 statistics.

8 MS. GLADING: You're talking about Page 2776?

9 THE WITNESS: Yeah.

10 MS. GLADING: Okay. Look at the paragraph on  
11 the following page, 2777. The first full paragraph.  
12 "Specifically, this internal audit reveals that for  
13 various periods between 1994 and '96, 89 percent of the  
14 consent searches conducted by troopers assigned to  
15 Moorestown and 94 percent of the searches conducted by  
16 troopers assigned to the Cranbury station, involve  
17 minority motorists."

18 Did you write that?

19 THE WITNESS: Yes.

20 MS. GLADING: Okay. And on what did you base  
21 that?

22 THE WITNESS: Numbers that were given to me.

23 MS. GLADING: By whom?

24 THE WITNESS: Presumably Chris Boyle.

25 MS. GLADING: Okay. Do you know why that

1 passage was deleted?

2 THE WITNESS: I don't believe it was. I  
3 believe that it was merely changed and put into a  
4 table.

5 MS. GLADING: Okay. There's only three  
6 tables and I don't see anything that adds up to 89  
7 percent on the consent search table. Maybe you could  
8 take a look at the interim report and explain to me how  
9 those numbers were put into the table.

10 THE WITNESS: Well, I think the report  
11 explains itself. The table -- what is that on Page 29?  
12 The table --

13 MS. GLADING: It's 27.

14 THE WITNESS: Sorry.

15 MR. MILLER: Well, the witness is looking at  
16 Page 29.

17 MS. GLADING: Oh, twenty --

18 THE WITNESS: I'm sorry, I was looking at  
19 arrests, you're looking at consents.

20 MS. GLADING: Okay. This is talking about  
21 consent searches. So I'm assuming that 27 is the  
22 relevant statistics.

23 THE WITNESS: Right. But you understand,  
24 this is a draft. More information gets compiled. Chris  
25 comes up with a table more complete, dropping a

1 footnote that explains the dates for the compiled  
2 consent information. So it's not that this got  
3 deleted, it's just that it got updated, amplified, put  
4 into a table and then there's still rhetoric under, you  
5 know, English describing the searches, both before and  
6 after the table. If the numbers are a little  
7 different, it's because we had more complete data set.

8 MS. GLADING: Do you recall these numbers  
9 being in any information that Sergeant Gilbert had  
10 provided?

11 THE WITNESS: The same answer. I mean I got  
12 something on the 15th and more material came in.

13 MS. GLADING: Okay.

14 THE WITNESS: I don't know the source of  
15 those particular numbers. It may well be Gilbert's  
16 compilations.

17 MS. GLADING: Did you have any involvement in  
18 drafting SOP F55?

19 THE WITNESS: Well, if I could just clarify  
20 this, by the way.

21 MS. GLADING: Yeah.

22 THE WITNESS: I think what Footnote 2 is  
23 referring to on the final --

24 MS. GLADING: Yeah.

25 THE WITNESS: -- interim report, is a

1 statement -- this is refreshing my recollection. The  
2 sentence that you quoted to me on Page 20 of the April  
3 9th version, something we had, I think Footnote 2 on  
4 Page 27 of the April 20th version is a reference to  
5 that, and then talking about, you know --

6 MS. GLADING: Which part of the footnote?

7 THE WITNESS: That it includes Cranbury  
8 searches from January '94 through March '94, whatever.  
9 I think that this is a way of saying we're taking these  
10 numbers and amplifying them. We're adding more -- and  
11 be more specific and precise as to what months are  
12 there and not there.

13 MS. GLADING: Um-hmm. Okay. You could turn  
14 go Page -- I'm really trying to move through this  
15 quickly -- Page 35 of the version in front of you.  
16 It's OAG2792. The paragraph at the bottom, the last  
17 paragraph on the page discussing Trooper of the Year  
18 program. And the second to last paragraph on the page,  
19 also discussing Trooper of the Year program. Do you  
20 recall writing that?

21 THE WITNESS: Yes.

22 MS. GLADING: Is it fair to say that that  
23 paragraph is critical of the reward system established  
24 under the Trooper of the Year program because it was  
25 not particularly effective in disciplining -- because

1 it led to officers skirting search and seizure rules?

2 THE WITNESS: I think the point that we're  
3 trying to make is that it created additional incentives  
4 to come up with large quantities of drugs and arrests.  
5 And that's one of the, what did I call it? the  
6 conditions that foster disparate treatment and reliance  
7 on stereotypes.

