

NEW JERSEY STATE LEGISLATURE  
OFFICE OF LEGISLATIVE SERVICES

IN RE: )  
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SENATE JUDICIARY )  
COMMITTEE INVESTIGATION )  
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TRANSCRIPT  
OF  
ELECTRONICALLY  
RECORDED DEPOSITION  
OF  
CARL WILLIAMS

TUESDAY, FEBRUARY 27, 2001

\* \* \* \* \*

TAKEN BEFORE:

JAMES V. BOWEN, Notary Public of the State of New Jersey, for the Offices of J & J COURT TRANSCRIBERS, INC., a Certified Transcription Agency, at the Office of Legislative Services, State House Annex, Trenton, NJ 08625, commencing at 10:19 a.m.

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## Examination - Williams

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**C A R L W I L L I A M S, W I T N E S S, S W O R N**

MR. CHERTOFF: Colonel Williams, for the record, we're here pursuant to a Senate Judiciary Committee resolution on January 29th of this year, which has been marked as F-1 and which I can show your counsel. That empowers us to take this deposition. For the record, you're represented by George Fisher?

THE WITNESS: That's correct.

MR. CHERTOFF: And you're with the Department of Law and Public Safety?

MR. FISHER: No. I'm with a private firm, Zuckerman and Fisher.

MR. CHERTOFF: In addition, Allison Accurso representing the Department of Law and Public Safety is present. We have Sokol and Jo Glading also present representing the Democratic members of the Committee. I am special counsel to the Committee for purposes of this hearing. Do you understand that? You have answer audibly.

THE WITNESS: Yes, sir.

MR. CHERTOFF: Okay.

MR. SOKOL: Mr. Chertoff, just for the record, Mr. Fisher, can you give the Court reporter your card so we have the full name --

MR. FISHER: I did, sir, yes.

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1 MR. CHERTOFF: Colonel Williams, what do you  
2 -- how are you currently retired, or are you retired?

3 THE WITNESS: Retired, sir.

4 MR. CHERTOFF: And when did you first join  
5 the New Jersey State Police?

6 THE WITNESS: 19 -- March, 1964.

7 MR. CHERTOFF: And did you serve continuously  
8 until you left in February of 1999?

9 THE WITNESS: I served continuously until I  
10 was fired in 1999.

11 MR. CHERTOFF: Let me direct your attention  
12 to 1994. At that point in time did you become  
13 Superintendent of the State Police?

14 THE WITNESS: Yes, sir, I did.

15 MR. CHERTOFF: And who appointed you to that  
16 position?

17 THE WITNESS: Governor Whitman and Attorney  
18 General Poritz.

19 MR. CHERTOFF: Is that a confirmed position,  
20 you have to be confirmed by the Senate for that, or is  
21 it just --

22 THE WITNESS: Yes, it is.

23 MR. CHERTOFF: Okay. And you were confirmed  
24 by the Senate, I take it?

25 THE WITNESS: Yes, I was.

1 MR. CHERTOFF: Do you remember approximately  
2 when you took office?

3 THE WITNESS: Well, I think I was temporarily  
4 assigned in March, and full process was -- I was sworn  
5 in in June of that year.

6 MR. CHERTOFF: Now, from 1990 to 1994 what  
7 position did you have with the State Police?

8 THE WITNESS: Well, from 1990 I was in charge  
9 of the Training Bureau for a while. Excuse me, I guess  
10 I got out of there in '87. All right. I was in charge  
11 of the Emergency Management Section. I'll start at  
12 where I was when I became Superintendent, go backwards.  
13 I, like I say, before I was Superintendent I was in  
14 charge of the Emergency Management Section. Prior to  
15 that I was the Major in charge of the Division Staff  
16 Section. And prior to that I was the Major in charge of  
17 the Criminal Investigation Section.

18 MR. CHERTOFF: Now, focusing your attention  
19 on the period of 1990 to 1994, when Colonel Dintino was  
20 Superintendent, were you familiar with a policy  
21 regarding drug interdiction on the highway in terms of  
22 how that should be emphasized?

23 THE WITNESS: I was -- I was familiar with  
24 the policy with the, you know, I don't recall exactly  
25 word for word what it was, but --

1 MR. CHERTOFF: In substance what was the  
2 policy?

3 THE WITNESS: That the New Jersey State  
4 Police would be active in the -- in the drug  
5 enforcement with the proper mandates of the Courts  
6 being followed by the -- by the Troopers on the road.

7 MR. CHERTOFF: But under Colonel Dintino was  
8 there a decision made, as far as you're aware, to de-  
9 emphasize random traffic stops as a narcotics  
10 interdiction tool and to focus instead on intelligence  
11 to try to identify container trucks and large loads  
12 coming up the Turnpike?

13 THE WITNESS: To my recollection I think  
14 there was something along that line, yes.

15 MR. CHERTOFF: And do you remember if that  
16 was embodied in a formal policy or some kind of order  
17 from the Superintendent?

18 THE WITNESS: I don't recall at this time.

19 MR. CHERTOFF: Now, when you came in as  
20 Superintendent did you make a conscious decision to  
21 change that policy in terms of narcotics interdiction  
22 on the highway?

23 THE WITNESS: We made a decision to become a  
24 little more active in the drug interdiction program,  
25 yes.

1 MR. CHERTOFF: And when you say, we made a  
2 decision, who is the we?

3 THE WITNESS: The Attorney General's Office  
4 and the New Jersey State Police.

5 MR. CHERTOFF: And in particular who in the  
6 Attorney General's Office?

7 THE WITNESS: Well, I think at the time it  
8 was -- it was then Terry Farley, who was the Director  
9 of the Division of Criminal Justice.

10 MR. CHERTOFF: Anybody else?

11 THE WITNESS: Well, I'm sure that, you know,  
12 to my recollection it was the Attorney General, Deborah  
13 Poritz, at that time also was behind the program.

14 MR. CHERTOFF: Now when you say to become  
15 more active, did that mean to become more active in  
16 terms of trying to interdict cars coming up the  
17 Turnpike?

18 THE WITNESS: I couldn't -- I couldn't hear  
19 your question, sir.

20 MR. CHERTOFF: When you say more active, do  
21 you mean more active in the sense of having a program  
22 to stop cars as they come up the Turnpike?

23 THE WITNESS: No, just overall more active in  
24 the entire scope of narcotics enforcement in the State  
25 of New Jersey.

1 MR. CHERTOFF: Well as it relates to the  
2 highway, particularly the Turnpike, was there any  
3 particular policy mandate that came out from your  
4 office regarding how that -- how highway interdiction  
5 should be carried out?

6 THE WITNESS: Not a specific policy other  
7 than to, you know, be aware of the surroundings and be  
8 aware of what we were being told by the various federal  
9 agencies that provided us with intelligence and  
10 information with regards to the trafficking narcotics  
11 through the State of New Jersey.

12 MR. CHERTOFF: Now when you came in and you  
13 started to deal with this policy issue, were you  
14 familiar with the fact that under Colonel Dintino there  
15 had been a focus to some degree on the issue of racial  
16 profiling as it related to highway stops?

17 THE WITNESS: Yes, I was.

18 MR. CHERTOFF: And what was your  
19 understanding of that as you -- when you assumed the  
20 office of Superintendent?

21 THE WITNESS: That the -- that the Troopers  
22 were to become aware of the -- of, you know, the  
23 mandates put out by the superintendent, that they were  
24 to be I guess judicious in what they did on the -- as  
25 far a traffic related stops and that they were to do so

1 with under -- you know, within the laws of the State of  
2 New Jersey.

3 MR. CHERTOFF: Now were you familiar with  
4 something called SOP F-55 in 1994?

5 THE WITNESS: I -- you know, I'm sure I was  
6 at the time. Right now I can't recall exactly what it  
7 said, no.

8 MR. CHERTOFF: If I refresh your memory by  
9 telling you that was an SOP that indicated you can't  
10 use race as a basis for stopping motorists, does that  
11 ring a bell?

12 THE WITNESS: Most likely, yes, sir.

13 MR. CHERTOFF: Now was it your understanding  
14 that that -- did that SOP remain in effect during your  
15 tenure?

16 THE WITNESS: Yes, it did.

17 MR. CHERTOFF: Did you modify it in any way?

18 THE WITNESS: Not that I recall.

19 MR. CHERTOFF: Are you familiar with a  
20 program called Trooper of the Year?

21 THE WITNESS: Yes, I am.

22 MR. CHERTOFF: And what -- to your knowledge,  
23 when did that program first get started?

24 THE WITNESS: I guess it was back during  
25 Colonel Pagano's regime. Specifically when, I can't

1 recall that.

2 MR. CHERTOFF: It was in effect when you got  
3 into office as Superintendent?

4 THE WITNESS: Oh, yes, sir.

5 MR. CHERTOFF: And had it been in effect  
6 under Colonel Dintino's tenure?

7 THE WITNESS: Yes, it had been.

8 MR. CHERTOFF: What was your understanding  
9 when you became Superintendent about what Trooper of  
10 the Year Award was meant to recognize?

11 THE WITNESS: Was to recognize an outstanding  
12 Trooper or Troopers who -- who emphasize the positive  
13 aspects of the Division of State Police and that, you  
14 know, made either outstanding, you know, arrests or  
15 possibly make a life-saving rescue or something --  
16 something along that line.

17 MR. CHERTOFF: Did there come -- well, let me  
18 withdraw the question. Was one of the criteria or one  
19 of the ways in which someone could become Trooper of  
20 the Year a function of how many drug arrests or the  
21 amount of drugs that that Trooper was involved in  
22 seizing for the period of a year?

23 THE WITNESS: It could be one of the -- one  
24 of the criteria. One of the criteria of many.

25 MR. CHERTOFF: When you were -- who made the

1 selection of Trooper of the Year when you were  
2 Superintendent?

3 THE WITNESS: Well when I was a  
4 Superintendent, there was an Awards Board made up of a  
5 group of Captains, I think it was five Captains and the  
6 process would begin at the Trooper Section level and a  
7 recommendation would be put in by either the Troop  
8 Commander or the unit section or Bureau Supervisor. It  
9 would come through the chain of command and then  
10 ultimately go to the Awards Board and the Awards Board  
11 would then make a recommendation as to who should be  
12 the -- you know, who they felt should be the Trooper of  
13 the Year or usually it was maybe one or two or three  
14 people. Then it would come up to my office and I would  
15 sit down with my immediate staff, two Lieutenant  
16 Colonels and we would discuss it and I would made the  
17 ultimate decision.

18 MR. CHERTOFF: During the time you were  
19 superintendent, did the Troopers who got selected get  
20 selected on the basis of the number of arrests they  
21 made or the quantity of drugs seized?

22 THE WITNESS: That might -- it was -- it was  
23 maybe a part of it, it wasn't -- it wasn't the only  
24 reason why they got selected. In other words, there  
25 was the overall activity of the Trooper, how they

1 participated in the -- in the drinking driving program,  
2 the highway safety program. I think when I was the  
3 Superintendent there were times when, you know, it  
4 wasn't a road Trooper that received the Trooper of the  
5 Year award. I think one year it was a detective from  
6 the Auto Unit, and you know, it wasn't just because  
7 they made "highway interdiction arrests." It was the  
8 overall Trooper, how they -- how they -- how they  
9 interdicted with their community, how they  
10 participated, whether they were active in a volunteer  
11 fire company or did, you know, other volunteer work  
12 with a, you know, volunteer organization or something  
13 like that. So it was the total package, not just one  
14 aspect.

15 MR. CHERTOFF: Well, to the extent that road  
16 Troopers were selected for Trooper of the Year, was the  
17 principal criterion there either quantity of drugs  
18 seized or number of arrests made on the road?

19 THE WITNESS: No.

20 MR. CHERTOFF: When you -- when a selection  
21 was made of a road Trooper did -- were you typically  
22 given the Trooper's disciplinary record to see if  
23 there were complaints filed against a Trooper during  
24 that year?

25 THE WITNESS: I was made aware of their

1 disciplinary record, yes, sir.

2 MR. CHERTOFF: And was that a factor you  
3 considered in making Trooper of the Year.

4 THE WITNESS: Yes.

5 MR. CHERTOFF: When you came in as  
6 Superintendent, let's say in 1994, were there any  
7 particular steps you remember taking to address the  
8 issue of racial profiling?

9 THE WITNESS: I think there was a period of  
10 time where I put out during the in service trainings  
11 the -- you know, I would make a introductory tape and I  
12 would mention on there that the, you know, that we  
13 wanted the Troopers to perform their duties in the way  
14 they were taught and under the -- under the -- the way  
15 it should be under the law. And I think I might have  
16 put out some Superintendent's newsletters, et cetera,  
17 et cetera, that reinforced this.

18 MR. CHERTOFF: What was your understanding  
19 when you became Superintendent of what racial profiling  
20 -- what impermissible racial profiling is?

21 MR. FISHER: You're saying when he became  
22 Superintendent?

23 MR. CHERTOFF: Yeah, at the time you were  
24 Superintendent -- when you first became Superintendent.

25 THE WITNESS: My personal?

1 MR. CHERTOFF: Yeah, what was your  
2 understanding of what racial profiling was?

3 THE WITNESS: Well, my understanding was that  
4 the -- if it was -- had to do with a traffic stop, that  
5 the only reason that the traffic stop was made because  
6 there was a minority operating the vehicle. If it was  
7 an on site arrest along the street or something like  
8 that, the only reason that the person was stopped was  
9 because they were a minority person. If there was no  
10 other reason to do that, there was no motor vehicle  
11 violation -- there was no criminal violation or  
12 something like that that initiated the stop or the  
13 detention, whatever it may be.

14 MR. CHERTOFF: Well, I want to make sure I'm  
15 clear on it. Was it your understanding that racial  
16 profiling occurs only when the sole or main reason for  
17 the stop is race, or was it your understanding that  
18 racial profiling occurs when one of a number of reasons  
19 is race?

20 THE WITNESS: It's my understanding that the  
21 only reason was because of solely for race.

22 MR. CHERTOFF: So your understanding was, in  
23 1994 at least, that if someone was speeding, so that  
24 would be a reason to stop on the Turnpike, and let's  
25 say they were driving a particular type of car, and

1 that was another reason that someone thought to stop  
2 them, and then their race was a third reason, your  
3 understanding is that was okay to use race as one of a  
4 number of reasons?

5 THE WITNESS: -- my understanding was the  
6 only reason they should stop them is because they're  
7 speeding, no matter what race they are.

8 MR. CHERTOFF: Well, was it your  
9 understanding that it was permissible to consider race  
10 as one of a number of factors in deciding who to stop  
11 on the road?

12 THE WITNESS: No.

13 MR. CHERTOFF: Did you -- was it your  
14 understanding that somehow there was literature out  
15 there in 1994 from the Federal Drug Enforcement  
16 Administration or other law enforcement administrations  
17 that somehow suggested that members of certain ethnic  
18 groups were more likely to commit crimes than people  
19 from other ethnic groups?

20 THE WITNESS: There was literature out there  
21 from the -- from various federal agencies that  
22 encompassed what a drug courier might be.

23 MR. CHERTOFF: And was it your --

24 THE WITNESS: And one of those --

25 MR. CHERTOFF: I'm sorry. Go ahead.

1 THE WITNESS: One of those was that certain  
2 ethnic groups were involved in certain narcotics.

3 MR. CHERTOFF: Well, I want to make sure I  
4 understand this, because there is literature we've seen  
5 in this investigation that talks about, for example,  
6 different types of gangs, you know, Jamaican gangs or  
7 whatever, what have you, but did you understand that to  
8 suggest that the fact that there are ethnic gangs that  
9 are involved in drug activity means that people of an  
10 ethnic group are more likely to be committing drug  
11 offenses than people of other ethnic groups?

12 THE WITNESS: As I said, there was -- there  
13 was literature put out by the -- by the federal  
14 government that suggested that.

15 MR. CHERTOFF: And you read that literatures  
16 as actually saying that people of certain races or  
17 certain ethnic groups are more likely than people of  
18 other ethnic groups to be involved in criminal conduct?

19 THE WITNESS: There were certain cartels and  
20 groups and different, I guess you'd call them  
21 corporations for want of a better word, that are  
22 involved with the distribution of narcotics that seemed  
23 to hold their participation within themselves. And  
24 that was made clear through these documents that we  
25 received from the various federal agencies.

1 MR. CHERTOFF: Let me ask you -- let me ask  
2 you again, I want to -- your understanding of this.  
3 As an example I'll use Jews, because since I'm Jewish  
4 no one can accuse me -- you know, being hostile. Let's  
5 assume you got something from the FBI or a federal  
6 agency that said there are Jewish-Russian ethnic gangs  
7 that are involved in gasoline tax fraud, and that there  
8 are absolutely groups that are composed of, you know,  
9 people -- Jews who left Russia and are cohesive and  
10 they have gangs. Would you draw from that the  
11 understanding that Jews are more likely than other  
12 ethnic groups to be involved in gas taxoline --  
13 gasoline tax fraud?

14 THE WITNESS: No.

15 MR. CHERTOFF: So, again, to use the example  
16 -- I think you used the Colombians, if the DEA put out  
17 literature that said there are Colombian drug  
18 organizations would you draw from that the conclusion  
19 that among a given array of people Colombians are more  
20 likely than other people to be involved in narcotics  
21 activity?

22 THE WITNESS: Not really, no.

23 MR. CHERTOFF: Okay. So you understand  
24 there's a difference between saying that there are  
25 ethnic groups, you know, criminal organizations that

1 are ethnically based, that that's a different concept  
2 than saying that people of an ethnic group are more  
3 likely to be committing particular types of crimes?

4 THE WITNESS: Correct.

5 MR. CHERTOFF: And was that distinction clear  
6 to you in your mind in 1994?

7 THE WITNESS: Yes, it was.

8 MR. CHERTOFF: But your -- but your  
9 impression was that the federal government was not  
10 making that distinction clear in the literature they  
11 were putting out?

12 THE WITNESS: They were putting out  
13 literature that was allegedly being committed by  
14 criminals, and, you know, I don't know how they -- how  
15 they came to that conclusion, but that was their  
16 findings and their information -- putting out.

17 MR. CHERTOFF: All right. Did you become  
18 familiar at some point in your tenure as Superintendent  
19 with a case that was going on in Gloucester County  
20 before Judge Francis called State v. Soto?

21 THE WITNESS: Yes, I was.

22 MR. CHERTOFF: How did you first become  
23 familiar with that case?

24 THE WITNESS: Well, while I was  
25 Superintendent, you know, one of the cases -- one of

1 the many things -- with regards to running the  
2 organization that I was, you know, concerned with in --  
3 because of the, you know, the impact it would have on  
4 the Division of State Police.