8 MS. GLADING: Okay. The following page,  
9 2793, goes on to talk about the Trooper of the Year  
10 program and I'm trying to avoid reading it all into the  
11 record. This pages includes a passage, "Our review of  
12 randomly-selected internal investigation files also  
13 suggest that investigators and reviewers sometimes seem  
14 not to have understood basic Fourth Amendment rules, so  
15 charges would be found to be unsubstantiated even when  
16 it was clear that a trooper's conduct amounted to an  
17 illegal frisk or search." And the page goes on to  
18 discuss other shortcomings in general in the State  
19 Police. I'll represent to you that entire page is  
20 deleted from the final report. Can you tell me why?

21 THE WITNESS: Yes, although -- if you mean by  
22 the final part, meaning the last version of the interim  
23 report because this --

24 MS. GLADING: The final version of the  
25 interim report, yes.

1 THE WITNESS: Right. This was based on  
2 information and discussions I had with Wayne Fisher and  
3 this was the type of issue that was going to be  
4 addressed in the final report.

5 MS. GLADING: Um-hmm. Okay, thanks.

6 Was it your decision or Mr. Zoubek's decision  
7 to delete it?

8 THE WITNESS: I know that Wayne was involved  
9 in that too. That this was an important issue, but it  
10 didn't specifically relate to racial profiling but  
11 rather supervision generally.

12 MS. GLADING: Okay. Let me give you this.

13 We're almost there. I'm losing my  
14 credibility with the witness and his lawyer.

15 THE WITNESS: You remind me of my grandfather  
16 as a photographer when he used to tell children, "Just  
17 one more," 20 times, 20 pictures later.

18 (Laughter)

19 MS. GLADING: Okay. I've handed the witness  
20 another collection of pages. This is from the April  
21 13th edition of this evolving interim report. And it  
22 begins at OAG2882. If you could turn to Page 23, which  
23 is OAG2910, I'm trying to understand why there are  
24 question marks in there where numbers had previously  
25 appeared.

1 THE WITNESS: We were getting updated  
2 numbers.

3 MS. GLADING: Okay. The previous version of  
4 the report that I showed you included aggregate  
5 numbers.

6 THE WITNESS: Well, these are all aggregate  
7 statistics.

8 MS. GLADING: Hmm?

9 THE WITNESS: These are all aggregate  
10 statistics.

11 MS. GLADING: Well, I'm looking at page --  
12 actually, I'm comparing, and I'm holding the April 9th  
13 version of it, Page 17, OAG2774, and I'm comparing that  
14 to OAG2910 on the April 13th version.

15 THE WITNESS: Um-hmm.

16 MS. GLADING: And there's a difference,  
17 because the April 13th version just discusses Cranbury  
18 and Moorestown between date and date, and it has  
19 question marks. And what I'm trying to understand is  
20 if you were initially going to include aggregate  
21 information and then you decided to take out the -- you  
22 decided to limit it to the Turnpike and ultimately  
23 Cranbury and Moorestown for all practical purposes, why  
24 was the data a question mark at this point?

25 THE WITNESS: Oh, that's easy, because I'm

1 making that change and I can't do it.

2 MS. GLADING: Okay.

3 THE WITNESS: Someone has to give me the  
4 numbers. Once that change that Paul had requested in  
5 the April 9th, his edits on limit the scope of the  
6 report to the Cranbury and Moorestown stations, and I  
7 don't know whether this was a weekend or what the  
8 scenario was, but me looking at it without having the  
9 data that Chris crunched, you can't isolate them out.  
10 You know it can be done and you know that information  
11 can come, but I can't identify what came from  
12 Perryville or Netcong or Washington. So you just -- I  
13 left it blank knowing that that would be easy to get.

14 MS. GLADING: Okay, thank you.

15 You could turn to Page 41, which is OAG2941.

16 THE WITNESS: Okay. And I'm looking at a  
17 sentence that appears to be similar but not identical  
18 to one we read earlier, and I'll read it. It's in the  
19 middle of the second -- of the last paragraph. "The  
20 failure to turn over discoverable material in the  
21 course of litigation has the very real capacity to lead  
22 to unjust results and at the very least, seriously  
23 compromises the State's litigation position."

24 I don't recall that unjust results language  
25 being in the prior version of this passage, do you?

1 THE WITNESS: No, but I would have written --  
2 I mean --  
3 MS. GLADING: You wrote that?  
4 THE WITNESS: Yeah, I did.  
5 MS. GLADING: Beg your pardon?  
6 THE WITNESS: I did write that.  
7 MS. GLADING: Okay. Ultimately this entire  
8 page was deleted but I wanted to get from you what  
9 unjust results you were concerned about and if you had  
10 known of any unjust results that had occurred to date.  
11 THE WITNESS: I believe what I meant by  
12 unjust result is losing a case with a guilty defendant  
13 -- I know they're -- I want to be careful, I know  
14 people are presumed innocent, but a factually-guilty  
15 defendant who gets an acquittal or a dismissal because  
16 of a prosecutorial failure to comply with discovery.  
17 MS. GLADING: Okay, thank you.  
18 And when you wrote this April 13th draft, do  
19 you recall if you wrote it before or after you saw the  
20 Power Point presentation?  
21 THE WITNESS: I really -- I don't know.  
22 MS. GLADING: All right.  
23 (Pause)  
24 What time of the day was that Power Point  
25 presentation, do you remember?