5 MR. CHERTOFF: And you remember -- did this  
6 get reported to you, was there someone in the State  
7 Police who had responsibility for reporting to you  
8 about the progress of that case?

9 THE WITNESS: Yes.

10 MR. CHERTOFF: Who was that?

11 THE WITNESS: I don't recall. You know, we  
12 had people at -- sitting in at the trial, and I can't  
13 recall specifically who that was.

14 MR. CHERTOFF: Now, the decision itself came  
15 down on March 4th, 1996. Before that day, before the  
16 decision, do you -- excuse me, do you remember having  
17 any conversations with members of the Office of the  
18 Attorney General about that case as it was ongoing?

19 THE WITNESS: To my -- to my recollection, I  
20 remember having, you know, conversation with DAG Fahy,  
21 who was the lead Deputy Attorney General with regards  
22 to that case.

23 MR. CHERTOFF: And what were those  
24 conversations?

25 THE WITNESS: Well, it's if I remember

1 correctly, that the case was going good and, you know,  
2 everything seems to be working out okay, and looks like  
3 we're going to get a favorable ruling.

4 MR. CHERTOFF: I guess that turned not to be  
5 a great prediction, right? There came a point in time  
6 there was a ruling.

7 THE WITNESS: Yes, sir.

8 MR. CHERTOFF: How did you learn about that?

9 THE WITNESS: Well, I was either notified by  
10 the Attorney General's Office or, you know, I would  
11 assume that -- and again, I can't recall specifically,  
12 but I would assume that I was contacted by, you know,  
13 maybe DAG Fahy or somebody from the Attorney General's  
14 Office, because, you know, it would have been after the  
15 court hearing. I wouldn't have a Trooper down there  
16 monitoring the case, so I'm sure that it was somehow  
17 relayed to me through the Attorney General's Office.

18 MR. CHERTOFF: Did you actually read the  
19 opinion?

20 THE WITNESS: Some of it. The copy I got is  
21 -- where I got so -- it was so distorted that you'd get  
22 a headache trying to read it.

23 MR. CHERTOFF: Did you meet with anybody from  
24 the Office of the Attorney General after you had  
25 learned the decision came down?

1 THE WITNESS: Yes, I did.

2 MR. CHERTOFF: Who'd you meet with?

3 THE WITNESS: I met with the Attorney  
4 General, Poritz, and Jack Fahy, DAG Fahy, and I think  
5 there were other people with me that I cannot, you  
6 know, recall right now, but we did have a meeting.

7 MR. CHERTOFF: And where was the meeting?

8 THE WITNESS: To my -- best of my  
9 recollection it was the Attorney General's Office.

10 MR. CHERTOFF: And what happened at the  
11 meeting?

12 THE WITNESS: Well, the case was discussed,  
13 the merits, the whyfores, hows, you know, different  
14 opinions that were brought out at the time. And a  
15 decision was made that we were going to appeal the --  
16 appeal Judge Francis' decision.

17 MR. CHERTOFF: Was there any discussion in  
18 that meeting about whether there actually was a problem  
19 with racial profiling by Troopers?

20 THE WITNESS: Again, at this time, it was  
21 five years ago, I can't recall. I don't -- I don't  
22 recall if that was discussed or not.

23 MR. CHERTOFF: Is it fair to say this was --  
24 let me withdraw the question. You understood that  
25 apart from Soto prior to 1996 there were other cases in

1 other parts of the State where the Public Defender's  
2 Office was attacking Troopers based on the claim of  
3 selective prosecution or racial profiling, correct?

4 THE WITNESS: Yes.

5 MR. CHERTOFF: Were you aware that in fact  
6 some cases were getting dismissed rather than having  
7 those charges litigated in the Courts?

8 THE WITNESS: I was aware that, you know,  
9 that some -- in some counties that the Judges were  
10 dismissing. Also I was aware that in other counties  
11 that the same type of hearing that took place before  
12 Judge Francis had been upheld in the -- in the State's  
13 favor.

14 MR. CHERTOFF: Is it fair to say the Francis  
15 decision was a very significant issue for you when you  
16 learned about it?

17 THE WITNESS: It was one of the, yes, one of  
18 the many significant issues. As I said, when you're  
19 responsible for an organization that size, you know,  
20 there's a lot of issues every day.

21 MR. CHERTOFF: I'm going to -- I'm going to  
22 mark as CW-1 for identification a teletype -- pass over  
23 to -- and take a look at that and see if you recognize  
24 this.  
25

1 (Pause)

2 MR. CHERTOFF: Did you -- you recognize this  
3 teletype?

4 THE WITNESS: Yes, sir.

5 MR. CHERTOFF: Did you send this out?

6 THE WITNESS: Excuse me?

7 MR. CHERTOFF: Did you send this out in 1996?

8 THE WITNESS: Yes, I did.

9 MR. CHERTOFF: And I take it you reviewed it  
10 before it went out.

11 THE WITNESS: Yes, I did.

12 MR. CHERTOFF: I just want to focus on a  
13 couple of parts of this. You indicate in the bottom of  
14 the first page, legal basis or probable cause may not  
15 be dependent on race. What did you mean by that?

16 THE WITNESS: As I stated before, that the  
17 only reason that they -- that a Trooper would make a  
18 stop is because of the race of the individual driving  
19 the vehicle.

20 MR. CHERTOFF: Okay. The next page, first  
21 paragraph, talks about the fact that, "While I disagree  
22 with respect to the statistics relied upon by this  
23 Judge, road Troopers in the entire Division chain of  
24 command must strive to document all objective bases for  
25 motor vehicle stops, summonses and arrests." And it

1 goes on to say, "Therefore it is essential to call in  
2 all stops with accurate descriptions of vehicle and  
3 occupants, and to make notes on the rear of yellow  
4 copies in order that our Division can successfully  
5 defend future challenges." At this point in time what  
6 was the practice of the State Police regarding  
7 recording the descriptions and the racial  
8 identification of motor vehicle occupants?

9 THE WITNESS: Again, if I remember correctly,  
10 the --

11 MR. CHERTOFF: I think I may have handed --

12 THE WITNESS: There are two copies --

13 MR. CHERTOFF: Yeah. I'm sorry. I -- go  
14 ahead.

15 THE WITNESS: If I remember correctly, you  
16 know, that was part of the edict that Carl Olaf -- or  
17 Carl Dintino had put out about the -- with regards to  
18 stops on -- along the highway, and that one of those  
19 was that the -- when the Trooper made the stop that  
20 they were to call in, excuse me, the race of the  
21 individual who was operating the motor vehicle. And --  
22 I think it was also my understanding at that time that  
23 might have become a little bit lax, that there wasn't  
24 the conformance with that that there should have been.  
25 And I was trying to emphasize that, you know, the

1 Troopers were going to call in the stop and follow the  
2 SOP.

3 MR. CHERTOFF: Do you remember discussions  
4 around this time with people in the Attorney General's  
5 Office about the need to get more information or record  
6 more data concerning the identity or identification of  
7 the occupants of cars when there's stops?

8 THE WITNESS: I think that was a thing  
9 discussed with regards to the aftermath of the Francis  
10 decision, yes.

11 MR. CHERTOFF: And that was discussed with  
12 Attorney General Poritz?

13 THE WITNESS: With Attorney General Poritz,  
14 Mr. Fahy, I'm pretty -- George Rover was in the -- in  
15 the loop at this time or not. I think Mr. Ciancia was  
16 there. You know, again, I can't specifically say who  
17 was at each meeting, but I do recall that, you know,  
18 things like that were discussed.

19 MR. CHERTOFF: Now, at this point in time in  
20 '96 were you familiar with the term called  
21 spotlighting?

22 THE WITNESS: It had been brought to my  
23 attention during this period of time, and that's why I  
24 mentioned it in the -- in the teletype.

25 MR. CHERTOFF: And what was your

1 understanding of spotlighting?

2 THE WITNESS: Well, it was alleged that the  
3 Troopers were sitting alongside the road, either in the  
4 center medial or on the berm, shoulder side, and using  
5 their spotlight to -- on cars as they go by.

6 MR. CHERTOFF: And for what purpose?

7 THE WITNESS: Well, again, it was alleged  
8 that they were in using this to identify the occupants  
9 of the vehicle.

10 MR. CHERTOFF: Again, what was the allegation  
11 about the reason they were trying to identify the  
12 occupants of the vehicle, you mean the race of the  
13 occupants?

14 THE WITNESS: The race of the occupants,  
15 right.

16 MR. CHERTOFF: And was the allegation that  
17 that was a means of determining who they would then  
18 stop?

19 THE WITNESS: That was the allegation.

20 MR. CHERTOFF: Did you ever at this period of  
21 time ask anybody to go out and examine -- anybody from  
22 IAB, for example, to examine whether there was any  
23 truth to the allegation?

24 THE WITNESS: Not that I recall.

25 MR. CHERTOFF: By the way, in 1996, who was

1 responsible for investigating allegations of either  
2 racial profiling or other misconduct by road troopers  
3 on the highway?

4 THE WITNESS: Internal Affairs Bureau.

5 MR. CHERTOFF: Now in this document here,  
6 which is CW-1, second page, second paragraph says, "I  
7 should note that while I'm aware that some of our  
8 troopers use the vehicle spotlight for safety purposes,  
9 there may be a perception that its purpose is to  
10 determine the racial character of the occupants of a  
11 vehicle. To avoid any misunderstanding on the part of  
12 the public, the spotlight should not be used prior to  
13 the point in time that the decision has been made to  
14 stop the vehicle." Did you embody this instruction in  
15 any order or SOP or something of that sort?

16 THE WITNESS: Not that I recall, no, sir.

17 MR. CHERTOFF: Now did you assign somebody to  
18 follow up on -- within the State Police organization to  
19 follow up on the issue of racial profiling at this  
20 point in time?

21 THE WITNESS: I assigned Sergeant Gilbert to  
22 more or less be a coordinator, facilitator, gatherer of  
23 information.

24 MR. CHERTOFF: And Sergeant Gilbert, I guess  
25 at that time he was Detective Gilbert --

1 THE WITNESS: Detective Gilbert, right.  
2 MR. CHERTOFF: -- was Thomas Gilbert?  
3 THE WITNESS: Excuse me, I couldn't hear you?  
4 MR. CHERTOFF: Thomas Gilbert?  
5 THE WITNESS: Thomas Gilbert, yes, sir.  
6 MR. CHERTOFF: And what was his position at  
7 the time you gave him this assignment?  
8 THE WITNESS: He was with the Labor Relations  
9 Unit.  
10 MR. CHERTOFF: And that would be in the  
11 Office of the Deputy Superintendent?  
12 THE WITNESS: Yes, sir.  
13 MR. CHERTOFF: And did you ask him to prepare  
14 a report to you on Judge Francis' decision and  
15 potential responses?  
16 THE WITNESS: I did.  
17 MR. CHERTOFF: I'm going to ask that we mark  
18 as CW-2, which I'll pass up --  
19 (Pause)  
20 MR. CHERTOFF: -- a document dated March  
21 28th, 1996 to you through a chain of command.  
22 (Pause)  
23 MR. CHERTOFF: Do you recognize this  
24 document?  
25 THE WITNESS: Yes, I do.

1 MR. CHERTOFF: Okay. You don't have to read  
2 the whole thing. I'll direct you to particular parts  
3 of it. You received this document from -- from  
4 Detective Gilbert, right?  
5 THE WITNESS: That is correct.  
6 MR. CHERTOFF: And on the front page where it  
7 says, "3/29/96, okay procedures recommended," is that  
8 your writing?  
9 THE WITNESS: Yes, it is.  
10 MR. CHERTOFF: All right. Now did he -- did  
11 you ask him to write this memo?  
12 THE WITNESS: Pretty sure I did.  
13 MR. CHERTOFF: Let me focus on some portions  
14 of this. On the third page of the memo it says, "The  
15 optimum method for recording or retrieving the desired  
16 data would be through the use of the patrol chart.  
17 With the added data concerning race, the patrol chart  
18 would constitute a comprehensive source document  
19 setting forth all relevant data for specific troopers,  
20 patrol areas and time periods. Patrol charts would be  
21 much better for recording race than summonses and  
22 warnings." Did you direct as a consequence of this  
23 that patrol charts now be used as a way of recording  
24 the race of people being stopped?  
25 THE WITNESS: If I remember correctly, yes, I

1 did.

2 MR. CHERTOFF: Okay. Did you also request  
3 that there be some kind of a study or an internal  
4 review or audit of data going forward --

5 THE WITNESS: Yes, sir, I did.

6 MR. CHERTOFF: -- to determine whether there  
7 was a problem, a statistical problem?

8 THE WITNESS: Yes, sir, I did.

9 MR. CHERTOFF: Let me go down to the second  
10 section here, Internal Affairs function, and  
11 specifically on the next page, which I guess is the  
12 fourth page, it says -- I want to be precise -- "The  
13 Internal Affairs Bureau at the direction of Captain  
14 Touw has recently begun utilizing its inspection unit  
15 to commence inspection audits. These audits will  
16 examine patrol enforcement patterns of specific duty  
17 stations. The concepts of the audits is to identify  
18 any indications of irregular patrol enforcement  
19 activity and to take appropriate remedial action before  
20 a full internal investigation becomes necessary." Is  
21 this the mechanism you directed to carry out this  
22 inspection to make sure the statistics going forward,  
23 there wasn't going to be a statistical problem?

24 THE WITNESS: Yes, sir, it was.

25 MR. CHERTOFF: Now finally there's a

1 discussion of training responses and did you direct  
2 that the recommendations in this memo be implemented as  
3 well?

4 THE WITNESS: That is correct, sir.

5 MR. CHERTOFF: Now the chain of command was  
6 such that when you gave a direction as here, "proceed  
7 as recommended," who had responsibility for actually  
8 carrying that out?

9 THE WITNESS: Well it would go back -- it  
10 would go from -- Detective Gilbert at that time was  
11 more or less acting as my, I guess you would say, as I  
12 said earlier, facilitator, expediter and it would then  
13 go back to the Deputy Superintendent, Lieutenant  
14 Colonel Littles who would then take it over to the  
15 Executive Officer and down through the chain of command  
16 to the various road station troops, wherever --  
17 wherever the organization existed.

18 MR. CHERTOFF: All right. Let me show you  
19 what I'm going to mark as CW-3.

20 (Pause)

21 MR. SOKOL: On the fourth page, the section  
22 on training responses, the second paragraph reads,  
23 "Recently the Academy has been directed to reconvene  
24 the Search and Seizure Committee which will meet on a  
25 regular basis, conduct appropriate research and publish

1 a semi-annual newsletter. Additionally, it was the  
2 consensus that training should be initiated which links  
3 this information with practical" --

4 THE WITNESS: I can't hear you.

5 MR. SOKOL: I'm sorry. "Additionally, it was  
6 the consensus that training should be initiated which  
7 linked this information with practical applications."  
8 And it goes on to describe how that would occur. Do  
9 you recall that portion of the report?

10 THE WITNESS: Yes, sir.

11 MR. SOKOL: Do you recall that the Search and  
12 Seizure Review Board was initiated by SOP B-30 on March  
13 26, 1990?

14 THE WITNESS: Not specifically, but --

15 MR. SOKOL: Do you recall that it was created  
16 on or about that time?

17 THE WITNESS: There was -- there was one  
18 created, yes, sir.

19 MR. SOKOL: And do you recall when it was  
20 terminated?

21 THE WITNESS: I don't recall, no. I don't  
22 think it was -- I don't think it was ever terminated  
23 terminated. I don't think it was -- was as active as  
24 it should have been.

25 MR. SOKOL: Well what did Mr. Gilbert mean --

1 Detective Gilbert at the time mean when he said, "The  
2 Academy's been directed to reconvene" this Search and  
3 Seizure Committee?

4 THE WITNESS: I don't know what he meant,  
5 sir. I -- you know, that's what he says here. I  
6 didn't question him with regards to that.

7 MR. SOKOL: Well this memo was dated March  
8 28th, '96, and you were sworn in in January or February  
9 of '94, is that correct?

10 THE WITNESS: No, sir.

11 MR. SOKOL: Well when --

12 THE WITNESS: March I was temporarily  
13 assigned as the Acting Superintendent. I was sworn in  
14 in June --

15 MR. SOKOL: Okay.

16 THE WITNESS: -- of '64.

17 MR. SOKOL: '94?

18 THE WITNESS: '94, excuse me.

19 MR. SOKOL: '94. Prior to your being sworn  
20 in, had this Committee been meeting on a regular basis?

21 THE WITNESS: I can't recall, sir.

22 MR. SOKOL: Did the stopping of the  
23 Committee's activities occur after you took over as  
24 either acting or regular Superintendent?

25 THE WITNESS: As I stated earlier, I don't

1 think there was ever any directive from me to stop  
2 anything. There wasn't a -- you know, a meeting held  
3 because of maybe work load, pressures from other  
4 things, et cetera, et cetera.

5 MR. SOKOL: Do you recall who was the person  
6 in charge of this Committee while you were  
7 Superintendent?

8 THE WITNESS: No, sir, I don't.

9 MR. SOKOL: I don't have any further  
10 questions.

11 MR. CHERTOFF: Okay. I'm going to show you  
12 CW-3 for identification which is a Superintendent's  
13 News Letter and ask if you recognize this? It's dated  
14 April 1, 1996.

15 (Pause)

16 MR. CHERTOFF: Do you recognize it?

17 THE WITNESS: Yes, sir.

18 MR. CHERTOFF: Did you send this out?

19 THE WITNESS: Yes, sir, I did.

20 MR. CHERTOFF: How often did you send out  
21 Superintendent's News Letters during your tenure?

22 THE WITNESS: I -- you know, there was no  
23 specific time period. If something happened, you know,  
24 I would send out a news letter maybe about the banquet  
25 coming up or, you know, some other important function,

1 or if, you know, there was a problem within the State  
2 Police that I thought there should be out, I would use  
3 the --

4 MR. CHERTOFF: It wasn't reserved though for  
5 extraordinary things?

6 THE WITNESS: No.

7 MR. CHERTOFF: Now in the prior document we  
8 looked at, CW-2, there was reference to patrol charts.  
9 Here if you look at the seventh paragraph down it talks  
10 about, "In order that we might successfully meet any  
11 future challenge to our stops and arrest procedures, it  
12 is essentially that you call in all stops and each  
13 report contain an accurate descriptions of vehicle  
14 occupants. Also it's a good idea to make any notes on  
15 the rear of yellow copies." Now what are the yellow  
16 copies referred to here?