1 THE WITNESS: Oh, I have no idea.  
2 MS. GLADING: Okay. I've handed the witness  
3 another set of pages from -- this is from the April  
4 16th edition, beginning at OAG3149, Page 21, which is  
5 OAG3185. The first sentence -- the first paragraph,  
6 second sentence reads, "In mid-March the Review Team  
7 began to receive records from the Superintendent's  
8 Office pertaining to audits, compilations of data and  
9 analyses about racial profiling. These records  
10 contained new and in some cases extremely disturbing  
11 information that had not previously been shared with  
12 the Office of the Attorney General or the Division of  
13 Criminal Justice."  
14 Did you write that?  
15 THE WITNESS: Yes.  
16 MS. GLADING: Was that referring to the  
17 documents that Mr. Zoubek made you aware of?  
18 THE WITNESS: Which documents?  
19 MS. GLADING: The documents that had been  
20 provided by the Sergeant Gilbert compilations?  
21 THE WITNESS: Yeah, the March 15th. Yeah.  
22 MS. GLADING: And looking at Page 22, the top  
23 of Page 22. "On April 16, 1999, the Review Team was  
24 provided for the first time with a new set of data  
25 concerning all consent searches conducted on the

1 Turnpike in 1997 and 1998. This latest information was  
2 manually collected by reviewing all, question mark,  
3 remarks, and is claimed to be more complete than a  
4 consent search data that was originally provided to the  
5 Review Team that is now claimed to be flawed as a  
6 result of an incomplete collection methodology.  
7 Although this new information is less startling than  
8 the consent data originally provided to us, it is  
9 nonetheless cause for concern, confirming that minority  
10 motorists were disproportionately subjected to consent  
11 searches." And that is OAG3186. What was the source  
12 of this data?

13 THE WITNESS: That would have been the  
14 presentation on -- it's been represented to me April  
15 13th. It suggests here that it was April 16th.

16 MS. GLADING: Could it have been different, a  
17 different date that the Review Team received this  
18 information than when the Power Point presentation was  
19 made?

20 THE WITNESS: No. At this point I don't  
21 think the Review Team was really the operable word.  
22 Either this is information that came maybe as a result  
23 -- I'm accepting it was the April 13th meeting and I  
24 have no reason to disbelieve it. Maybe specific  
25 information came following that meeting.

1 MS. GLADING: Okay.

2 THE WITNESS: As a result of it. Or this  
3 might be wrong on the date.

4 MS. GLADING: Okay. And this draft is --

5 MR. MILLER: Or the meeting could have been  
6 April 16th.

7 MS. GLADING: Hmm?

8 MR. MILLER: Or the meeting could have been  
9 April 16th.

10 THE WITNESS: Right.

11 MS. GLADING: This draft is dated April 16th.  
12 Do you recall writing this the same day that you were  
13 provided with this new set of data?

14 THE WITNESS: Not specifically. I have to  
15 represent to you these were long days and nights at  
16 this point. So I don't know whether this is a mistake,  
17 whether we met on the 16th. A lot of this was done at  
18 home.

19 MS. GLADING: If you could turn to Page 25 of  
20 this document. It's OAG3189 and I'm also going to ask  
21 you about OAG3190, the following page.

22 THE WITNESS: Okay.

23 MS. GLADING: And take a moment to look at  
24 the information, beginning at Table 2 and ending at the  
25 boldfaced word "searches" on OAG3190.

1 THE WITNESS: Yes.

2 MS. GLADING: Okay. Actually I misled you.  
3 I need you to look at the sentence beginning on OAG3189  
4 beginning, "The second source of information..." it's  
5 the second paragraph. Do you see that?

6 THE WITNESS: Yes.

7 MS. GLADING: Okay. That sentence indicates,  
8 "The second source of information regarding motor  
9 vehicle stops by personnel assigned to the Moorestown,  
10 Cranbury stations comes from data compiled by the  
11 Division of State Police in response to a request made  
12 by the United States Department of Justice." And then  
13 it discusses information about stops made by Moorestown  
14 and Cranbury on 15 dates randomly selected by the  
15 Department of Justice for each of two years, 1995 and  
16 1996. And I'll represent to you that that passage and  
17 any reference -- any reference to the Department of  
18 Justice is deleted from the final version of the  
19 interim report. Those sentences are deleted. The  
20 table is deleted. And there is a reference on Page 27  
21 of the final version of the interim report. If you  
22 could get to that, Page 27 of the interim report  
23 itself.