17 THE WITNESS: The yellow copy was the  
18 officer's -- in other words, with a summons, traffic  
19 ticket, we call them summons, there were four copies.  
20 There was a white copy, what we called a green copy, a  
21 yellow copy and a hard copy. The hard copy would go to  
22 the motorist, the individual that's stopped. The white  
23 copy would go to the Court. The blue copy would be  
24 used to come in through into -- up the chain of  
25 command, in other words from the station to the troop

1 level and eventually to Division Headquarters as a  
2 statistical gathering means that would ultimately end  
3 up in R&I. And the yellow copy is what they call the  
4 officer's copy. That's the copy the trooper would keep  
5 in his -- most -- at that time, most of the stations  
6 had a -- there would be a file at the station level  
7 where they would either keep them in there or they  
8 might keep them in their -- like for the tact packs and  
9 stuff like that, they might keep them in their  
10 briefcase or whatever; and they would use that to  
11 refresh their memory when they went to Court. And on  
12 the back of it, it had an area where the -- the trooper  
13 could put in comments such as, you know, the car was  
14 weaving in and out, failed to keep right, whatever it  
15 may be with regards to help him or her when they  
16 testify before the Court if the summons happened to be  
17 challenged at municipal level.

18 MR. CHERTOFF: Now how come this letter --  
19 how come this letter did not make reference to the  
20 patrol chart as Sergeant Gilbert had recommended in his  
21 memo of March 28th?

22 THE WITNESS: Well the only -- only thing I  
23 can say is -- and I can't remember this specifically,  
24 but this goes basically to the families. It's not  
25 specifically to the trooper. It goes to the home of

1 the trooper and it's to the family. So the only thing  
2 I can say is, you know, for some reason it was left  
3 off. I don't know why it was left off. Maybe we  
4 decided that it wasn't -- wasn't needed to that  
5 specific group that we were targeting, which was not  
6 only the trooper but also the trooper's family.

7 MR. CHERTOFF: Do you remember some other  
8 document that mandated that these things be entered in  
9 patrol charts at this point in time, in April of '96?

10 THE WITNESS: Another document that mandated  
11 what, sir?

12 MR. CHERTOFF: That troopers put race down on  
13 the patrol chart?

14 THE WITNESS: I think there -- I think there  
15 had something -- there might have been an SOP that it  
16 said the same thing.

17 MR. CHERTOFF: What is the patrol chart, by  
18 the way? Where is that kept?

19 THE WITNESS: Well a patrol chart is a -- I  
20 guess for want of a better word, is a chronology of a  
21 trooper's activities during the day. In other words,  
22 he'd start out in the morning and you'd list your area  
23 of responsibility. You'd list your time out, the  
24 mileage on your troop car and then there were -- you  
25 had to make certain checks like your radar instrument,

1 make sure that the -- you know, that that was working,  
2 make sure that your shotgun was there, all the -- all  
3 the materials that you needed in the vehicle to  
4 function during that day were supposed to be checked  
5 out.

6 And then as you -- as you progress through  
7 the day and made any kind of contact, be it a motor  
8 vehicle stop, you were supposed to give a -- indicate  
9 time, your location, where you made the stop, you know,  
10 if you issues a summons the summons on there, et  
11 cetera, et cetera. And -- or if it was a -- if you  
12 went to a domestic complaint, a call with a domestic  
13 complaint, you know, that was to be noted on your  
14 patrol chart. And all of your day's activities  
15 throughout the entire shift would be noted on the  
16 patrol chart. And then at the end of the day, that  
17 would be turned into the station commander or your  
18 station -- actually your station sergeant or senior  
19 trooper, whoever it might be.

20 I think at that time -- in the old days we  
21 used to have what we call a station record and you  
22 would come in and you would more of less verbally tell  
23 or write down on a notepaper what you did during your  
24 period of patrol and list your summonses and everything  
25 and that would be transposed into the station record.

1 If my memory serves me correctly, this was at the  
2 period of time we were doing away with the station  
3 records and so this was the only way that a document  
4 would be available so that the station commander and  
5 the shift sergeant would know what that trooper's doing  
6 during their activity, their day at work.

7 MR. CHERTOFF: Okay. Now you --

8 MR. SOKOL: Mike, excuse me, just a point of  
9 clarification. Before you said there may have been an  
10 SOP requiring the notation of race. Was it on the back  
11 of the yellow copy or on the patrol chart?

12 THE WITNESS: No. I don't -- I think it --  
13 and again I can't recall specifically, but it would  
14 most likely have been on the patrol chart. I don't  
15 think it was -- I don't think there was ever anything -  
16 - there's no room on the summons for the race and you  
17 know, I don't recall that.

18 MR. CHERTOFF: Now you understood that the  
19 Soto case focused upon the activities of troopers at  
20 the Moorestown and Cranbury Stations, right?

21 THE WITNESS: Well I think -- I think the  
22 Soto case specifically focused on the activities of the  
23 troopers at the Moorestown Station. It was all in  
24 Gloucester County.

25 MR. CHERTOFF: And just for our purposes, in

1 terms of the chain of command, the Moorestown Station  
2 was part of which troop?

3 THE WITNESS: Troop D.

4 MR. CHERTOFF: And that -- and where's the  
5 headquarters for Troop D?

6 THE WITNESS: Well then at that time Troop D  
7 Headquarters was in New Brunswick. That's the New  
8 Jersey Turnpike. It is currently located in Cranbury  
9 but --

10 MR. CHERTOFF: And how many stations were  
11 part of Troop D?

12 THE WITNESS: Three.

13 MR. CHERTOFF: And that would be -- cover the  
14 whole Turnpike?

15 THE WITNESS: Yes, sir.

16 MR. CHERTOFF: And where would the stations  
17 be located?

18 THE WITNESS: Well one was at Newark, it was  
19 at the Newark Airport right as you -- right at the toll  
20 booth there. The other one was at -- at that time was  
21 at the New Brunswick at the Headquarters. In other  
22 words there were several -- there's several buildings  
23 there and one of them they call it like the round house  
24 and that was where the -- that was the State Police  
25 Barracks at New Brunswick and the Headquarters was over

1 in the main Turnpike facility up there. And Moorestown  
2 Station was actually in Mt. Laurel Township on mile  
3 post 37 northbound.

4 MR. CHERTOFF: Now when was -- when did the  
5 New Brunswick Station become the Cranbury Station or  
6 vice versa?

7 THE WITNESS: I guess that was around 19 --  
8 you know, don't hold me on. I'm just -- maybe 1997,  
9 early '97.

10 MR. CHERTOFF: So it started out as New  
11 Brunswick and then it became Cranbury?

12 THE WITNESS: Yes, sir.

13 MR. CHERTOFF: All right. Did you become  
14 aware in 1994, shortly after the Soto decision that  
15 there were allegations coming from the Moorestown  
16 Station by minority troopers that there was racial  
17 profiling going on?

18 MS. GLADING: I'm sorry. I think he said  
19 '94.

20 MR. FISHER: I think you said -- yeah, you  
21 did say '94.

22 MR. CHERTOFF: I'm sorry. Did you become  
23 aware shortly after the Soto decision in April '96 that  
24 there were allegations coming out of the Moorestown  
25 Station by minority troopers that racial profiling was

1 taking place?

2 THE WITNESS: There was -- there was such an  
3 allegation.

4 MR. CHERTOFF: How did you become aware of  
5 that?

6 THE WITNESS: I think through the general --  
7 you know, my duties as the Superintendent, being  
8 advised of, you know, what was going on within the  
9 Division.

10 MR. CHERTOFF: Did you direct somebody to  
11 look into that?

12 THE WITNESS: If I remember correctly, I had  
13 the -- I think it was the Troop Commander and/or the  
14 Station Commander or both look into the -- into those  
15 allegations in conjunction with IAB.

16 MR. CHERTOFF: I'm going to show you what's  
17 been marked as F-16 and ask you if you recognize this  
18 report?

19 (Pause)

20 MR. CHERTOFF: Recognize this?

21 THE WITNESS: Excuse me?

22 MR. CHERTOFF: Do you recognize this  
23 document?

24 THE WITNESS: I recognize this report. I  
25 recognize it because I was just recently shown it by

1 Mr. Fisher, but --

2 MR. CHERTOFF: Did you get a copy of this  
3 back in 1996?

4 THE WITNESS: I specifically can't recall  
5 that, sir.

6 MR. CHERTOFF: You specifically can't?

7 THE WITNESS: Cannot.

8 MR. CHERTOFF: Do you remember if you got  
9 informed about the content of this report?

10 THE WITNESS: To the best of my recollection,  
11 yes.

12 MR. CHERTOFF: Okay. Who informed you about  
13 that?

14 THE WITNESS: Again, I think it was either --  
15 could have been Major Sparano or Lieutenant Colonel  
16 Roberson, I'm not sure.

17 MR. CHERTOFF: Now I want to direct your  
18 attention to particular parts of this report,  
19 particular findings. The report indicates that  
20 minority troopers were concerned about the appearance  
21 of profile stops based upon the following things,  
22 disparity of minority versus non-minority arrests, were  
23 you told about that by either the Major or the  
24 Lieutenant Colonel, whoever reported about this to you?

25 THE WITNESS: Again, I can't recall

1 specifically, but most likely yes.

2 MR. CHERTOFF: Were you told about the  
3 perception that there was roadside spotlighting still  
4 going on?

5 THE WITNESS: Again, I can't recall  
6 specifically, but we discussed the report most likely.

7 MR. CHERTOFF: Were you told about the  
8 perception that the Division Awards Program based on  
9 quantity of arrests encouraging profiling?

10 THE WITNESS: Again, that's very possible but  
11 I can't recall specifically.

12 MR. CHERTOFF: Were you told that Operation  
13 R.O.A.D.S.I.D.E, DITU, drug interdiction details  
14 encouraged profiling, that that was a perception?

15 THE WITNESS: Again, it's possible, I can't  
16 recall specifically receiving that information.

17 MR. CHERTOFF: Do you remember how you  
18 respond to this -- responded when you got this general  
19 information about what was going on?

20 THE WITNESS: Well I think, you know, we or I  
21 told the Major and Lieutenant Colonel to make sure that  
22 this was looked into and that, you know, is there any  
23 substance to what the -- what the allegations are.

24 MR. CHERTOFF: Did you report this or talk  
25 about this with anybody in the Attorney General's

1 Office?

2 THE WITNESS: I can't specifically recall  
3 doing that, no.

4 MR. CHERTOFF: Did you ask anybody to follow  
5 up on this?

6 THE WITNESS: Yes, I did. As I said, I think  
7 either Major Sparano and/or Lieutenant Colonel  
8 Roberson.

9 MR. CHERTOFF: Now the document also  
10 indicates, and I want to know if you were told this at  
11 the time, that the ratio of minority drivers who were  
12 asked to give consents to search was much higher than  
13 the ratio of white drivers being asked to give consents  
14 to search, were you told about that?

15 THE WITNESS: Specifically I don't recall  
16 that, but again it's possible.

17 MR. CHERTOFF: Did you understand the  
18 significance of the difference between the percentage  
19 of whites and minorities that are being stopped as  
20 opposed to the percentages that are being asked to  
21 consent to search at this point?

22 THE WITNESS: I don't -- I don't know if at  
23 that time we had a true picture of, you know, who was -  
24 - who was being stopped and, you know, by a true  
25 picture I mean a total picture of what -- what was

1 going on out there or allegedly going on.

2 MR. CHERTOFF: Did you understand though that  
3 there's a significance in the different -- or there's a  
4 significant difference between the issue of percentages  
5 of groups being stopped as opposed to percentages of  
6 groups being asked to consent to search? Do you  
7 understand the difference between the two?

8 THE WITNESS: And again, I don't know, you  
9 know, what the reasons were, why they were being, you  
10 know, asked to -- for consent searches, you know, what  
11 else there was in the total picture with regards to  
12 that request being made.

13 MR. CHERTOFF: All right. Let me ask you to  
14 take a look at G-4 for identification dated April 17th  
15 from Detective Gilbert to you. I ask you to take a  
16 look at that.

17 (Pause)

18 MR. CHERTOFF: Actually there's a mistake in  
19 the attach to it. I'm just interested in the memo  
20 dated 4/17.

21 MR. SOKOL: I don't think his has the  
22 attachment. I think it was just a copy of --

23 MR. CHERTOFF: Yeah, okay.

24 MR. FISHER: I think that's all he has.

25 MR. CHERTOFF: Do you recognize this?

1 THE WITNESS: Yes, sir.

2 MR. CHERTOFF: Now had you at this point  
3 directed that a Committee be set up in the State Police  
4 as of April 1996 to deal with the profiling issue?

5 THE WITNESS: To the best of my recollection  
6 I had, yes.

7 MR. CHERTOFF: And did that Committee also --  
8 did you also invite Assistant Attorney General Fahy and  
9 Susswein of the Division of Criminal Justice to  
10 participate in that Committee?

11 THE WITNESS: Yes, sir.

12 MR. CHERTOFF: And did you direct that  
13 Detective Gilbert provide regular reports to you on  
14 that?

15 THE WITNESS: Yes, sir.

16 MR. CHERTOFF: And to get -- you signed off  
17 on this as CAW okay, right?

18 THE WITNESS: Yes, sir.

19 MR. CHERTOFF: That meant you read it?

20 THE WITNESS: Yes, sir.

21 MR. CHERTOFF: And does okay mean anything  
22 other than you read it, does it indicate an approval of  
23 the recommendations?

24 THE WITNESS: It indicated an approval of the  
25 recommendations.

1 MR. CHERTOFF: All right. Now I want to go  
2 through this again. Let me direct your attention to  
3 second page of this, meeting of April 12th, 1996. And  
4 it says Gloucester County appeal. It says towards the  
5 end of that paragraph, "It was agreed that a review  
6 would be initiated of the 19 Moorestown NJSP cases to  
7 ascertain which troopers were involved. Once  
8 identified, an analysis of their activity will be  
9 conducted to identify any potential negative issues  
10 should they be called upon to testify. If this review  
11 uncovers substantial problems, it would be recommended  
12 that additional thought be given to proceeding with the  
13 appeal." Do you remember or did you approve the  
14 initiation of a review of the actual 19 Moorestown New  
15 Jersey State Police cases to determine what the  
16 underlying facts were?

17 THE WITNESS: I would -- with the okay that  
18 appears on here, yes, sir.

19 MR. CHERTOFF: Now there's a checkmark, do  
20 you recognize if that's your checkmark or somebody  
21 else's?

22 THE WITNESS: I have no idea, sir.

23 MR. CHERTOFF: Now the next page talks about  
24 Hunterdon County. Were you familiar with the fact that  
25 there was a challenge at this point in time focusing on

1 I-78 stops made in Hunterdon County by Troop B,  
2 Perryville Station?

3 THE WITNESS: It's my recollection that there  
4 was some activity going on up there at that time, yes,  
5 sir.

6 MR. CHERTOFF: And did you know whether that  
7 was being examined -- a statistical overview of I-78  
8 Perryville Station was being commenced at this point?

9 THE WITNESS: Yes, sir.

10 MR. CHERTOFF: And did you approve that?

11 THE WITNESS: Yes, sir.

12 MR. CHERTOFF: And your understanding of the  
13 reason for these reviews was to determine whether in  
14 fact it looked from a statistical standpoint like there  
15 was a problem at the Perryville Station and at the  
16 Moorestown Station, correct?

17 THE WITNESS: Yes, sir.

18 MR. CHERTOFF: Now the next section talks  
19 about statistical data motor vehicle stops. It talks  
20 again about the patrol chart. At this point in time  
21 had you directed that patrol charts be filled out for  
22 statistical purposes as of the date of this memo which  
23 is April 17th, 1996?

24 THE WITNESS: If I remember correctly, yes,  
25 sir.

1 MR. CHERTOFF: And it talks on the next page  
2 about, "It's recommended that an interoffice  
3 communication be prepared and should be distributed to  
4 all Field Operations Section personnel setting forth  
5 the non-compliance noted in the Gloucester County  
6 decision, an explanation that additional challenges of  
7 a similar nature are pending, a clear statement that  
8 failure to identify vehicle occupants constitutes a  
9 violation of SOP F-3, and that this type of non-  
10 compliance will not be overlooked." To your knowledge,  
11 did that interoffice communication get sent out?

12 THE WITNESS: To my knowledge, yes, sir.

13 MR. CHERTOFF: And then it talks about  
14 inspection audits. Was it your understanding that  
15 inspection audits as of this point were commencing to  
16 look at the statistical composition, racial composition  
17 of stops in the various stations?

18 THE WITNESS: Yes, sir.

19 MR. CHERTOFF: Okay. The last page addresses  
20 a number of miscellaneous things. First of all,  
21 towards the bottom it says, "The Search and Seizure  
22 Training Program must be ongoing and linked to a review  
23 process. In order to succeed, there must be a long-  
24 term dedication of manpower to this effort and it must  
25 be staffed by individuals who give the program validity

1 in the eyes of its recipient, the road trooper." Did  
2 you implement that recommendation?

3 THE WITNESS: To the best of my recollection,  
4 yes, sir.

5 MR. CHERTOFF: Where did you -- what did you  
6 do to implement it?

7 THE WITNESS: I think I -- I think at that  
8 time I put Captain Juan Mattos from the Training  
9 Academy in charge of the Committee and gave him the  
10 wherewithal, the authority to form the Committee and  
11 start looking into these recommendations that are  
12 contained here on this report.

13 MR. CHERTOFF: All right. The last paragraph  
14 says, "The final topic of discussion was the Division  
15 Awards Program. Historically the majority of awards  
16 have been obtained through achieving certain  
17 statistical accomplishments." Do you agree with that?  
18 Is that your understanding of what the historical  
19 record was?

20 THE WITNESS: Well I agree with it in part.  
21 It doesn't -- when I say that, you know, overall  
22 Division statistical accomplishments, in other words  
23 the activity of the trooper with regards to their work  
24 ethic and what they did. And as I stated before, the  
25 Trooper of the Year didn't necessarily always come from

1 the road and it was a part of the decision making  
2 process as to who would be Trooper of the Year.

3 MR. CHERTOFF: Well it goes on to say here,  
4 "In the present climate it's very important to grant  
5 these awards to those who have established a reputation  
6 for achieving the result by doing the job right. Also  
7 it is recommended that the proportion of awards given  
8 for non-statistical forms of exemplary policing be  
9 increased." What did you do to implement that  
10 recommendation?

11 THE WITNESS: Well as I -- you know, when --  
12 when we get the -- in the future after this time when  
13 we got the recommendations for the Trooper of the Year,  
14 that would be taken into consideration.

15 MR. CHERTOFF: Do you remember anything  
16 specific, did you issue a directive or did you talk to  
17 anybody at the various awards committees?

18 THE WITNESS: No, sir, not that I recall.

19 MR. CHERTOFF: I'm going to mark as G -- I'm  
20 sorry, as W -- I'm sorry, CW-4, I think we're up to --

21 (Pause)

22 MR. CHERTOFF: -- the following document.

23 MR. SOKOL: I have one question.

24 MR. CHERTOFF: Um-hmm.

25 MR. SOKOL: Do you recall the policy where

1 prior to conducting a consensual search, a call had to  
2 be made back to the barracks and have another officer  
3 come out, a Sergeant come out to confirm the consensual  
4 search?

5 THE WITNESS: Yes, sir, I recall that policy.  
6 (Pause)

7 MR. CHERTOFF: Okay. This is a document  
8 dated May 14th, 1996 to you from Major Sparano. It  
9 attaches two other documents, one of which we've  
10 previously seen which is the original report of  
11 Lieutenant Gilbert concerning the Moorestown problem,  
12 right?

13 THE WITNESS: Yes, sir.

14 MR. CHERTOFF: And then there's another  
15 somewhat earlier document from Sergeant Smith  
16 indicating that there were issues being raised about  
17 improper patrol procedures, right?

18 THE WITNESS: Yes, sir.

19 MR. CHERTOFF: Now Captain Silvert here said  
20 that, "It's the opinion of this Command that the  
21 inquiry conducted has failed to substantiate any  
22 factual concerns. This Command does not agree with the  
23 suggested Division Troop remedial action of Lieutenant  
24 Gilbert with the exception of continuing education for  
25 our troopers in the area of search and seizure." And

1 just to focus here, if you look at Lieutenant Gilbert's  
2 report, he talks about remedial action and suggested  
3 Division Troop remedial action on the last page  
4 including "mediation, additional sensitivity training,  
5 intensive search and seizure in-service, formation of a  
6 Committee to conduct open discussions and formation of  
7 a Law Enforcement Committee to conduct conferences with  
8 judges." And all of that is disagreed with except for  
9 the -- I guess the search and seizure training. Do you  
10 remember seeing this memo?

11 THE WITNESS: Yes, I have.

12 MR. CHERTOFF: What was your response to  
13 this? Did you agree with Captain Silvert or Lieutenant  
14 Gilbert?

15 THE WITNESS: I think I more or less agreed  
16 with -- more so with Lieutenant Gilbert than Captain  
17 Silvert.

18 MR. CHERTOFF: And what was the reason for  
19 that?

20 THE WITNESS: Well I think as, you know, as  
21 this transpired I initiated most of the things that  
22 Lieutenant Gilbert had recommended such as intensive  
23 search and seizure in-service training, additional  
24 sensitivity training, EEOAA unit becoming involved, you  
25 know, the formation of the Committee to conduct open

1 discussions at Troop levels. I don't know if you would  
2 say that the Search and Seizure Committee was, you  
3 know, a spinoff of that or not, but, you know, number  
4 five would be that. So some of the things that were  
5 recommended by Lieutenant Gilbert were ultimately put  
6 into -- into place.

7 MR. CHERTOFF: All right. Well let show you  
8 now CW-5 for identification, and ask you if you  
9 recognize this document? This is from Captain Touw to  
10 you and again still relates to the Moorestown matter.

11 (Pause)

12 MR. CHERTOFF: Do you recognize this?

13 THE WITNESS: Yes, sir.

14 MR. CHERTOFF: Now what was your response --  
15 now here Captain Touw seems to be essentially agreeing  
16 with Captain Silvert, but perhaps, you know, not being  
17 quite as restrictive. Who do you agree with in this,  
18 Captain Silvert, Captain Touw or Lieutenant Gilbert?  
19 What was your final position on this? What did you  
20 finally wind up doing with respect to this?

21 THE WITNESS: Well as I said, I think it was  
22 more or less a combination with an emphasis on going  
23 back to Lieutenant Gilbert with what transpired  
24 ultimately within the Division.

25 MR. CHERTOFF: Now up through July of 1996,

1 while this discussion is going on, it was your  
2 understanding that the State was proceeding to prepare  
3 for its appeal on Soto, right?

4 THE WITNESS: That is correct, sir.

5 MR. CHERTOFF: And you understood that the  
6 Soto case focused on the very same station that was the  
7 subject of this set of reports, right?

8 THE WITNESS: Yes, sir.

9 MR. CHERTOFF: Did you discuss these reports  
10 and this issue with anybody from the Division -- the  
11 Department of Law and Public Safety?

12 THE WITNESS: I can't remember specifically,  
13 but I'm sure that, you know, there were meetings with  
14 DAG Fahy and DAG Rover with regards to these -- these  
15 issues.

16 MR. CHERTOFF: Well when were these meetings  
17 with DAG Fahy and DAG Rover?

18 THE WITNESS: Well as I said, I can't  
19 remember specifically dates and times at this --

20 MR. CHERTOFF: Do you remember a specific  
21 meeting where this was discussed?

22 THE WITNESS: Do I? No, sir, I don't.

23 MR. CHERTOFF: So you can't actually tell us  
24 here whether at least in mid 1996 you had discussed  
25 this particular set of issues with anybody in the

1 Office of the Attorney General for example?

2 THE WITNESS: No, I can't.

3 MR. CHERTOFF: Or with anybody in the  
4 Division of Criminal Justice?

5 THE WITNESS: No, I can't.

6 MR. CHERTOFF: Did you understand that this  
7 could potentially have an impact on the Gloucester  
8 County litigation depending on how the appeal went?

9 THE WITNESS: The facts that were --

10 MR. CHERTOFF: Yes.

11 THE WITNESS: The facts that were found? The  
12 possibility was there, yes, sir.

13 MR. CHERTOFF: But you don't remember talking  
14 about that with anybody?

15 THE WITNESS: I -- as I said, I don't recall  
16 specifically, but --

17 MR. CHERTOFF: Let me now mark CW-6 for  
18 identification.

19 MS. GLADING: Did you maintain a calendar  
20 during these years through business appointments and  
21 meetings?

22 THE WITNESS: My secretary did, yes.

23 MS. GLADING: Did you keep a copy of that  
24 calendar when you left the State Police?

25 THE WITNESS: Yes, I did.

1 MS. GLADING: Mr. Chertoff, we ought to  
2 discuss whether or not we want him to produce the  
3 calendar if that might refresh his recollection about  
4 specific meetings with Mr. Rover and Fahy.

5 MR. CHERTOFF: Do you have it -- could you  
6 produce those calendars?

7 THE WITNESS: Excuse me?

8 MR. CHERTOFF: Could you produce those  
9 calendars?

10 THE WITNESS: I have my appointment books.

11 MR. CHERTOFF: I'm agreeable to that and to  
12 request that you produce certainly for 1996 and 1997  
13 your appointment books. Would you be willing to do  
14 that?

15 MR. FISHER: I have no problem with that.

16 MR. CHERTOFF: Okay, great. Why don't --  
17 could we get that, let's say, by the end of the week?

18 MR. FISHER: That should not be a problem.

19 MR. CHERTOFF: Okay, good. All right.

20 MR. FISHER: That's '96 and '97?

21 MR. CHERTOFF: Right.

22 MS. GLADING: And '98 might be relevant as  
23 well.

24 MR. FISHER: I'm sorry?  
25 (Pause)

1 MR. CHERTOFF: All right. I'm putting before  
2 you -- I put before you CW-6. Do you have that in  
3 front of you?

4 THE WITNESS: Yes, sir.

5 MR. CHERTOFF: It's with a buck slip on top,  
6 Superintendent's Action Memo and there's something  
7 attached to it.

8 (Pause)

9 MR. CHERTOFF: Now do you recognize this and  
10 the attachment?

11 (Pause)

12 THE WITNESS: Okay.

13 MR. CHERTOFF: Okay. Now first of all, again  
14 attached to this is -- is another report on the  
15 Committee meeting of the Committee that you had  
16 directed to be set up regarding racial profiling,  
17 correct?

18 THE WITNESS: Correct.

19 MR. CHERTOFF: And in particular, if I focus  
20 you on page two, fourth paragraph down it says,  
21 "Although there will be initial resistance from uniform  
22 personnel, use of the patrol chart for the recording  
23 and compilation of statistical data is believed to be  
24 the best choice for those reasons already set forth in  
25 prior reports. Upon approval of the Superintendent,

1 the Planning Bureau will be instructed to reconfigure  
2 the patrol chart for this purpose." Why was it your  
3 understanding that there'd be some resistance to this  
4 from uniform personnel?

5 THE WITNESS: I don't think it was my  
6 understanding. This is Sergeant Gilbert -- or  
7 Detective Gilbert's report. He's -- you know, I don't  
8 know -- I didn't write the report, sir.

9 MR. CHERTOFF: Well did you have an  
10 understanding of what he meant by that though?

11 THE WITNESS: Maybe a guess.

12 MR. CHERTOFF: Yeah.

13 THE WITNESS: What he meant? I guess he  
14 figures that he's telling me that there'll be a problem  
15 out there on the -- on the road with the -- for some  
16 reason with the troopers not -- not wanting to put down  
17 the information.

18 MR. CHERTOFF: Well did you ask anybody why  
19 they perceived that would be a problem with the road  
20 troopers?

21 THE WITNESS: Well --

22 MR. CHERTOFF: Was it laziness or just  
23 because they wouldn't want to caught out in terms of an  
24 accurate depiction of who they were stopping?

25 THE WITNESS: I have no idea, sir. The only

1 thing I can say is that if the decision came down from  
2 my office that they were going to do, they better do  
3 it.

4 MR. CHERTOFF: Now it also says at the bottom  
5 paragraph on the page, "The Search and Seizure  
6 Committee has been reformed and has met twice." Again  
7 following up on Mr. Sokol's question, does that refresh  
8 your memory that at a period of time it was not in  
9 existence or was essentially lapsed?

10 THE WITNESS: As I stated earlier, I think  
11 the -- you know, there might have been a period of time  
12 there when they were not active and doing what was  
13 necessary with regards to the SOP.

14 MR. CHERTOFF: Okay. Now on the buck slip  
15 here, you indicate -- is that your handwriting on the  
16 Superintendent's Action Memo?

17 THE WITNESS: Yes, sir.

18 MR. CHERTOFF: And it says, "Reconfiguration  
19 of patrol chart approved. Patrol charts" -- well  
20 actually why don't you read your writing?

21 THE WITNESS: Excuse me, sir?

22 MR. CHERTOFF: Is this your writing on the  
23 buck slip?

24 THE WITNESS: Yes, sir.

25 MR. CHERTOFF: Why don't you read your

1 writing where -- on the second half where it says,  
2 "Reconfiguration of patrol charts approved," why don't  
3 you continue to read that?

4 THE WITNESS: Mine's kind of dull here, but I  
5 think it says, "Patrol charts retained six years  
6 approved and radio logs retained six years approved."

7 MR. CHERTOFF: Now was the typical matter in  
8 which you would formally order something to take place?

9 THE WITNESS: Yes, sir.

10 MR. CHERTOFF: Finally on the last page of  
11 this memo it talks about, "The Gloucester County appeal  
12 is proceeding as planned. The Records and  
13 Identification Section has prepared an analysis of the  
14 arrest statistics for those troopers whose cases are  
15 the subject of the appeal." Does that -- in your mind  
16 did that -- was that the follow up of Sergeant  
17 Gilbert's earlier suggesting that there be analysis of  
18 the 19 -- of the records of the 19 troopers whose  
19 activities were the subject of the Gloucester County  
20 case in order to evaluate whether that appeal should go  
21 forward?

22 THE WITNESS: My recollection, yes, sir.

23 MR. CHERTOFF: It also says, "Preliminary  
24 analysis of enforcement activity for Perryville Station  
25 for the period 10/94 to 10/95 has also been completed."

1 Again, was it your understanding that was in response  
2 to the earlier indication that Sergeant Gilbert had  
3 requested this kind of analysis because of the  
4 Hunterdon County challenge?

5 THE WITNESS: Yes, sir.

6 MR. CHERTOFF: Who -- who, by the way, at  
7 this period of time in mid '96 was the liaison with  
8 respect to racial profiling between the State Police  
9 and the Department of Law and Public Safety?

10 THE WITNESS: Specifically I -- to the best  
11 of my recollection it was DAG Fahy and DAG Rover.

12 MR. CHERTOFF: And who from the State Police  
13 side did that liaison?

14 THE WITNESS: Detective Gilbert.

15 MR. CHERTOFF: Now I want to show you what  
16 we're going to mark now as CW-7. I'm sorry, I don't  
17 need to do that. It's already marked as F-12.

18 (Pause)

19 MS. GLADING: Do you recall what the analysis  
20 of the troopers in the Soto case showed?

21 THE WITNESS: Not right at this time, no.

22 MR. CHERTOFF: I think that actually comes up  
23 a little bit later.

24 MS. GLADING: Does it? Okay.

25 MR. CHERTOFF: I'm going to show you F-12 for

1 identification.

2 (Pause)

3 MR. CHERTOFF: I don't know if you're -- take  
4 a look and tell me if you've ever seen this document  
5 before?

6 (Pause)

7 THE WITNESS: Sir, I never remember seeing  
8 it.

9 MR. CHERTOFF: All right. Recognizing that,  
10 if you turn to the second page, it's a memo to Captain  
11 Touw from Jack Fahy indicating that there's a desire to  
12 get certain records, patrol charts and radio logs from  
13 a couple of troopers that are involved in a Mercer  
14 County selective prosecution litigation. And it  
15 indicates that, "Entering a preliminary consent order  
16 is part of a broader plan in which the State Police and  
17 the Attorney General's Office and the Public Defender's  
18 Office are attempting to resolve the issue of alleged  
19 racially selective stopping practices statewide." What  
20 was your understanding of this plan that's referred to,  
21 if any, at this point in time?

22 THE WITNESS: Like I said, sir, I -- this is  
23 the first time I recall ever seeing this -- this  
24 document.

25 MR. CHERTOFF: Were you aware that there was

1 an effort in mid '96 to resolve all of these  
2 outstanding challenges to selective prosecution by  
3 troopers all across the State?

4 THE WITNESS: I know that there was a --  
5 within the Office of the Attorney General, that there  
6 was an attempt being made to focus the attention of the  
7 organization and the Attorney General's Office to this  
8 alleged problem, yes.

9 MR. CHERTOFF: Okay. Now I'm going to show  
10 you CW-7, which is a memo dated July 16th to you  
11 regarding Trooper of the Year Award 1996 from Troop D  
12 from Captain Silvert.

13 (Pause)

14 MR. CHERTOFF: Now is this typical of the  
15 kind -- where you got recommendations for Trooper of  
16 the Year at this point in time?

17 THE WITNESS: To the best of my recollection,  
18 yes, sir.

19 MR. CHERTOFF: Now as I look at this, would  
20 you agree with me that essentially what's being laid  
21 out here as the basis for the award is simply the  
22 number of arrests and the amounts of money and drugs  
23 being seized?

24 THE WITNESS: That is correct, sir.

25 MR. CHERTOFF: When you got this, did you --

1 this is, of course, after you had gotten that  
2 recommendation from Sergeant Gilbert that there should  
3 be de-emphasis on statistics and a greater emphasis on  
4 more qualitative factors. Do you know what your  
5 response was to getting this -- these nominations for  
6 these two troopers regarding Trooper of the Year Awards  
7 based on essentially just statistics? Did you respond?

8 THE WITNESS: I don't -- I don't recall  
9 specifically ever receiving this. I think as I stated  
10 earlier, the process at the Awards Board -- this would  
11 go ultimately to the Awards Board and they would make a  
12 recommendation with additional information to me maybe  
13 with one or two or three people recommended to be the  
14 Trooper of the Year and I don't remember specifically  
15 seeing this -- these documents that you just presented  
16 to me.

17 MR. SOKOL: Do you recall who got the award  
18 that year?

19 THE WITNESS: No, I don't.

20 MR. SOKOL: Do you know if either Trooper  
21 Hickman or Trooper Guidetti got the award, does that  
22 refresh your recollection?

23 THE WITNESS: No, I don't -- I don't recall,  
24 sir.

25 MR. CHERTOFF: I'm going to show you now CW-

1 8, and you'll recall that in the prior report you had  
2 gotten from Sergeant Gilbert he'd made mention of an  
3 analysis that had been done about statistics at  
4 Moorestown.

5 (Pause)

6 MR. CHERTOFF: It's actually two documents.  
7 What you'll see in the package is --

8 MR. FISHER: So these two go together?

9 MR. CHERTOFF: Yeah. What you'll see is that  
10 F-17 which is attached to CW-8 is essentially the same  
11 as -- the first two pages of F-17 are the same as CW-8  
12 except CW-8 has handwriting on it whereas F-17 has  
13 documents that are the actual copies of the documents.  
14 So I want you to take a look at that.

15 (Pause)

16 MR. CHERTOFF: Now this is a memo to Major  
17 Fedorko. On the first page -- first two pages of CW-8,  
18 do you recognize the handwriting?

19 THE WITNESS: Yes, sir.

20 MR. CHERTOFF: Whose handwriting is that?

21 THE WITNESS: At the bottom?

22 MR. CHERTOFF: Yeah.

23 THE WITNESS: Mine.

24 MR. CHERTOFF: Okay. I want you to put --

25 MR. FISHER: Just so we're clear, when you

1 say that are you encompassing all the handwriting or  
2 just at the very bottom?

3 MR. CHERTOFF: Right. As -- read the words  
4 that are your handwriting on the -- on the first two  
5 pages of CW-8.

6 THE WITNESS: "Note, Station Commanders,  
7 Assistant Station Commanders will be responsible for  
8 this. If they see a problem it will be up to them to  
9 take the proper action."

10 MR. CHERTOFF: What about the next page?

11 THE WITNESS: "All Troop Inspection  
12 Lieutenants will check three to five and vests.  
13 Station Commanders, Assistant Station Commanders and  
14 CIV Troop Lieutenants will check warrantless arrests."

15 MR. CHERTOFF: Okay. Now if you look at the  
16 attachment to CW-8 which is F-17. That is the same  
17 cover memo without writing as well as the attachment,  
18 correct?