24 THE WITNESS: Um-hmm.

25 MS. GLADING: The first full paragraph. It

1 says, "In addition, general information about searches  
2 conducted on 30 randomly-selected sample dates were  
3 analyzed. According to this internal State Police  
4 audit, a total of 38 searches was conducted by the  
5 Cranbury, Moorestown stations during these 30 dates."

6 Can you explain to me why any reference to  
7 the Department of Justice was deleted from the final  
8 version of the interim report?

9 THE WITNESS: No, I don't think it's  
10 significant. We obviously kept getting more -- oh,  
11 it's the same data.

12 MS. GLADING: Right.

13 THE WITNESS: No. I don't know why that was  
14 deleted.

15 MS. GLADING: Who deleted it?

16 THE WITNESS: In this case I think what had  
17 happened was I asked Chris to write me a sentence, "in  
18 English," but statistically accurate, and she would  
19 have written it and sent it over and she might not have  
20 been aware of the earlier version or the reference to  
21 Department of Justice or -- I don't think this was Paul  
22 saying delete Department of Justice. This is just one  
23 where someone else wrote that sentence and it got  
24 replaced.

25 MS. GLADING: All right. Well, it got

1 replaced with a sentence that says, "General  
2 information about searches conducted on 30 randomly-  
3 selected sample dates were analyzed." And it just says  
4 neutral 30 randomly-selected dates. What was your  
5 understanding of what you wanted to convey -- let me  
6 rephrase that.

7 Was there any concern that reference to the  
8 Department of Justice would raise questions about what  
9 the Department of Justice had undertaken concerning the  
10 New Jersey State Police?

11 THE WITNESS: That wasn't going through my  
12 mind when I made that change, no.

13 MS. GLADING: Why would you have deleted the  
14 table?

15 THE WITNESS: It was replaced.

16 MS. GLADING: Hmm? No, it was not replaced,  
17 it was deleted, Table 2. And there was a narrative  
18 included at the bottom of Page 27, that one paragraph.

19 THE WITNESS: If you're looking at -- no, it  
20 was replaced. It was -- we decided to go with three  
21 tables. Instead of having two tables on motor vehicle  
22 stops, one with 15 randomly-selected dates in two  
23 years, we compiled all the information, and that was my  
24 instruction to Chris, into a single, readable table.

25 MS. GLADING: All right. Well, let me

1 represent to you that -- because you don't --  
2 unfortunately you don't have the full report. I was  
3 trying to save trees, but this version of the report  
4 includes Table 1, which is stops by Cranbury and  
5 Moorestown. Table 2, which is the 30 sample dates, the  
6 one we're looking at.

7 THE WITNESS: Um-hmm.

8 MS. GLADING: It includes Table 3, which is  
9 the searches conducted by Cranbury and Moorestown  
10 stations, various time periods.

11 THE WITNESS: Right.

12 MS. GLADING: And --

13 THE WITNESS: And there's a Table 4.

14 MS. GLADING: Hang on. Hang on. And the  
15 numbers in that Table 3 are identical to the numbers in  
16 the final draft of the interim report. Okay, so no  
17 change was made to that table from this point on. I  
18 mean I could show it to you if you need to see it.

19 THE WITNESS: No. I'm just telling you, I  
20 made that decision. It was irrelevant and redundant.  
21 Who cared about randomly-selected days when I had for  
22 entire months sequentially the listed months?

23 MS. GLADING: Okay.

24 THE WITNESS: The whole point of the  
25 randomly-selected days is when you're trying to limit

1 the amount of work you have to do in data collection.  
2 The work was already done.

3 MS. GLADING: Okay. It's your testimony that  
4 it was deleted from the final report?

5 THE WITNESS: I ordered that deleted because  
6 why use randomly-selected days when you have a larger  
7 data set?

8 MS. GLADING: I'm sorry, I thought I heard  
9 you say earlier it wasn't deleted, it was consolidated?

10 THE WITNESS: Well, I assumed -- it is  
11 consolidated in this sense. Those months were covered.  
12 The same events appear in the final table, because the  
13 randomly-selected days happen to be in the months that  
14 were covered. So that would have been duplicative.  
15 There's not one incident covered in the randomly-  
16 selected days that isn't represented in the final  
17 table.

18 MS. GLADING: Do you know why -- well, the  
19 randomly-selected days includes dates in 1995, right?

20 THE WITNESS: Again, whatever it says here.

21 MS. GLADING: Um-hmm. Do you know why there  
22 are -- and I'm looking at Footnote 2 on Page 27 of the  
23 final report, why there are no 1995 dates covered in  
24 that table?

25 THE WITNESS: I don't know why. I know they

1 were missing, there was missing data.

2 MS. GLADING: All right. So these --

3 THE WITNESS: And that being so, now that you  
4 point that out, let me step back because I take my oath  
5 seriously. If I just represented that every incident  
6 was covered, if 1995 is not covered in this table, then  
7 1995 isn't covered.

8 MS. GLADING: Um-hmm.

9 THE WITNESS: So those 15 randomly days,  
10 those incidents would not be covered.

11 MS. GLADING: Were not included in the final  
12 report.

13 THE WITNESS: If you compare this footnote,  
14 apparently not.

15 MS. GLADING: Okay, thank you.

16 If you could take a look at Page 31 of what  
17 I've given you, it's OAG3195 and it indicates -- I'm  
18 looking at the second sentence of the first full  
19 paragraph. "Given the concerns engendered by the data  
20 that was recently provided to us, we recommend that a  
21 cases-by-case review be conducted of every consent  
22 search conducted on the Turnpike in 1997 and 1998 to  
23 determine whether those searches were predicated upon a  
24 reasonable, articulable suspicion that the search would  
25 reveal evidence of a crime."

1 Can you tell me what recently-provided  
2 material you were talking about?

3 THE WITNESS: The March 15th consent numbers.

4 MS. GLADING: Okay. The March 15th consent  
5 numbers?

6 THE WITNESS: Well, and whatever followed  
7 from that.

8 MS. GLADING: Okay. You had been presented,  
9 apparently, at this point in time, this is April 16th,  
10 with Sergeant Serrao's presentation because you  
11 referenced it earlier on this version, right?

12 THE WITNESS: Um-hmm. Yes.

13 MS. GLADING: And he had done a case -- he  
14 had done a census of every consent search conducted in  
15 '97 and '98 as he represented to us yesterday in his  
16 sworn testimony, is that your recollection?

17 THE WITNESS: Then? Having done it then?

18 MS. GLADING: Um-hmm.

19 THE WITNESS: I don't know what the word  
20 "consensus" means.

21 MS. GLADING: He looked at a thousand consent  
22 search forms for '97 and '98. Everything, he said.

23 THE WITNESS: Okay. Well, that's not what we  
24 had in mind by this action step.

25 MS. GLADING: Hmm?

1 THE WITNESS: That's data collection. That's  
2 not what we had in mind with the action step to review  
3 those consent searches.

4 MS. GLADING: Okay. Did you then instruct  
5 him to undertake this recommendation that was made?

6 THE WITNESS: I have never had any dealings  
7 with him, but there was an action step to undertake a  
8 review of each search episode, consent --

9 MS. GLADING: Did that -- did that take  
10 place?

11 THE WITNESS: I do not know whether it has or  
12 not.

13 MS. GLADING: Okay. All right. Is -- just  
14 so that we can finish with this, is it your  
15 representation that aside from the statistics that you  
16 talked about having changed because -- aside from the  
17 question marks you left in the document at one point  
18 because you didn't have the statistics in hand, that  
19 the other edits made to this were at the direction of  
20 Paul Zoubek?

21 THE WITNESS: Most and some are mine.

22 MS. GLADING: Um-hmm.

23 THE WITNESS: In terms of style and grammar  
24 and --

25 MS. GLADING: Okay. But in terms of

1 substance.

2 THE WITNESS: Most of the substantive edits  
3 would have been Paul's recommendations. Sometimes very  
4 specific, sometimes more general.

5 MS. GLADING: Okay. Did Mr. Zoubek recommend  
6 the removal of the Department of Justice table?

7 THE WITNESS: No, I told you, that was on my  
8 doing because I thought the table was redundant and it  
9 represented a smaller data set.

10 MS. GLADING: Okay.

11 THE WITNESS: There was no reason to have two  
12 tables.

13 MS. GLADING: This is the last one and most  
14 of it was already covered, so don't worry about the  
15 thickness of it.

16 (Pause)

17 This is versions of a draft -- an April 16th  
18 draft that is differently numbered than the previous  
19 April 16th draft that we looked at. And I'm not really  
20 sure why. But it begins at OAG3027 and I'd ask you to  
21 look at the second page of this which is OAG3034.

22 THE WITNESS: Yes.

23 MS. GLADING: The passage in the last  
24 paragraph after the colon you discuss interrelated  
25 problems, both driven to some extent by the zeal to

1 interdict illicit drugs. "One, willful misconduct by  
2 some State Police members who were bent apparently on  
3 harassing minority motorists and then tampering with  
4 State Police records to conceal their misconduct."