19 THE WITNESS: Yes, sir.

20 MR. CHERTOFF: And the attachment is actually  
21 the report of Lieutenant Hinkle regarding the 19  
22 troopers who were the subject of the Gloucester County  
23 litigation, correct?

24 THE WITNESS: That's my understanding, yes,  
25 sir.

1 MR. CHERTOFF: All right. Now what was your  
2 reaction to this report, the underlying report when you  
3 got it? Did you read it?

4 THE WITNESS: I'm sure I read the -- Colonel  
5 or Major Fedorko's report and I most likely read the  
6 attachment from Captain Touw --

7 MR. CHERTOFF: Now --

8 THE WITNESS: -- or from Lieutenant Hinkle,  
9 excuse me, to Captain Touw.

10 MR. CHERTOFF: If you go to the -- if you go  
11 to the memo that went to Major Fedorko on the second  
12 page, it says, "Additional facts established during the  
13 Moorestown audit, the percentage of minorities stopped  
14 by both minority and non-minority troopers was  
15 dramatically higher than the expert testified to in the  
16 Gloucester County trial." Do you remember reading  
17 that?

18 THE WITNESS: Yes, sir.

19 MR. CHERTOFF: Did you understand that was a  
20 significantly bad fact that had been discovered?

21 THE WITNESS: Well I -- I don't know if I'd  
22 call it a bad fact, but it was significant, you know,  
23 what the -- I guess what the background is, why the --  
24 why the stop was made, et cetera, I -- you know,  
25 there's more to just making a stop and statistics than

1 what they show on first blush.

2 MR. CHERTOFF: But you understood at first  
3 blush it was going to be a -- it was a bad fact because  
4 in fact --

5 THE WITNESS: Whoever --

6 MR. CHERTOFF: -- the proportions were even  
7 more tipped racially as developed by this audit than  
8 the figures that the judge was relying upon in the  
9 adverse decision in the Gloucester County case,  
10 correct?

11 THE WITNESS: Right. Whoever wrote this,  
12 that's what they stated.

13 MR. CHERTOFF: Okay. Did you report on this  
14 audit to anybody at the Department of Law and Public  
15 Safety? Did you talk about it with anybody?

16 THE WITNESS: I don't specifically remember  
17 doing that, no, sir.

18 MR. CHERTOFF: Did you ask anybody to tell  
19 Jack Gilbert about this?

20 THE WITNESS: I don't specifically remember,  
21 you know, telling somebody to do that --

22 MS. GLADING: I'm sorry, you said Jack  
23 Gilbert.

24 MR. CHERTOFF: I'm sorry, Tom Gilbert. Did  
25 you ask -- no, no. I'm sorry. Did you ask anybody to

1 tell Jack Fahy about this?

2 THE WITNESS: Not specifically, no, sir.

3 MR. CHERTOFF: Did you understand that there  
4 was a potential relationship between these findings and  
5 the ongoing Gloucester County appeal given that  
6 Sergeant Gilbert had previously indicated to you that  
7 they were going to do this analysis to determine  
8 whether they should continue with the appeal?

9 THE WITNESS: It was my understanding that  
10 there was an ongoing exchange of information between  
11 the State Police and the Attorney General's Office,  
12 either DAG Fahy or DAG Rover with all the information  
13 that was being gathered.

14 MR. CHERTOFF: Who told you that?

15 THE WITNESS: Who told me?

16 MR. CHERTOFF: Yeah. Where'd you get that  
17 impression that there was ongoing exchange of  
18 information?

19 THE WITNESS: From Detective Gilbert.

20 MR. CHERTOFF: Now let's go to your  
21 handwriting. It says here, there's a heading that  
22 says, "Future audits can be conducted at the Station  
23 level by instituting the following." And then the  
24 fourth bullet says, "The troopers racial tabulation can  
25 be formulated and recorded on his or her biannual

1 periodic evaluation reports as satisfactory, needs  
2 improvement or unsatisfactory." Why did you write no,  
3 exclamation point there?

4 THE WITNESS: Because I didn't think that was  
5 a place for that type of information to show up. The  
6 evaluation report had nothing to do with what their  
7 activity was. It was a -- strictly their work product  
8 out on the road. I also felt that there might be a  
9 problem contractually with the STFA and, you know,  
10 changing, all of a sudden changing the evaluation  
11 report without, I guess, negotiating with them so to  
12 speak. Those are -- those are the reasons that I --

13 MR. CHERTOFF: It goes on to say in that  
14 paragraph, in that bullet, "Troopers receiving two or  
15 more consecutive unsatisfactory evaluations will be  
16 referred to the Troop Commander, which could result in  
17 the trooper's transfer, referral to the Employees  
18 Assistance Program or a review of his or her conduct by  
19 the Internal Affairs Bureau." You wrote, "Station  
20 Commander, Assistant Station Commander will be  
21 responsible for this. If they see a problem it will be  
22 up to them to take the proper action." Why did you  
23 suggest that that be the way it be dealt with as  
24 opposed to what was recommended by Captain Touw in his  
25 memo to Major Fedorko?

1 THE WITNESS: Well, there were two reasons.  
2 Number one is that it was my feeling that the Station  
3 Commanders and Assistant Station Commanders were the  
4 people who were most aware and, you know, they were  
5 responsible for their troopers under their command.  
6 Secondly, there was already a process in IAB where if a  
7 trooper got X number of internal investigations they  
8 would be brought in to receive counseling and, you  
9 know, what's the problem, et cetera, et cetera, and it  
10 was brought to the attention of the Section Supervisor,  
11 Unit Leader, whatever.

12 MR. CHERTOFF: Well, the Station Commanders  
13 are below the Troop Commanders, correct?

14 THE WITNESS: Well, but they're in charge of  
15 their Station.

16 MR. CHERTOFF: Did it seem to you that by  
17 having -- leaving the discretion for taking action at  
18 the level of the Station Commander rather than taking  
19 it to the Troop Commander that it would be less likely  
20 that the Station Commander would want to antagonize  
21 personnel in the Station or take action if it went to a  
22 higher level?

23 THE WITNESS: No. I thought it would be  
24 more, you know, just the opposite, that the Station  
25 Commander would be, you know, the person to do it

1 because he knew his personnel, he knew what they were  
2 doing on a daily basis, and the -- you know, he was --  
3 he was aware of what was -- what was going on in his  
4 area of responsibility.

5 MR. CHERTOFF: Okay. On the next page you go  
6 -- there's a section that says, "The following  
7 recommendations are made for the review of criminal  
8 investigation reports." What are criminal  
9 investigation reports?

10 THE WITNESS: In other words, whenever an  
11 arrest is made, I guess you would say under 2C, there  
12 is a series of reports that have to be typed out and  
13 put together. And those are the -- you know, they  
14 synopsis of what happened, the purpose, the reasons why  
15 the individual's arrest -- there has to be an arrest  
16 report, there has to be fingerprint cards, photographs.  
17 If there's a vehicle involved there has to be a vehicle  
18 report. If there's contraband there has to be a  
19 property report. All these reports that make up a  
20 criminal arrest so that it can be processed through the  
21 criminal chain, I'll say, are -- you know, that's what  
22 constitutes a criminal report.

23 MR. CHERTOFF: Now, first recommendation is  
24 change SOP B-28 to include in the Troop Criminal  
25 Investigation Officer's inspection a review of three,

1 five investigations to ensure the investigation was  
2 conducted properly. What was SOP B-28?

3 THE WITNESS: I think -- again, I -- to the  
4 best of my recollection the -- that was the SOP with  
5 regards to how the Troop Lieutenants would, when they  
6 go out on the Station inspections, in other words, the  
7 Troop Lieutenants were responsible to do so many  
8 Station inspections each month. And that more or less,  
9 I guess, laid out their responsibility.

10 MR. CHERTOFF: Well, what -- you say, all  
11 Troop Inspecting Lieutenants will --

12 THE WITNESS: That's correct.

13 MR. CHERTOFF: -- check three to five  
14 investigations. Is that different from the inspection  
15 by the Troop Criminal Investigation Officer?

16 THE WITNESS: What I was getting at there is  
17 that instead of just having, when the Criminal  
18 Investigations Lieutenant went to the Station and, you  
19 know, just did criminal investigations, I wanted all  
20 the Lieutenants, be it administration, the Traffic  
21 Lieutenant, whoever it may be, to take an active part,  
22 and also to get involved in looking, you know, when he  
23 was there, or she was there, to look into those  
24 investigations and check into them, not only that one  
25 person, that CIS Lieutenant from the Troop. I wanted

1 more involvement than was outlined in the -- in the  
2 SOP.

3 MR. CHERTOFF: And the next one then says,  
4 establish the responsibility for the review of all  
5 warrantless arrests, responsibility at the Station  
6 level and Troop Bureau levels. And you write, Station  
7 Commander and Assistant Station Commander and CIB Troop  
8 Lieutenants will check warrantless arrests. Would CIB  
9 Troop Lieutenants, those would be the Criminal  
10 Investigation Officers at the Troop level?

11 THE WITNESS: Correct.

12 MR. CHERTOFF: Now, having written these  
13 instructions on this form, did you send -- did you give  
14 it to somebody, pass it on to somebody to be  
15 implemented?

16 THE WITNESS: Well, again, it, you know, it  
17 should have gone back through the chain of command and  
18 been implemented, yes.

19 MR. CHERTOFF: All right. Let me show you G-  
20 7 for identification.

21 MR. FISHER: Mr. Chertoff, would it be  
22 convenient to take a break for a moment to --

23 MR. CHERTOFF: You know, actually, let me  
24 finish going through this one thing, and then I think  
25 we will maybe take a lunch break.

1 MR. FISHER: Okay. Fine.

2 (Pause)

3 MR. CHERTOFF: You see there are two versions  
4 of the same document, but one -- under G-7, but one has  
5 attached a lesson plan in Sea Girt and the other one  
6 has attached your buck slip, October 16, '96, with  
7 certain instructions. Am I correct that attached --  
8 the buck slip that says, Superintendent's action  
9 number, that's all your handwriting?

10 THE WITNESS: Well, some of -- most of it is.  
11 The part there where it says, Detective T. Gilbert,  
12 note Colonel's comments, and the initials there, that's  
13 not mine.

14 MR. CHERTOFF: Whose writing is that?

15 THE WITNESS: Got me on that one. I don't --  
16 I really don't know. I don't -- it could have been --  
17 I don't know.

18 MR. CHERTOFF: If you look at the memo from  
19 Detective Gilbert to you on page three, third  
20 paragraph, it says, "A report submitted by Captain Touw  
21 concerning the Moorestown Station indicates that the  
22 moves to enhance proper call-in procedures have had an  
23 impact, with an analysis being able to racially  
24 identify 90.2 percent of the stops which were  
25 examined." Did you understand that to refer to the

1 memo we just saw previously, to you -- to Major Fedorko  
2 from Captain Touw concerning the Moorestown --

3 THE WITNESS: I interpret that, you know, as  
4 the process that has begun to gather the information on  
5 the patrol charts, yes.

6 MR. CHERTOFF: Finally, the last page says,  
7 "A final recommendation would be that the Search and  
8 Seizure Committee conduct a thorough review of SOP F-  
9 55, Motor Vehicle Searches and Seizures, and make any  
10 recommendations as to any needed updating or  
11 enhancement. SOP F-55 has not been updated since June  
12 7, 1990." Did you ask that that be carried out?

13 THE WITNESS: I don't recall specifically if  
14 I did or not, but I don't see why I wouldn't.

15 MR. CHERTOFF: You don't know one way or the  
16 other.

17 THE WITNESS: I can't recall specifically,  
18 no, sir.

19 MR. CHERTOFF: All right. Now as of  
20 November, 1996 Peter Verniero was the Attorney General,  
21 correct?

22 THE WITNESS: Yes, sir.

23 MR. CHERTOFF: When he came in over the  
24 summer did you meet with him as part of his transition?

25 THE WITNESS: I met with him several times,

1 yes, sir.

2 MR. CHERTOFF: In the transition phase did  
3 you have discussions with him about racial profiling?

4 THE WITNESS: We had discussion about the  
5 Soto case and where that was going, and the various  
6 other cases that were involved with the State Police  
7 and were being jointly, and again, I'll use the word,  
8 looked at with the Attorney General's Office with their  
9 guidance and input.

10 MR. CHERTOFF: Again, focusing on the  
11 transition phase, what were those discussions you had  
12 with Peter Verniero about these cases?

13 THE WITNESS: I -- you know, I can't recall  
14 specific conversations, sir.

15 MR. CHERTOFF: How about generally? What was  
16 his reaction? Did he -- I mean, did he say anything  
17 one way or the other? Did he indicate a reaction?

18 THE WITNESS: Well, the -- you know, the  
19 only, I guess you call it the reaction, you know, that  
20 was -- that I came away with a feeling, a positive  
21 feeling, that the -- that the Soto case was going to  
22 continue as, you know, the appeal in the Soto case, and  
23 that they were part of a team effort to look into the -  
24 - into the other allegations and to, I guess you would  
25 say, take the part of the State Police and be aware of,

1 you know, what's going on out there.

2 MR. CHERTOFF: Did you in this -- in these  
3 conversations -- at the time of the transition, did you  
4 have discussions with him where you talked to him about  
5 the changes you were making in terms of auditing and  
6 review of statistics going forward?

7 THE WITNESS: I can't recall specifically  
8 saying, you know, this is -- today I'm doing this, this  
9 and this. Generally, you know, I would say that he was  
10 aware of -- either from me and/or from the input from  
11 the people in the Attorney General's Office.

12 MR. CHERTOFF: What's your basis for saying  
13 that?

14 THE WITNESS: Well, the various meetings that  
15 we would have with the -- with the -- Fahy, Rover and  
16 the  
17 other--

18 MR. CHERTOFF: Well, I want to focus only on  
19 the transition period. I know there was meetings  
20 later. I wanted -- I'm just focusing on the transition  
21 period.

22 MR. FISHER: Can we perhaps identify what you  
23 understand or --

24 MR. CHERTOFF: I'd say --

25 MR. FISHER: -- or what the witness would --

1 MR. CHERTOFF: -- before October of 1996, the  
2 first two to three months of Attorney General  
3 Verniero's tenure.

4 THE WITNESS: Again, I can't recall any --  
5 one specific, you know, meeting or time that we -- that  
6 we discussed specifically racial profiling.

7 MR. CHERTOFF: In that period?

8 THE WITNESS: In that period, but I do recall  
9 discussing, you know, and I'll use the word what had  
10 transpired in the past, more or less what he inherited  
11 from the, I'm going to use, the Poritz era, General  
12 Poritz.

13 MR. CHERTOFF: In November of 1996 did you  
14 become aware that the Department of Justice in  
15 Washington was beginning an inquiry into the issue of  
16 racial profiling by the State Police?

17 THE WITNESS: It was around that time, yes, I  
18 --

19 MR. CHERTOFF: How did you -- how were you  
20 made aware of it?

21 THE WITNESS: Again, I think it was with the  
22 advice from the Attorney General's Office, you know,  
23 making me aware of it with George Rover and possibly  
24 other people that were there that, you know, made me  
25 aware that the Justice Department had started to make

1 various inquiries.

2 MR. CHERTOFF: Well, do you remember how it  
3 first came to your attention?

4 THE WITNESS: No, sir, I don't.

5 MR. CHERTOFF: Pardon?

6 THE WITNESS: No, sir, I don't.

7 MR. CHERTOFF: Did you become aware in early  
8 December of 1996 that there was going to be a meeting  
9 at the Department of Justice with Attorney General  
10 Verniero?

11 THE WITNESS: Could you repeat that question

12 --

13 MR. CHERTOFF: Did you become aware in early  
14 December, '96 that there was going to be a meeting  
15 coming up at the Department of Justice in Washington  
16 with Peter Verniero?

17 THE WITNESS: Yes, sir.

18 MR. CHERTOFF: Were you invited to come to  
19 that meeting?

20 THE WITNESS: No, sir, I was not.

21 MR. CHERTOFF: Was there a meeting in advance  
22 of that Department of Justice meeting?

23 THE WITNESS: To my recollection, yes, sir.

24 MR. CHERTOFF: Was that on December 9th?

25 THE WITNESS: To the best of my recollection,

1 yes, sir.

2 MR. CHERTOFF: How were you invited to that  
3 meeting?

4 THE WITNESS: I would most likely have been  
5 told by my secretary that a meeting was scheduled for  
6 me to -- at the Attorney General's Office, such and a  
7 such a date, such and such a time.

8 MR. CHERTOFF: And you went?

9 THE WITNESS: Absolutely.

10 MR. CHERTOFF: Did you go by yourself?

11 THE WITNESS: Again, without having, you  
12 know, my records in front of me, I think I did but I'm  
13 not sure.

14 MR. CHERTOFF: Is there some record that  
15 would help you determine whether you went by yourself?

16 THE WITNESS: Well, those diaries that --

17 MR. CHERTOFF: All right. So if he has the  
18 diaries it may be able to help you later with them.

19 THE WITNESS: You know, what happened was --  
20 I think you'll see in there's -- my secretary would put  
21 down, you know, if I was to be there and anybody else  
22 who was to be there, who I was supposed to bring or  
23 whatever, she might mention those names in the -- on  
24 that specific date.

25 MR. CHERTOFF: All right. Now, you --

1 MR. FISHER: Mr. Chertoff, I'm sorry, again,  
2 could we have a momentary break so --

3 MR. CHERTOFF: Sure. All right. Why don't  
4 we take a break for a few minutes? And then I'm --  
5 just for planning purposes, I was going to basically go  
6 through the end of '96 and then break for lunch --

7 MR. FISHER: That's all right --

8 MR. CHERTOFF: -- take --

9 MR. FISHER: -- we just need a minute to --

10 MR. CHERTOFF: No problem.

11 (Off the record)

12 MR. CHERTOFF: All right. Colonel, directing  
13 your attention to February 9th, did you attend --  
14 December -- I'm sorry, December 9th, 1996, did you  
15 attend a meeting in the afternoon with Alexander Waugh  
16 of the Office of the Attorney General, Jack Fahy,  
17 Jaynee LaVecchia of the Division of Law, and Attorney  
18 General Verniero, related to racial profiling?

19 THE WITNESS: I attended a meeting that date,  
20 yes, sir, and --

21 MR. CHERTOFF: And --

22 THE WITNESS: -- I think the date was January

23 --

24 MR. CHERTOFF: No, I'm talking about December  
25 now--

1 THE WITNESS: December --

2 MR. CHERTOFF: -- December 9th.

3 THE WITNESS: And I think that was a meeting  
4 about what was going to happen with the Attorney  
5 General going down to Washington later that week.