5 That information was deleted from the final  
6 report.

7 THE WITNESS: I don't believe so.

8 MS. GLADING: No?

9 THE WITNESS: I believe -- maybe the word  
10 "apparently" or there might have been some edits. I  
11 believe that --

12 MS. GLADING: Can you find it for me in your  
13 version of the interim report then?

14 THE WITNESS: Well, let's see. Page 7.

15 MS. GLADING: Page 7. Okay. Let me correct  
16 my statement. The sentence, the portion of the  
17 sentence that says, that describes some State Police  
18 members as "bent apparently on harassing minority  
19 motorists and then tampering with State Police records  
20 to conceal their misconduct," has been deleted. Can  
21 you explain why?

22 THE WITNESS: Yes. We were engaged in -- at  
23 that point, I believe, an indictment, a criminal  
24 prosecution. I'm not sure when the indictment  
25 occurred. And we were concerned and this may have been

1 my doing, concerned about making -- what do you call  
2 them? out-of-court statements or things that could  
3 prejudice that case, because this could be interpreted  
4 as a clear --

5 MS. GLADING: Oh, really?

6 THE WITNESS: -- reference to Hogan and  
7 Kenna.

8 MS. GLADING: Was it a reference to Hogan and  
9 Kenna?

10 THE WITNESS: It included them, for the  
11 reasons from the earlier drafts and Deb's memo and...

12 MS. GLADING: Was it taken out -- who wanted  
13 it taken out?

14 THE WITNESS: I believe that was Paul's  
15 suggestion, but I certainly understand and it was  
16 careless on my part to be making statements that could  
17 be attributed to individual defendants.

18 MS. GLADING: And did it involve other  
19 defendants besides Hogan and Kenna?

20 THE WITNESS: It certainly could.

21 MS. GLADING: Did it when you wrote it?

22 THE WITNESS: It's a small number, I --

23 MS. GLADING: Well, it's actually -- you say  
24 "some" State Police members. So who are "some" when  
25 you wrote that?

1 THE WITNESS: Well, I do not know and if you  
2 -- I do not know the scope of the problem or how many.  
3 This is the so-called "bad apple" aspect of the  
4 problem. I do not know how many bad apples. I believe  
5 it's a very small number.

6 MS. GLADING: Um-hmm. Okay. And if you  
7 could look at Page 21, OAG3052. And 20, OAG3051.

8 (Pause)

9 At the top of Page 21, the paragraph  
10 beginning, "In particular is outlined more fully in  
11 Section B. We received compilations of statistics from  
12 the Moorestown and Cranbury stations that tracked the  
13 racial breakdown of stops. This information apparently  
14 has been collected at the request of the Superintendent  
15 on a weekly basis since April of 1997. Also produced  
16 for the first time were compilations describing the  
17 racial breakdown of consent searches conducted by  
18 troopers assigned to the Moorestown and Cranbury  
19 barracks at various times between '94 and '98."

20 Did you write that?

21 THE WITNESS: Yes.

22 MS. GLADING: And what did you base that on?

23 THE WITNESS: It's very similar to what it --  
24 in the earlier drafts. It's based on my belief that  
25 March 15th and thereabouts was the first time -- it

1 certainly was the first time I had ever seen it and I  
2 assume the first time that the Attorney General's  
3 Office had seen consent numbers.

4 MS. GLADING: Okay. Who told you that the  
5 Superintendent had been -- had requested the weekly  
6 collection of such data since April 1997?

7 THE WITNESS: I believe that's coming out of  
8 the material that was provided on March 15th.

9 MS. GLADING: Okay. I've not heard that  
10 before, I don't know if any of my colleagues have or  
11 not, but --

12 THE WITNESS: But doesn't the Gilbert memo  
13 itself talk about I've been asked to compile by the  
14 Superintendent? I think that's the inference that I  
15 drew from that, that he had an assignment to compile  
16 this information.

17 MS. GLADING: You interpreted that as he  
18 should compile this on a weekly basis from then on?

19 THE WITNESS: I don't think I would have made  
20 that up, so I'm assuming that there's something I had  
21 in writing. The phrase weekly basis I would not have  
22 interjected that without some factual basis.

23 MS. GLADING: Do you know if April '97 was  
24 connected at all with the Department of Justice  
25 inquiry?

1 THE WITNESS: I have no idea.

2 MS. GLADING: Um-hmm. All right. I think  
3 we're done. I think I've covered everything else.  
4 Just give me one minute, please.

5 (Pause)

6 MR. WHEELER: Just to clarify the record.  
7 You just said that to your knowledge that before March  
8 15th, 1999 the Attorney General's Office had not seen  
9 any consent data at all?