6 MR. CHERTOFF: What happened at the meeting?

7 THE WITNESS: Again, I can't remember  
8 specifically, but, you know, generally it was an  
9 agreement that the Attorney General would go down and  
10 represent the Division of State Police and try to, I  
11 guess ascertain exactly what direction that the  
12 Department of Justice was going in and what, you know,  
13 what they -- what they wanted, what they had in mind,  
14 and, you know, work on those -- work from there.

15 MR. CHERTOFF: Were you concerned about the  
16 possibility of a Civil Rights Division inquiry into  
17 racial profiling?

18 THE WITNESS: No, sir.

19 MR. CHERTOFF: Did you believe at that point  
20 in time there was racial profiling going on?

21 THE WITNESS: Throughout the organization?  
22 No, sir.

23 MR. CHERTOFF: At -- in places in the  
24 organization?

25 THE WITNESS: Well, there's -- you know, I

1 had something like 1,200 troopers on the road, you  
2 know, I don't know if there was maybe one or two,  
3 there's a possibility, but, you know, anything's  
4 possible.

5 MR. CHERTOFF: Well, by this point in time  
6 you had had the results of the Moorestown audit,  
7 correct?

8 THE WITNESS: Yes, sir.

9 MR. CHERTOFF: And those results showed a  
10 considerable disparity, for example, as it relates to  
11 consent searches between the number of minorities asked  
12 to consent to search versus the number of non-  
13 minorities. That didn't strike you as troubling?

14 THE WITNESS: As I said, sir, it was -- you  
15 know, it piqued my concern, but, again, there's a total  
16 picture, and I was waiting for more information to come  
17 in with regards to that total picture.

18 MR. CHERTOFF: Well, what were you waiting  
19 for?

20 THE WITNESS: A longer time period, a more  
21 detailed analysis of, you know, what precipitated the  
22 stop, what ended up, you know, as a result of the stop,  
23 et cetera, et cetera.

24 MR. CHERTOFF: Well, did you direct people to  
25 go out and interview the troopers and investigate why

1 they had decided to make stops?

2 THE WITNESS: Again --

3 MR. CHERTOFF: Did you direct people to go  
4 out and interview the troopers and ask them why they  
5 had made particular stops?

6 THE WITNESS: It was my understanding that  
7 was all part of what was -- information gathering that  
8 was taking place at the time.

9 MR. CHERTOFF: Now, in the meeting with  
10 Attorney General Verniero on December 9th, did anybody  
11 ask you whether you believed racial profiling was a  
12 problem?

13 THE WITNESS: Not that I specifically recall,  
14 no, sir.

15 MR. CHERTOFF: How about generally?

16 THE WITNESS: Not that I recall.

17 MR. CHERTOFF: Did you in the meeting explain  
18 that you were in the process of having people  
19 investigate whether there was a problem at the  
20 Moorestown Barracks?

21 THE WITNESS: I think that, again, that was  
22 understood, that that investigation was a result of the  
23 Soto decision that was -- that was going on, and I  
24 don't know if I discussed that specifically or not.

25 MR. CHERTOFF: How do you know it was

1 understood?

2 THE WITNESS: Well, I don't know it was  
3 understood or not, but, you know, if -- Jack Fahy was  
4 there at the meeting with the -- you know, at that  
5 time, and he was the -- he was the person that was  
6 responsible for the Soto appeal that was ongoing.

7 MR. CHERTOFF: Well, let me ask you this.  
8 You're called in for a meeting on December 9th, right?

9 THE WITNESS: Um-hmm.

10 MR. CHERTOFF: You understand that there's  
11 going to be a meeting at the Department of Justice  
12 about a possible civil rights inquiry, right?

13 THE WITNESS: I was made aware of that, yes.

14 MR. CHERTOFF: Right. So -- and that's a  
15 fairly important thing, right?

16 THE WITNESS: Yes, sir.

17 MR. CHERTOFF: And the issue is, what  
18 position is the Attorney General going take when he  
19 goes down to Washington, right?

20 THE WITNESS: Yes, sir.

21 MR. CHERTOFF: Was there discussion there  
22 about the underlying facts? In other words, do we have  
23 anything to worry about, is there a problem here?

24 THE WITNESS: As I said, to the best of my  
25 recollection there was an overview discussion of, you

1 know, what had transpired since the Soto decision.

2 MR. CHERTOFF: And who gave the overview  
3 discussion?

4 THE WITNESS: Well, if I remember correctly,  
5 it was DAG Fahy.

6 MR. CHERTOFF: Giving the legal -- what  
7 happened legally, right, in terms of the appeal and  
8 everything?

9 THE WITNESS: Right.

10 MR. CHERTOFF: But who gave the overview  
11 about what was actually going on at the State Police?

12 THE WITNESS: I don't know if that was  
13 discussed or not, you know, or what context it was.  
14 And I guess if any questions were asked I gave the  
15 answer.

16 MR. CHERTOFF: Did somebody ask you, is there  
17 a problem now in any of the Stations that we need to be  
18 aware of that?

19 THE WITNESS: I don't specifically remember  
20 that question being asked.

21 MR. CHERTOFF: How about in general? Did  
22 people probe to find out whether there was an actual  
23 underlying set of facts that could show racial  
24 profiling?

25 THE WITNESS: Again, I can't -- I can't

1 specifically say that, you know, I was asked that  
2 question.

3 MR. CHERTOFF: Again, not specifically, in  
4 general did the topic of what was actually going on in  
5 1996, did that topic come up?

6 THE WITNESS: I can't recall that  
7 specifically coming up sir, I --

8 MR. CHERTOFF: What else do you remember  
9 about this meeting on December 9th?

10 THE WITNESS: That's about it.

11 MR. CHERTOFF: Did the Attorney General seem  
12 interested in what was going on?

13 THE WITNESS: Yes, he did.

14 MR. CHERTOFF: Were you interested in what  
15 was going on?

16 THE WITNESS: Yes, I was.

17 MR. CHERTOFF: Was there any follow-up that  
18 any -- that you were required to do as a result of the  
19 meeting?

20 THE WITNESS: I can't recall at this time if  
21 there was or not, if I was asked to do anymore or  
22 provide anymore records or answer anymore questions --

23 MR. CHERTOFF: Did you volunteer to provide  
24 more records?

25 THE WITNESS: I'd do anything they wanted.

1 MR. CHERTOFF: Going back in time, by the  
2 way, when you were sitting with Attorney General Poritz  
3 in 1996 in the wake of the Soto decision, did she ever  
4 ask you, is there racial profiling going on?

5 THE WITNESS: Not specifically, no.

6 MR. CHERTOFF: How about generally?

7 THE WITNESS: Not that I recall.

8 MR. CHERTOFF: Did you ever tell her one way  
9 or the other that there was racial profiling going on?

10 THE WITNESS: Not that -- not that I recall,  
11 no, sir.

12 MR. CHERTOFF: And in the meeting on December  
13 9th you did not mention the fact that there was an  
14 ongoing audit at Moorestown that showed statistical  
15 differences between the way minorities and non-  
16 minorities were being treated?

17 THE WITNESS: I don't recall saying that,  
18 sir.

19 MR. CHERTOFF: Didn't you think that would be  
20 an important issue for them to know about before they  
21 went down to the Department of Justice to negotiate  
22 about this inquiry?

23 THE WITNESS: Like I said, I don't recall if  
24 I mentioned it or I didn't mention it.

25 MR. CHERTOFF: You didn't go down on December

1 12th to the meeting, did you?

2 THE WITNESS: No, sir.

3 MR. CHERTOFF: When's the next time you had a  
4 meeting about racial profiling with the Attorney  
5 General?

6 THE WITNESS: I don't recall specifically.

7 MR. CHERTOFF: Was it Christmas Eve, 1996?

8 THE WITNESS: Could have been, yes, sir --

9 MR. CHERTOFF: Would it refresh your memory  
10 if I read to you from your certification in Williams v.  
11 Verniero, at paragraph five, where you say, "There was  
12 a meeting involving me, Mr. Waugh and Mr. Fahy on  
13 Christmas Eve, December 24th, 1996, at which time they  
14 advised me the results of the Department of Justice  
15 meeting," does that remind you if there was a meeting  
16 Christmas Even, 1996?

17 THE WITNESS: Yes, sir.

18 MR. CHERTOFF: How did you come to go to that  
19 meeting?

20 THE WITNESS: I'm sure I was told by my  
21 secretary to -- that a meeting had been scheduled for  
22 me to go down and speak with the Attorney General.

23 MR. CHERTOFF: Now, am I correct that even in  
24 the State Police Christmas Eve -- I'm going to withdraw  
25 the question. Is Christmas Eve a busy or slow time

1 around the State Police?

2 THE WITNESS: Well, I think it's not only the  
3 State Police but I think State Government in general  
4 it's a slow time.

5 MR. CHERTOFF: Were you surprised to be asked  
6 to come to a meeting on Christmas Eve about racial  
7 profiling?

8 THE WITNESS: I think there was -- I think,  
9 if I remember correctly, there was another issue that  
10 we discussed at that meeting, and that was a promotion  
11 list that I wanted to get out. So, no, I wasn't  
12 surprised.

13 MR. CHERTOFF: Mr. Waugh was at the meeting?

14 THE WITNESS: I don't recall.

15 MR. CHERTOFF: Mr. Fahy?

16 THE WITNESS: I don't recall.

17 MR. CHERTOFF: Do you know who Mr. Waugh was  
18 in 1996?

19 THE WITNESS: Yes, sir, I do.

20 MR. CHERTOFF: He was the Executive Assistant  
21 Attorney General?

22 THE WITNESS: He was -- yeah.

23 MR. CHERTOFF: Was he involved in the racial  
24 profiling issue as it relates to the Department of  
25 Justice?

1 THE WITNESS: To the best of my recollection  
2 he was, yes.

3 MR. CHERTOFF: Okay. What was discussed at  
4 the meeting on December 24th?

5 THE WITNESS: Well, again --

6 MS. GLADING: Excuse me. Was Sergeant  
7 Gilbert at the meeting, do you recall?

8 THE WITNESS: He might have been, but I'm not  
9 positive. I think -- I think he might have been there,  
10 yes. As I said, the -- I think there were two  
11 meetings, or two topics that were discussed. One was  
12 the alleged profiling problem in the State Police and  
13 the promotional -- the promotion --

14 MR. CHERTOFF: What was discussed about the  
15 profiling issue?

16 THE WITNESS: Again, specifically, where we  
17 were, where we're going, and what's -- you know, what's  
18 the next step with regards to the information that's  
19 being requested by the Justice Department to, you know,  
20 be sure that I cooperate with the Justice Department,  
21 everybody else.

22 MR. CHERTOFF: What was said about that?

23 THE WITNESS: And I can't remember  
24 specifically what was said.

25 MR. CHERTOFF: How about generally?

1 THE WITNESS: I can't remember, you know,  
2 specifically or -- what was -- what was said at that  
3 meeting.

4 MR. CHERTOFF: Well, did they -- did they  
5 come back and say, great news, we're happy with the way  
6 things are going, or was it, oh, boy, we're in a lot of  
7 trouble, or was it indifference? What was the general  
8 message of the meeting?

9 THE WITNESS: Well, I think that there was  
10 some -- you know, I don't think it was, oh, boy, it's  
11 great news, but, you know, this is what the -- this  
12 seems to be the way the Justice Department is going,  
13 this is what they're looking at, this is what's going  
14 to be needed, et cetera, et cetera.

15 MR. CHERTOFF: Anything else you remember  
16 about it?

17 THE WITNESS: No, sir.

18 MR. CHERTOFF: Were you left with something  
19 to follow up on after the meeting?

20 THE WITNESS: I don't specifically recall  
21 that, you know, being the case.

22 MR. CHERTOFF: At this point, at the end of  
23 the year, 1996, what was your personal reaction to the  
24 idea of the Civil Rights Division of the Department of  
25 Justice investigating your organization?

1 THE WITNESS: Well, I was concerned, you  
2 know, that -- and -- but I was also of the opinion  
3 that, you know, we were doing things the right way, we  
4 were trying to, you know, adhere to all the mandates  
5 that were out there with regards to search and seizure  
6 and the processes with regards to criminal arrests.

7 MR. CHERTOFF: You didn't -- you weren't  
8 troubled by the results of the Moorestown audit?

9 THE WITNESS: As I stated earlier, I was -- I  
10 was concerned, but again, I was waiting for more  
11 information to come in.

12 MR. SOKOL: Colonel, do you recall at the  
13 December 9th meeting a discussion among the  
14 participants, not necessarily you, regarding the data  
15 that would be transmitted to the Department of Justice?

16 THE WITNESS: I know sometime in that period  
17 there was a discussion about what Justice -- the  
18 Department of Justice wanted, and I don't -- can't  
19 recall specifically which meeting it was at that that  
20 was --

21 MR. SOKOL: Well, then collectively, at  
22 either the December 9th or December 24th meeting, was  
23 there a data among the participants about the data that  
24 would be conveyed to the Department of Justice?

25 THE WITNESS: To my recollection there was --

1 there was that type of discussion, yes.

2 MR. SOKOL: And to the best of your  
3 recollection, what was discussed about the data?

4 THE WITNESS: Well, you know, this is -- this  
5 is what the -- looked like the way the Justice  
6 Department was going, and this is the, you know,  
7 possibly the information that they want to obtain.

8 MR. SOKOL: Was there any discussion about  
9 limiting the amount of information that would be  
10 transmitted?

11 THE WITNESS: Not limiting the information.  
12 There was a discussion about the availability of the  
13 information that they were asking for, and by that I  
14 mean, you know, the retention of records, documents  
15 that they thought might be available that because of  
16 our record keeping system weren't available, et cetera,  
17 et cetera.

18 MR. SOKOL: At the Christmas Eve meeting were  
19 you given the request from the Department of Justice  
20 for additional information?

21 THE WITNESS: I don't recall specifically if  
22 I got it then or thereafter, soon thereafter, when  
23 exactly I got it.

24 MR. SOKOL: But you did receive it sometime  
25 around then -- correct?

1 THE WITNESS: I think it was through DAG  
2 Rover, and I don't know if it came specifically to me  
3 or to Gilbert then to me, but somehow in that scenario.

4 MR. SOKOL: And it was in writing?

5 THE WITNESS: I don't recall, sir.

6 MR. CHERTOFF: Let's take a break for lunch.  
7 Why don't we resume at 1:15?

8 (Luncheon recess)

9 MR. CHERTOFF: Now, Colonel Williams, I want  
10 to move you now to 1997. Did you become aware of the  
11 fact that early January, 1997 that there was a Justice  
12 Department request for information from the State  
13 Police?

14 THE WITNESS: Yes, sir.

15 MR. CHERTOFF: And did you assign Sergeant  
16 Gilbert to carry out the function of dealing with the  
17 Department of Law and Public Safety in responding to  
18 that request for information?

19 THE WITNESS: Yes, sir.

20 MR. CHERTOFF: Okay. I want to show you --

21 THE WITNESS: And the Division of State  
22 Police, also, both ways.

23 MR. CHERTOFF: Okay. I want to show you  
24 what's been previously marked as G-12 for  
25 identification.

1 (Pause)

2 MR. CHERTOFF: Do you remember seeing this  
3 document?

4 THE WITNESS: Yes, sir.

5 MR. CHERTOFF: Now, you initialed it, showing  
6 that you read it on January 9th, 1997, correct?

7 THE WITNESS: Yes, sir.

8 MR. CHERTOFF: And this was basically a  
9 report from Sergeant Gilbert to you about what would be  
10 required to respond to the request or the draft  
11 information request that was attached to the report,  
12 correct?

13 THE WITNESS: Yes, sir.

14 MR. CHERTOFF: Now, you had a meeting on  
15 January 10th with Attorney General Verniero and  
16 Alexander Waugh about this issue, right?

17 THE WITNESS: Yes, sir.

18 MR. CHERTOFF: And what was the -- where did  
19 the meeting take place?

20 THE WITNESS: Best of my recollection, it  
21 took place at the Attorney General's Office.

22 MR. CHERTOFF: And why did you have the  
23 meeting? Why did you have the meeting?

24 THE WITNESS: Because I was told to be there.

25 MR. CHERTOFF: And what were you told the

1 subject would be?

2 THE WITNESS: I don't know if I was told the  
3 subject or -- you know, I'd have to -- that diary  
4 that's, you know, would be there, whether there's a  
5 reason in there or not. I can't specifically remember  
6 right now exactly what the subject was.

7 MR. CHERTOFF: Well, from looking at your  
8 note here, you wrote a note on January 10th, 1997.  
9 That's your handwriting, right?

10 THE WITNESS: Right. Now I know what --

11 MR. CHERTOFF: Okay. And that --

12 THE WITNESS: -- you know, what the meeting  
13 was about.

14 MR. CHERTOFF: -- did you bring this memo to  
15 the meeting?

16 THE WITNESS: Excuse me?

17 MR. CHERTOFF: Did you bring this memo to the  
18 meeting?

19 THE WITNESS: Not that I recall, no, sir.

20 MR. CHERTOFF: But you made this note  
21 afterwards?

22 THE WITNESS: Yes, sir.

23 MR. CHERTOFF: And then why'd you -- why'd  
24 you make that note?

25 THE WITNESS: To inform then Sergeant Gilbert

1 what the results of that meeting I had with Attorney  
2 General Verniero and Assistant Attorney General Waugh.

3 MR. CHERTOFF: Can I assume from that that  
4 Sergeant Gilbert did not go with you to the meeting?

5 THE WITNESS: I don't recall him being there.

6 MR. CHERTOFF: What about anybody else from  
7 the State Police?

8 THE WITNESS: Again, I don't recall anybody  
9 else going with me.

10 MR. CHERTOFF: What happened at the meeting?

11 THE WITNESS: Well, you know, this -- to the  
12 best of my recollection with the -- which is refreshed  
13 here is that the -- I was given a direction as to the  
14 information the Department of Justice would be  
15 receiving, and that instead of making it the entire  
16 Division of State Police with regards to statistics,  
17 that it would be restricted to the Turnpike with the  
18 Cranbury and Moorestown Station being the prime focus.

19 MR. CHERTOFF: Well, who told you that? Who  
20 told you that it would be restricted?

21 THE WITNESS: Specifically I can't recall,  
22 sir.

23 MR. CHERTOFF: Did you have a discussion in  
24 the meeting with Attorney General Verniero and  
25 Assistant Attorney General Waugh about why it would be

1 desirable to restrict the scope of the request?