10 THE WITNESS: That was to my knowledge. I  
11 was not aware that anyone had seen consent numbers or  
12 that they were available.

13 MR. WHEELER: Okay, thank you.

14 MS. GLADING: Oh, okay, here. If you could  
15 look at Page 42, OAG3073, the bottom paragraph reads,  
16 "Even more troubling, we have also learned of instances  
17 where neither the Division of Criminal Justice nor the  
18 appropriate county prosecutor were advised when an  
19 internal investigation revealed that a trooper had  
20 falsified material information in a report. This is a  
21 serious problem, one that not only directly affects the  
22 integrity of the organization, but also implicates the  
23 ethical and discovery obligations of prosecutors."

24 You know, I think I asked you about this  
25 earlier or something like this, but I wonder if you can

1 tell me, did you write that?

2 THE WITNESS: Yes, and it was verbatim in at  
3 least one earlier version. Presumably a number of  
4 earlier versions.

5 MS. GLADING: Okay. Were defendants informed  
6 of cases where -- you say you learned of instances  
7 where neither the Division nor the county prosecutor  
8 were advised when there was an internal investigation  
9 revealing a trooper falsified material information in a  
10 report. Instances seem to be plural and can you tell  
11 me, when you learned of these instances or when the  
12 State learned of these instances, did it take steps to  
13 notify the county prosecutor?

14 THE WITNESS: I don't know. This is coming  
15 right out of Deb Stone's memo.

16 MS. GLADING: Okay. Was there an  
17 investigation conducted into this that began at this  
18 point in time?

19 THE WITNESS: I don't know what was done.

20 MS. GLADING: Okay. Would Mr. Zoubek have  
21 more information about that?

22 THE WITNESS: I have no idea.

23 MS. GLADING: Okay. And I really am near the  
24 end now. On Page 48 --

25 THE WITNESS: I can just see my grandfather

1 saying, "Just one more, just one more."

2 MS. GLADING: The first full paragraph,  
3 "Today we make clear as a matter of policy of not  
4 settled law that race, ethnicity and national origin  
5 are impermissible factors that police may not rely upon  
6 to any degree and in any context other than in  
7 determining whether a person matches a description of a  
8 known suspect."

9 And the language in the final was changed to  
10 indicate that race, ethnicity and national origin are  
11 inappropriate factors that police should not rely upon  
12 at all. Is there any difference to you in the  
13 differences in those wordings?

14 THE WITNESS: I'd like to -- can you tell me  
15 the page, because I'm not sure I like the final change.

16 MS. GLADING: Sure. Page 48, OAG3079.

17 THE WITNESS: Um-hmm.

18 MS. GLADING: And it is the statement of --

19  
20 MR. MILLER: No, he's looking in the final  
21 report.

22 THE WITNESS: No, I'm just -- because this is  
23 a -

24 MS. GLADING: Oh, I don't -- you know, I  
25 don't have the --

1 THE WITNESS: Because I don't recall that  
2 change being made and I can't imagine --

3 MS. GLADING: Yeah, I don't have the --

4 THE WITNESS: -- I intended to soften that.

5 MS. GLADING: I have to look at my  
6 handwritten...

7 THE WITNESS: Okay. This is for the --  
8 that's the 16th. And I'm just wondering how it finally  
9 came out.

10 MS. GLADING: This is the edit. This is as  
11 it reads in the final report. My handwritten notes.

12 THE WITNESS: Okay. Okay, I'll accept that.

13 MR. WEBER: Just identify for the record the  
14 page on the final interim report.

15 THE WITNESS: Well, I'll accept that's the  
16 representation. Is there a difference --

17 MS. GLADING: Yeah, legally.

18 THE WITNESS: I can understand why as a  
19 lawyer I would make a change, impermissible, because  
20 the law is not that clear under federal law and maybe  
21 inappropriate is a more lawyerly statement.

22 MS. GLADING: Um-hmm.

23 THE WITNESS: I'm not sure there's a  
24 different between may not and should not at all. I  
25 think we were very strong in the report, I thought, at

1 some point. And certainly in the consent decree these  
2 cannot be considered and I do believe that they are  
3 impermissible factors personally.

4 MS. GLADING: Okay. Are they ever  
5 appropriate?

6 THE WITNESS: Certainly. Here's the way I  
7 approach it, because you have to understand, there's  
8 law and there's policy. As a matter of law, I thought  
9 the rule was when you rely -- Government relies on a  
10 racial classification, that would include ethnicity or  
11 national origin, the conduct, the decision to use it  
12 would be subject to strict scrutiny, which is hard to  
13 win, frankly, for the Government. A notable example  
14 where you would be able to win is to be on the lookout  
15 exception. There's just no other way to accomplish the  
16 legitimate objective of apprehending a known suspect,  
17 other than accounting for their description and their  
18 race. So that would be an easy victory for the  
19 Government.

20 I think I testified last time, I had trained  
21 for years that the law was clearer than, in fact, it  
22 is, at least federal law. And I only learned of that  
23 mistake while I was doing the research for this project  
24 and the *Law Review* article.

25 MS. GLADING: You did testify to that.

1 THE WITNESS: Yeah.

2 MS. GLADING: Just a couple of questions on  
3 the final report and I'm done.

4 If you could look at the first page,  
5 Introduction and Overview of the final version of the  
6 interim report. We're done with the drafts.

7 THE WITNESS: Yes, ma'am.

8 MS. GLADING: The paragraph beginning,  
9 "During the course of the investigation of the April  
10 23, 1998 incident, an additional inquiry into the  
11 practices of State Troopers assigned to the Moorestown  
12 and Cranbury barracks of the New Jersey State Police  
13 was initiated. That investigation is examining stops  
14 made by troopers assigned to those barracks for the  
15 first four months of 1998 and is still pending.  
16 However, some of the data collected as part of that  
17 investigation are used in this interim report."

18 What data from that investigation was used in  
19 the interim report?

20 THE WITNESS: I don't know specifically.

21 MS. GLADING: Okay. Do you know what the  
22 source of this information was or who was conducting  
23 this inquiry?

24 THE WITNESS: I don't know specifically.

25 MS. GLADING: Okay.

1 THE WITNESS: I don't know whether that's  
2 State Police or whether that was Deb Stone in her shop  
3 or --

4 MS. GLADING: Deb Stone?

5 THE WITNESS: I don't know who was doing  
6 this, whether this was part of a spin-off of the 7A  
7 investigation or not. I don't know.

8 MS. GLADING: Who would be the people we need  
9 to ask to find out what this is talking about since you  
10 don't know?

11 THE WITNESS: Well, Deb Stone, Paul Zoubek  
12 would certainly be a likely person to know who would  
13 now at least.

14 MS. GLADING: Would they have given you this  
15 language?

16 THE WITNESS: Yeah.

17 MS. GLADING: Is that what happened?

18 THE WITNESS: Yeah, exactly.

19 MS. GLADING: Gave it to you wholesale and  
20 you just dropped it in.

21 THE WITNESS: Or pretty much wholesale, yeah.  
22 I reserve the right to always change --

23 MS. GLADING: And who would be the person to  
24 ask which data was used in this interim report from  
25 this four-month audit?

1 THE WITNESS: In terms of actually used and  
2 compiled it? That might Chris.

3 MS. GLADING: Chris. Okay. Thank you.  
4 You don't have any knowledge of what data was  
5 used? Okay.

6 THE WITNESS: No, I mean that's just true  
7 right from day one.

8 MS. GLADING: Yeah. It's interesting  
9 because, you know, it's the second paragraph of the  
10 whole report. It seems to be an important piece of  
11 information in the development of the report.

12 THE WITNESS: To be honest, I was less  
13 concerned with those specific sources, like what  
14 document it came from or what data.

15 MS. GLADING: Right.

16 THE WITNESS: Once this was represented to me  
17 this is accurate, reliable data, I just sort of put it  
18 together.

19 MS. GLADING: Okay.

20 (Pause)

21 That's it. Thank you.

22 MR. WEBER: Mr. Susswein, thank you very much  
23 for coming back. On behalf of the Committee, we  
24 appreciate you making yourself available for a second  
25 time and this deposition is concluded.

1 MS. GLADING: Yeah. I want to put -- leave  
2 on the record for a second.

3 That I will discuss this with Senator Lynch,  
4 but I believe it will be his view that we need to have  
5 Chris Boyle as a witness at some point after we have  
6 Mr. Susswein's deposition transcript available to us.  
7 And that when we request her as a witness, we need to  
8 request her to come with documentation about her work  
9 product at this time so she can tell us where numbers  
10 came from and how they were developed and how they were  
11 provided to her.

12 MR. WEBER: We'll coordinate -- if that is,  
13 in fact, the Committee's request, I'll coordinate that  
14 with Mr. Miller.

15 MS. GLADING: Okay.

16 MR. MILLER: Very well.

17 MR. WEBER: Thank you.

18 THE WITNESS: Thank you.

19 (Off the record)

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, RONALD SUSSWEIN 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 26, 2001

\_\_\_\_\_  
JAMES V. BOWEN  
Notary Public of the State of New Jersey

My Commission expires\_\_\_\_\_

\_\_\_\_\_  
Patricia A. Kontura, AOC #234