2 THE WITNESS: Well, it's my -- if I remember  
3 correctly it was DAG Rover was dealing with the  
4 individuals from the Department of Justice who were  
5 handling this case in Washington. And again, to the  
6 best of my recollection, there was an agreement made  
7 between them with input from DAG Rover as to what  
8 records would be provided to them at that time.

9 MR. CHERTOFF: Was that based upon, to your  
10 knowledge from that meeting on January 10th, was that  
11 based upon some kind of representation to the  
12 Department of Justice that it would be very difficult  
13 to get data together from other stations?

14 THE WITNESS: I think it was one of the -- it  
15 would be very difficult to get an entire Division worth  
16 of data together, so I think there was a decision made  
17 to limit it to those two stations by mutual agreement.

18 MR. CHERTOFF: There was only one additional  
19 station, though, that would be the Newark Station,  
20 correct, on the Turnpike?

21 THE WITNESS: On the Turnpike, yes, sir.

22 MR. CHERTOFF: And if you look at page two,  
23 section two, it says, in the fourth paragraph, "Section  
24 two calls for data on post stop action in respect to  
25 race, ethnicity." What did you understand post stop

1 action to be ?

2 THE WITNESS: Where's that -- which --

3 MR. CHERTOFF: Page two, fourth paragraph.

4 THE WITNESS: I would -- in my opinion, what  
5 that post stop means is that the -- that would be the  
6 radio logs from the communications operators where the  
7 trooper's been instructed to call in the race of the  
8 individual that they're stopping.

9 MR. CHERTOFF: Doesn't post stop action mean  
10 things like arrests and consent to search reports?

11 THE WITNESS: I think, you know, it would be  
12 an entire package, yes.

13 MR. CHERTOFF: So you understood that post  
14 stop action would be not just information with respect  
15 to stops but would include information about subsequent  
16 enforcements like -- enforcement activities like  
17 searches, consents to search and arrests, right?

18 THE WITNESS: Yes, sir.

19 MR. CHERTOFF: Tell us what else you remember  
20 about this meeting on January 10th. Was there  
21 discussion with the Attorney General and Assistant  
22 Attorney General Waugh about the scope of the federal  
23 investigation, where it was going, what they might  
24 find, things of that sort?

25 THE WITNESS: I can't specifically recall

1 exactly what, you know, who said what, when and, you  
2 know, what was the -- what the subject matter --

3 MR. CHERTOFF: Forget specific. Generally  
4 what was -- what did you go to the meeting to talk  
5 about?

6 THE WITNESS: Well, again, what the -- what  
7 the Justice Department wanted from the State Police as  
8 far as records provided.

9 MR. CHERTOFF: Well, you see attached to  
10 Exhibit G-12 there is an actual typed request form,  
11 right?

12 THE WITNESS: Yes, sir.

13 MR. CHERTOFF: So you had that before, right?

14 THE WITNESS: Excuse me?

15 MR. CHERTOFF: You had that before, it was  
16 part of this memo, right?

17 THE WITNESS: Part of this memo, yes, sir.

18 MR. CHERTOFF: Right. So why did you need to  
19 go to the Attorney General's Office and see with two  
20 very high ranking officials of the Department of Law  
21 and Public Safety simply to repeat what's in a written  
22 document?

23 THE WITNESS: Because I was ordered to be at  
24 the Attorney General's Office and talk to him.

25 MR. CHERTOFF: Was the point to make a

1 recommendation or to discuss what cause of action --  
2 what course of action to take?

3 THE WITNESS: I'm sure that, you know, we  
4 discussed the contents of the requests from the  
5 Department of Justice and what we were going to do as  
6 an organization, both the Attorney General's Office and  
7 the State Police, to confront  
8 -- to do what they asked to do, provide what records  
9 they wanted us to provide.

10 MR. CHERTOFF: In your experience does the  
11 Attorney General of the State of New Jersey and the  
12 Superintendent of the State Police sit down to discuss  
13 document requests in litigation as a routine matter?

14 THE WITNESS: I wouldn't say as a routine  
15 matter but --

16 MR. CHERTOFF: Was there ever in your  
17 experience as a Superintendent any other time you went  
18 to discuss responding to discovery requests with the  
19 Attorney General outside of in the context of racial  
20 profiling matters?

21 THE WITNESS: With any other case --

22 MR. CHERTOFF: Yeah.

23 THE WITNESS: -- any case at all?

24 MR. CHERTOFF: With the Attorney General  
25 himself or herself, you personally.

1 THE WITNESS: I can't -- I can't specifically  
2 recall, you know, one instance.

3 MR. CHERTOFF: This is the only one you can  
4 think of, right, in connection with racial profiling?

5 THE WITNESS: Again, you know, with  
6 refreshing my memory with the document, this is the  
7 only one that I can recall right now, yes.

8 MR. CHERTOFF: And you can't remember  
9 anything of substance that was said at that meeting?

10 THE WITNESS: Not at this time, no, sir.

11 MR. CHERTOFF: Is there something I could  
12 give you or show you that would help you refresh your  
13 memory besides this memo?

14 THE WITNESS: If you have something else, I -  
15 - you know, I can't -- I can't recall at this time  
16 specifically what was discussed at that meeting.

17 MR. CHERTOFF: Did you discuss the appeals at  
18 that meeting from Soto?

19 THE WITNESS: The Soto case?

20 MR. CHERTOFF: Yeah.

21 THE WITNESS: It's possible. I don't --

22 MR. CHERTOFF: Was there a connection drawn  
23 in the meeting between what was going to be litigated  
24 in the Soto case and what you were being required to  
25 turn over to the Civil Rights Division?

1 THE WITNESS: There was -- there was a  
2 parallel gathering of documents and, you know, whether  
3 it was discussed at that time, I -- I can't recall.

4 MR. CHERTOFF: Was there a discussion about  
5 the effect that the Civil Rights Division investigation  
6 might have on the Soto appeal?

7 THE WITNESS: Not that I recall.

8 MR. CHERTOFF: Okay. Let me show you what's  
9 been -- what I'm going to now mark as CW-9 for  
10 identification.

11 (Pause)

12 MR. CHERTOFF: Do you recognize that?

13 (Pause)

14 THE WITNESS: I recognize it now, yes, sir.

15 MR. CHERTOFF: What is it?

16 THE WITNESS: It's a report from Lieutenant  
17 Blaker to me reference the IACP and Maryland State  
18 Police intelligence exchange meeting.

19 MR. CHERTOFF: What was that?

20 THE WITNESS: If I remember correctly, the  
21 IACP, which is the International Association of Chiefs  
22 of Police State Provincial which is the State Police  
23 agencies in the United States, parts of Canada also,  
24 had -- had a meeting in Washington with the I think  
25 representatives from Justice Department regarding the

1 racial profiling issue throughout the United States.  
2 And I sent two representatives to that -- to that  
3 meeting.

4 MR. CHERTOFF: Who did you send?

5 THE WITNESS: I sent I think it was -- I  
6 think it was Lieutenant Colonel at that time Dunlop and  
7 Sergeant Gilbert.

8 MR. CHERTOFF: And why did you send them?

9 THE WITNESS: To represent the State of New  
10 Jersey at this meeting to find out what the nationwide  
11 move was and come back with any suggestions,  
12 information, et cetera, that they might have.

13 MR. CHERTOFF: So you were aware at this  
14 point that there were other State Police organizations  
15 in other states that were dealing with the issue of  
16 racial profiling in the context of litigation or  
17 investigations or things of that sort, right?

18 THE WITNESS: Correct.

19 MR. CHERTOFF: And you were mindful of their  
20 experience that it might -- as it might relate to your  
21 own experience, right?

22 THE WITNESS: That is correct.

23 MR. CHERTOFF: And then there came a point  
24 shortly thereafter that you came to learn that the  
25 Maryland State Police had actually had to enter into a

1 consent order with private plaintiffs over racial  
2 profiling in that state, correct?

3 THE WITNESS: Yes, sir.

4 MR. CHERTOFF: I'm going to show you what I  
5 want to mark as CW-10.

6 MS. GLADING: Before we move off this  
7 document, can -- item number one indicates, "Although  
8 we have no specific unit now, we remain a leader in  
9 highway narcotics interdiction." When was the -- well  
10 let me ask you first, what does specific unit refer to?

11 THE WITNESS: Well at the time we had a --  
12 going back there was a specific unit who was  
13 responsible for training with regards to highway  
14 interdiction and narcotics.

15 MS. GLADING: Is that the Drug Interdiction  
16 Training Unit?

17 THE WITNESS: Yes.

18 MS. GLADING: And did that later become  
19 Operation R.O.A.D.S.I.D.E.?

20 THE WITNESS: Well I think it was, you know,  
21 a combination. It was together.

22 MS. GLADING: When did that unit shut down?

23 THE WITNESS: I can't recall specifically.

24 MS. GLADING: Was the DITU in place when you  
25 took office as Superintendent?

1 THE WITNESS: I think it was, but I'm not  
2 sure.  
3 MS. GLADING: Was Operation R.O.A.D.S.I.D.E.  
4 in place when took office as Superintendent?  
5 THE WITNESS: I'm pretty sure it was.  
6 MS. GLADING: Was Operation R.O.A.D.S.I.D.E.  
7 focusing on commercial interdiction at that point?  
8 THE WITNESS: I think eventually it did.  
9 Initially, you know, it was a broad based, but then it  
10 become more into the trucks and what we'll call large  
11 load narcotics.  
12 MS. GLADING: Okay. And at some point during  
13 administration as Superintendent the Operation  
14 R.O.A.D.S.I.D.E. was shut down, is that correct?  
15 THE WITNESS: I don't think it was shut down.  
16 I think, you know, there was less personnel, you know,  
17 dedicated to it.  
18 MS. GLADING: Okay.  
19 MR. CHERTOFF: All right. Let's go to CW-10.  
20 Now this is a memo from you to Major Sparano, right?  
21 (Pause)  
22 THE WITNESS: Yes, sir.  
23 MR. CHERTOFF: And what is the Field  
24 Operations Section?  
25 THE WITNESS: Field Operations Section is the

1 -- what we consider the road troopers, the --  
2 MR. CHERTOFF: Now at this point in time you  
3 were aware about this settlement agreement, correct?  
4 THE WITNESS: Between Maryland and the  
5 Department of Justice?  
6 MR. CHERTOFF: Yes.  
7 THE WITNESS: Yes, sir.  
8 MR. CHERTOFF: And you were -- well actually  
9 between Maryland and the ACLU, right?  
10 THE WITNESS: Or the ACLU, yes, sir.  
11 MR. CHERTOFF: But it was a court settlement,  
12 correct?  
13 THE WITNESS: Yes, sir.  
14 MR. CHERTOFF: And you knew there was a study  
15 of statistical -- a statistical study of traffic and  
16 enforcement patterns that was the basis for that  
17 settlement, correct?  
18 THE WITNESS: Yes, sir.  
19 MR. CHERTOFF: You became aware that the  
20 settlement would be -- was an important thing to be  
21 concerned about in terms of the exposure of the New  
22 Jersey State Police to a potential court order or court  
23 settlement, correct?  
24 THE WITNESS: Yes, sir.  
25 MR. CHERTOFF: And in fact you had Sergeant

1 Gilbert look at existing statistics at the State Police  
2 in order to see what the exposure was to the kind of  
3 court order that was imposed in the Maryland case,  
4 correct?

5 THE WITNESS: He was gathering statistics,  
6 yes, sir.

7 MR. CHERTOFF: That was at your specific  
8 direction, that was at your direction, right?

9 THE WITNESS: Yes, sir.

10 MR. CHERTOFF: You told him, let's find out  
11 what our statistics look like as compared to the  
12 Maryland case, right?

13 THE WITNESS: Yes, sir.

14 MR. CHERTOFF: Because you understood the  
15 importance of the Maryland case since there was now a  
16 court order in that case that could be a precedent in  
17 New Jersey, right?

18 THE WITNESS: That is correct, sir.

19 MR. CHERTOFF: And so he reported back to you  
20 on -- in March. I'm going to show you what we're going  
21 to call CW-11. It's a package of documents.

22 (Pause)

23 MR. CHERTOFF: Now there's three documents.  
24 One is March 27th, 1997 to you from Captain Roberson,  
25 the Commander of Troop D which is the Turnpike Troop,

1 correct?

2 THE WITNESS: Yes, sir.

3 MR. CHERTOFF: Then underneath that is  
4 another interoffice communication from Sergeant Boddy,  
5 the Assistant CIO Officer of Troop D Captain Roberson?

6 THE WITNESS: That is correct.

7 MR. CHERTOFF: And then underneath that is an  
8 undated memo to you from Sergeant Gilbert, you see  
9 that?

10 THE WITNESS: Yes, sir.

11 MR. CHERTOFF: And that appears to comment on  
12 Captain Roberson's memo, correct?

13 THE WITNESS: I didn't -- again, sir?

14 MR. CHERTOFF: This appears to comment on  
15 Captain Roberson's memo, correct?

16 THE WITNESS: At the bottom?

17 MR. CHERTOFF: No, at the top where it says,  
18 "Sergeant Gilbert, I believe Captain Roberson's  
19 concerns should be weighed" --

20 THE WITNESS: Oh, okay.

21 MR. CHERTOFF: -- "in consideration of the  
22 following," right? And that relates back to Captain  
23 Roberson's memo of March 27th, right?

24 THE WITNESS: Yes, sir.

25 MR. CHERTOFF: Now this memo's undated,

1 right?

2 THE WITNESS: I don't see a date on it.

3 MR. CHERTOFF: Did there come a point in time  
4 that you told Sergeant Gilbert that he didn't need to  
5 date memos or put memos to you on an ordinary format?

6 THE WITNESS: No, sir.

7 MR. CHERTOFF: But if you look at the last  
8 page of the memo, it says, "Major Sparano spoke to me  
9 on 4/1/97," correct?

10 THE WITNESS: Yes, it does.

11 MR. CHERTOFF: So you could conclude from  
12 that that the memo from Sergeant Gilbert to you was  
13 written some time after the Captain Roberson memo of  
14 March 27th, 1997, correct?

15 THE WITNESS: One could assume that, yes,  
16 sir.

17 MR. CHERTOFF: And then on the first page,  
18 finally, which is the Roberson memo of March 27th,  
19 there's handwriting apart from the signature. Is that  
20 your handwriting?

21 THE WITNESS: No, sir.

22 MR. CHERTOFF: Whose is it?

23 THE WITNESS: I have no idea.

24 MR. CHERTOFF: All right. Let's go back to -  
25 - let's take it chronologically. Let's go to Sergeant

1 Boddy's memo. Now this talks about a request for daily  
2 radio log and probable cause to search forms. Did you  
3 understand probable cause to search forms to be  
4 different from consent to search forms?

5 THE WITNESS: To me they're one in the same.

6 MR. CHERTOFF: Well then actually -- if you  
7 look at paragraph three it says, "The consent to search  
8 and probable cause -- synopsis indicates race." In  
9 fact are they two different forms, consent to search  
10 and probable cause to search forms, one in the case of  
11 a consent, one in the case of a non-consenting search?

12 THE WITNESS: You're saying they're two  
13 different --

14 MR. CHERTOFF: I'm asking you, are they --  
15 are they different forms or are they part of the same  
16 form?

17 THE WITNESS: I think the consent to search  
18 form is a specific form and --

19 MR. CHERTOFF: And probable cause to search?

20 THE WITNESS: -- to me the probable cause  
21 search synopsis would be within the -- if there was a  
22 criminal package put together, that that's where that  
23 would be.

24 MR. CHERTOFF: Now at this point, when you  
25 get this memo on or around March 26th or 27th of 1997,

1 did you understand obviously that consent to search  
2 forms addressed post stop activity by troopers?

3 THE WITNESS: Yes, sir.

4 MR. CHERTOFF: And did you understand at this  
5 point that the Maryland consent decree was based in  
6 fact upon evidence derived from the consent to search  
7 forms held by the Maryland State Police?

8 THE WITNESS: To the best of my recollection,  
9 that's correct.

10 MR. CHERTOFF: In other words, what -- what  
11 exposed the Maryland State Police to having to enter  
12 into this settlement was not the stop data, but it was  
13 the consent to search data, right?

14 THE WITNESS: That's my understanding.

15 MR. CHERTOFF: And so you get this memo from  
16 Sergeant Boddy which basically says to you, it doesn't  
17 make sense to limit the consent to search form request  
18 just to two stations, all the road stations should have  
19 -- should be subject to this, right?

20 THE WITNESS: That's his recommendation, yes,  
21 sir.

22 MR. CHERTOFF: All right. And then it comes  
23 back with Captain Roberson who essentially echoes the  
24 same thing and says why discriminate against only those  
25 were on Troop D in the Turnpike, right?

1 THE WITNESS: Yes, sir.

2 MR. CHERTOFF: But then you get the memo from  
3 Sergeant Gilbert, correct?

4 THE WITNESS: Yes, sir.

5 MR. CHERTOFF: Now he says here, "In respect  
6 to the original request, we have consistently attempted  
7 to limit what we will be giving the Department of  
8 Justice. With your approval, we have been able to  
9 limit the production of actual data so far to two  
10 Turnpike Stations." Is that true, was it with your  
11 approval?

12 THE WITNESS: It was the approval from the  
13 Attorney General's Office and the agreement with the  
14 Department of Justice.

15 MR. CHERTOFF: And your approval as well?

16 THE WITNESS: And my approval. I agreed that  
17 that -- we would limit it to the two stations.

18 MR. CHERTOFF: Okay. It goes on to say,  
19 "Although the original request was overly broad, they  
20 have acknowledged their primary interest is the  
21 southern end of the Turnpike. We have responded  
22 accordingly and been successful so far. Providing  
23 radio log and consent to search PC search data for all  
24 stations in the Division would erase how we've been  
25 able to steer this thing thus far." Did you understand

1 that to mean that if you expanded the consent to search  
2 data outside of those two stations it would essentially  
3 reverse the tactical position that the State had taken  
4 up to this point in time which was to keep it very  
5 limited?

6 THE WITNESS: I take it as a -- you know, a  
7 decision that was made to come under the mandates of  
8 what the Department of Justice decided they wanted us  
9 to -- you know, to do with regards to documents that we  
10 provided them.

11 MR. CHERTOFF: Now it goes on to say here,  
12 "We have a pretty good handle on what our Turnpike  
13 stats are before we start collecting the ongoing data,  
14 thus little risk of unpleasant surprises. Expanding to  
15 other stations is uncharted territory. There is no  
16 best case scenario or upside to this course of action.  
17 If other stations are statistically higher for minority  
18 activity, not very probable, then DOJ says problem is  
19 Division wide. If their numbers are lower DOJ will use  
20 to reinforce their claim of racial profiling on the  
21 Turnpike." What was your reaction to that? Did you  
22 agree with that?

23 THE WITNESS: Well what I see there is a best  
24 case, worse case scenario that Sergeant Gilbert is  
25 advising me of the different possibilities that could

1 happen with regard to expanding the scope beyond what  
2 the Justice Department was asking for.

3 MR. CHERTOFF: Did you understand him in  
4 effect to be saying, look, we know what the Turnpike  
5 stats are and we know how, you know, they compare to  
6 the Maryland State Police situation, if we actually ask  
7 questions about other areas we may find out information  
8 that's not going to be helpful to us, is that  
9 essentially what he was saying there?

10 THE WITNESS: Or we could find information  
11 that could be helpful to us. I think that's what --  
12 he's saying both.

13 MR. CHERTOFF: Well actually isn't he saying  
14 that there's no upside to this course of action because  
15 either way it could wind up hurting you in the  
16 litigation with the Department of Justice?

17 THE WITNESS: That's -- you know, apparently  
18 that's what he's saying here.

19 MR. CHERTOFF: Did you agree with that  
20 approach?

21 THE WITNESS: I -- I don't know if I agreed  
22 with it or not, but we didn't again go beyond the scope  
23 of what the Justice Department was asking for.

24 MR. CHERTOFF: Forgetting for a second what  
25 the Justice Department was asking for, as of this point

1 in time did you say to anybody in the State Police or  
2 the Department of Law and Public Safety, let's go look  
3 at everything else and see whether we have a problem  
4 and if so, where it is?

5 THE WITNESS: Not at this specific time, no.

6 MR. CHERTOFF: Was there a point that you  
7 made that request?

8 THE WITNESS: I think later on there might  
9 have been a more encompassing review of the entire  
10 Division.

11 MR. CHERTOFF: When was that?

12 THE WITNESS: Right before I was terminated.

13 MR. CHERTOFF: You mean in February of 1999?

14 THE WITNESS: Yes, sir.

15 MR. CHERTOFF: Well, between April of '97 and  
16 February of '99 did you suggest or did anybody else  
17 suggest in your presence, let's look at everything else  
18 and find out what the facts are, good, bad or  
19 indifferent?

20 THE WITNESS: Not at that time, no, sir.

21 MR. CHERTOFF: Okay. Now --

22 (Pause)

23 MR. CHERTOFF: -- if you look at paragraph  
24 three, he says, the one area we are light in is the  
25 ability to monitor our activity on an ongoing basis.

1 Although the inspection audit process is effective we  
2 can only demonstrate its use on several occasions.  
3 Implementing the temporary limited monitoring system on  
4 the 'Pike demonstrates a good faith effort on our part  
5 until implementation of the CAD system Division wide.  
6 What was the CAD system?

7 THE WITNESS: That was a computer aided  
8 dispatch system.

9 MR. CHERTOFF: And would that be a system  
10 that would more easily track the race of people being  
11 stopped?

12 THE WITNESS: It would be a system that would  
13 do that, yes, sir.

14 MR. CHERTOFF: And it goes on to say further  
15 down, food for thought, once we go on line with CAD  
16 numbers for individual troopers as to specifics of stop  
17 activity will be very easy to generate. I take it  
18 that's because it would be computerized instead of  
19 manually -- having to be manually collected, right?

20 THE WITNESS: That's correct, sir.

21 MR. CHERTOFF: Public Defender's Offices  
22 throughout the State, not just those handling Turnpike  
23 cases, will ultimately learn of this and seek to obtain  
24 these statistics. Thus we will have to keep up the  
25 awareness level of troopers at all duty locations

1 concerning impact of statistics to minimize problems in  
2 the future. When did the CAD system go on line?

3 THE WITNESS: Again, sir, I can't -- it kind  
4 of went in in stages. I can't remember specifically,  
5 you know it was -- it was a big budget problem. I'm  
6 trying to recall, I think -- you know, it went in to --  
7 by troop, and I think the Turnpike was towards the end  
8 of the, you know, the process.

9 MR. CHERTOFF: Why was the Turnpike towards  
10 the end?

11 THE WITNESS: Because they wouldn't pay for  
12 the system.

13 MR. CHERTOFF: Pardon?

14 THE WITNESS: They wouldn't pay for the  
15 system.

16 MR. CHERTOFF: You mean the Turnpike had to  
17 pay for the system?

18 THE WITNESS: They had to help with it, yes,  
19 sir.

20 MR. CHERTOFF: Not the State Police?

21 THE WITNESS: No, sir.

22 MR. CHERTOFF: Did -- was one of the reasons  
23 it was delayed was because of the recognition that once  
24 that system was in -- was in place it would be very  
25 easy to monitor whether there was profiling going on?

1 THE WITNESS: no, sir.

2 MR. CHERTOFF: Did you discuss this memo, the  
3 content of this memo, with anybody at the Department of  
4 Law and Public Safety after you got it?

5 THE WITNESS: I can't remember specifically  
6 doing that, no, sir.

7 MR. CHERTOFF: Did you pass it on to somebody  
8 else?

9 THE WITNESS: I don't -- I didn't personally.

10 MR. CHERTOFF: Okay. Now, let me also show  
11 you CW-12. It's another -- I'm sorry -- it's another  
12 undated memo to you from Sergeant T. Gilbert, re  
13 Justice Department inquiry.

14 (Pause)

15 MR. CHERTOFF: Have you seen this before?

16 (Pause)

17 THE WITNESS: Yes, sir.

18 MR. CHERTOFF: When did you get this?

19 THE WITNESS: I have no idea, sir.

20 MR. CHERTOFF: Did you get this around the  
21 same time that you got the memo from Sergeant Gilbert  
22 that we looked at just a moment ago, CW-11, namely, in  
23 the February-March period of 1997?

24 MR. FISHER: Just as a matter of record, my  
25 understanding is we've established that the memorandum

1 of Detective Gilbert -- or, Sergeant Gilbert was at  
2 least after April 1st.

3 MR. CHERTOFF: Right. I'm going to --

4 MR. FISHER: I thought you said February.

5 MR. CHERTOFF: I'm asking him whether in the  
6 period February, March or April you received this memo  
7 which is CW-12.

8 THE WITNESS: I don't recall, sir.

9 MR. CHERTOFF: Was it right around the time  
10 you received that memo we showed you earlier regarding  
11 the Maryland State Police settlement?

12 THE WITNESS: I -- again, I don't know when I  
13 received this memo.

14 MR. CHERTOFF: Basically, though, in the  
15 spring of '97, is that fair to say, spring of '97?

16 THE WITNESS: I'm not going to argue with  
17 you.

18 MR. CHERTOFF: Did you direct --

19 THE WITNESS: I don't --

20 MR. CHERTOFF: -- did you direct --

21 MR. FISHER: No, wait a minute. I'm sorry.  
22 Could he -- I think he was still going to answer the  
23 question.

24 MR. CHERTOFF: I'm sorry. Go ahead. Finish.

25 THE WITNESS: I -- again, I can't

1 specifically say that that's when I got it or I didn't  
2 get it, but -- because there's no date on that.

3 MR. CHERTOFF: Okay. Let's put it in  
4 context. In March -- on February 26th you sent a memo  
5 to Major Sparano talking about the Maryland State  
6 Police consent order, right?

7 THE WITNESS: Yes, sir.

8 MR. CHERTOFF: Is it fair to say at that  
9 point you direct Sergeant Gilbert, in connection with  
10 the Justice Department inquiry, to take a look at that  
11 study of the Maryland State Police and compare it to  
12 the -- to what he can determine are the comparable  
13 figures for the Turnpike?

14 THE WITNESS: Yes, sir.

15 MR. CHERTOFF: And you did that because you  
16 knew it was very important in analyzing whether there  
17 was exposure to the State of New Jersey in the Justice  
18 Department investigation based on what had happened in  
19 Maryland, right?

20 THE WITNESS: Correct.

21 MR. CHERTOFF: Did you tell people at the  
22 Department of Law and Public Safety you were going to  
23 actually have that analysis conducted?

24 THE WITNESS: I don't recall if I  
25 specifically told any one individual, no, sir.

1 MR. CHERTOFF: Did you tell Sergeant Gilbert  
2 to communicate about this with anybody at the  
3 Department of Law and Public Safety?

4 THE WITNESS: Sergeant Gilbert's instructions  
5 from me were that we were to share all the information  
6 that we were generating with the Office of the Attorney  
7 General.

8 MR. CHERTOFF: And specifically through  
9 either Mr. Fahy or Mr. Rover?

10 THE WITNESS: Well, in this case I would say  
11 Mr. Rover, DAG Rover, because he was -- he was more the  
12 point man with the Department of Justice, where Mr.  
13 Fahy was more with the Soto appeal.

14 MR. CHERTOFF: When you got this did you  
15 understand this -- that this was a very significant  
16 report?

17 THE WITNESS: It was as significant as the  
18 others, yes, sir.

19 MR. CHERTOFF: And it made it clear to you  
20 that based on Sergeant Gilbert's review of the consent  
21 to search data, not this top data, the consent to  
22 search data, which was the same thing looked at in  
23 Maryland, that New Jersey and Maryland really had  
24 essentially the same types of numbers?

25 THE WITNESS: According to what this report

1 says, yes, sir.

2 MR. CHERTOFF: Yeah, you understood that?

3 THE WITNESS: Yes, sir.

4 MR. CHERTOFF: And if you go on through the  
5 report it says here, on this last line of page two,  
6 "With all the foregoing numbers in hand I think it's  
7 clear that our complete numbers are probably on a par  
8 with those generated by the Maryland State Police."  
9 And then it goes on to the next page to say, "At this  
10 point we are in a very bad spot. Through the  
11 Gloucester County case, the Illinois State Police  
12 investigation and the Maryland State Police study  
13 settlement, the Justice Department has a very good  
14 understanding of how we operate and what type of  
15 numbers they can get their hands on to prove their  
16 position." Did you understand that?

17 THE WITNESS: Yes, sir.

18 MR. CHERTOFF: Now then it goes on to say  
19 this. "I still believe the traffic studies in both New  
20 Jersey and Maryland were flawed because they didn't  
21 encompass the majority of night hours. However, even  
22 if we can get any type of positive results out of a new  
23 study the gains we might achieve will still be  
24 overshadowed by the search percentages. Our opponents  
25 already know this. The Maryland decree even skips over

1 the initial stop date in favor of focusing on those  
2 stops which involve a search."

3 Now, did you understand from this that at  
4 least as of this point in time that there real weak  
5 spot for the State Police in New Jersey wasn't going to  
6 be the analysis of the stop data, like Judge Francis  
7 had used in Gloucester County, because there were flaws  
8 with t, but the real vulnerable point was going to be  
9 the consent to search data, in other words, the  
10 information about which motorists who were stopped get  
11 asked to consent to search as opposed to those aren't  
12 asked to consent to search. Did you understand that  
13 from this memo?

14 THE WITNESS: What I understood from this was  
15 that that was Sergeant Gilbert's opinion and that, you  
16 know, we had to do more, shall I say background  
17 checking to find out if that was so and what the  
18 purpose and the reasons were.

19 MR. CHERTOFF: How about this -- how about if  
20 you go down on the third page where it says, Arabic  
21 numeral 2, "The preliminary data analysis makes it  
22 clear that the more historical search data we give them  
23 the worse off we will be in regards to having any  
24 control over what we are forced into." Did you  
25 understand from that that Sergeant Gilbert was saying

1 that if the Justice Department got historical search  
2 data as opposed to stop data it would really put the  
3 State Police in a vulnerable position in trying to  
4 negotiate with the Department of Justice in Washington  
5 about how to resolve this issue?

6 THE WITNESS: Again, I understood that that  
7 was Sergeant Gilbert's opinion.

8 MR. CHERTOFF: Did you have reason to doubt  
9 the logic of his opinion?

10 THE WITNESS: Well, you know, there's -- as  
11 the saying goes, there's two sides to every story and,  
12 you know, I would think that we would discuss it with  
13 the Attorney General's Office and get their opinion and  
14 their ideas as to, you know, exactly what this  
15 information contained and what it meant and where we  
16 should go with it.

17 MR. CHERTOFF: And in fact, Sergeant Gilbert  
18 gave you very specific numbers, right? Sergeant  
19 Gilbert gave you very specific numbers in his report,  
20 right?

21 THE WITNESS: Yes, sir, he did.

22 MR. CHERTOFF: Now, you said you obviously  
23 knew you had to discuss this with the Attorney  
24 General's Office, right? Correct?

25 THE WITNESS: Correct -- I missed the

1 question. I'm sorry.

2 MR. CHERTOFF: That he had to discuss it with  
3 the Attorney General's Office.

4 THE WITNESS: That he had to or --

5 MR. CHERTOFF: Yes. You knew that you had to  
6 -- this was something you needed to discuss with the  
7 Attorney General's Office.

8 THE WITNESS: I didn't know that I personally  
9 had to have a discussion with the Attorney General's  
10 Office but that this information would be disseminated  
11 to the Attorney General's Office.

12 MR. CHERTOFF: And you specifically told  
13 Sergeant Gilbert to make sure that he communicated this  
14 to Deputy Attorney General Rover, right?

15 THE WITNESS: I don't -- I didn't  
16 specifically tell Sergeant Gilbert to, to my  
17 recollection, to put this specific report into DAG  
18 Rover's hands. All as I know is from the get go that  
19 he was instructed to share all the information with DAG  
20 Rover.

21 MR. CHERTOFF: Did you actually discuss this  
22 report with Sergeant Gilbert, CW-12?

23 THE WITNESS: Again, specifically I can't  
24 recall an exact time when I discussed it but there's  
25 the possibility that I did, yes.

1 MR. CHERTOFF: And there came a point in  
2 time, in fact, in May of '97 that you actually went  
3 with Sergeant Gilbert to meet with the Attorney General  
4 to discuss the Maryland State Police consent decree  
5 along with other things, isn't that correct?

6 THE WITNESS: That's correct.

7 MR. CHERTOFF: And that meeting -- who called  
8 for that meeting, do you know?

9 THE WITNESS: As to my recollection, the  
10 Attorney General.

11 MR. CHERTOFF: And do you know whether it was  
12 called specifically to deal with the issue of how to  
13 handle requests for consent to search data that would  
14 be coming from the Department of Justice?

15 THE WITNESS: I would assume that that's one  
16 of the topics that was discussed that day.

17 MR. CHERTOFF: Let's mark this for  
18 identification. I'm going to actually that we recess  
19 for about 10 or 15 minutes so I can make a couple of  
20 quick calls, and then -- well, why don't you look at  
21 this first? This will be --

22 MR. BOWEN: CW-13.

23 MR. CHERTOFF: -- CW-13 -- we'll be back.

24 (Off the record)

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

1 W-13 --  
2 MR. BOWEN: CW.  
3 MR. CHERTOFF: -- CW-13. You have that in  
4 front of you, right?  
5 THE WITNESS: Yes, sir.  
6 MR. CHERTOFF: Okay. Now this came to you  
7 from George Rover, right?  
8 THE WITNESS: Yes, sir.  
9 MR. CHERTOFF: And you understood from this  
10 letter as of May 16th that the Department of Justice  
11 was going to be looking for, among other things,  
12 consent to search forms, correct?  
13 THE WITNESS: Yes, sir.  
14 MR. CHERTOFF: And you understood as of this  
15 point the significance of consent to search forms  
16 because you knew that those were the basis of the  
17 consent decree in Maryland, right?  
18 THE WITNESS: Yes, sir.  
19 MR. CHERTOFF: And then four days later you  
20 had a meeting with the Attorney General in his office,  
21 right?  
22 THE WITNESS: May the 20th.  
23 MR. CHERTOFF: Correct. That's four days  
24 after May 16th, right?  
25 THE WITNESS: I won't argue with you on that,

1 sir.  
2 MR. CHERTOFF: And I'm going to -- you got an  
3 agenda in advance, right?  
4 THE WITNESS: I did what, sir?  
5 MR. CHERTOFF: You got an agenda in advance?  
6 THE WITNESS: Yes, sir.  
7 MR. CHERTOFF: And showing you G-19 for  
8 identification -- this is my only copy -- do you  
9 recognize the typed agenda?  
10 THE WITNESS: Yes, sir.  
11 MR. CHERTOFF: Is your handwriting on that  
12 agenda?  
13 THE WITNESS: It is not.  
14 MR. CHERTOFF: Okay. Now did you get this in  
15 advance, right?  
16 THE WITNESS: Yes, I did.  
17 MR. CHERTOFF: And you went to the meeting,  
18 right?  
19 THE WITNESS: Yes, I did.  
20 MR. CHERTOFF: And you went with Sergeant  
21 Gilbert, right?  
22 THE WITNESS: And I also think at this  
23 meeting I took Captain Blaker.  
24 MR. CHERTOFF: Captain Blaker. And you took  
25 Sergeant Gilbert and Captain Blaker because among other

1 things you knew Sergeant Gilbert was knowledgeable  
2 about the statistics as it related to consent to  
3 search, correct? You took -- you took Sergeant Gilbert  
4 because among other things you knew Sergeant Gilbert  
5 was knowledgeable about the statistics related to  
6 consent to search, right?

7 THE WITNESS: Yes, sir.

8 MR. CHERTOFF: And you knew one of the items  
9 on the agenda was production of consent to search  
10 documents, right?

11 THE WITNESS: Yes, sir.

12 MR. CHERTOFF: Including a discussion of the  
13 Maryland case, right?

14 THE WITNESS: Yes, sir.

15 MR. CHERTOFF: And a discussion of proper  
16 characterization of documents, right?

17 THE WITNESS: Yes, sir.

18 MR. CHERTOFF: Now, in addition to you,  
19 Captain Blaker and Sergeant Gilbert the Attorney  
20 General was there, right?

21 THE WITNESS: Yes, sir.

22 MR. CHERTOFF: And also Alexander Waugh?

23 THE WITNESS: To my recollection Alexander  
24 Waugh was there.

25 MR. CHERTOFF: And Mr. Fahy?

1 THE WITNESS: To my recollection -- I know  
2 Rover was there positively.

3 MR. CHERTOFF: Fahy you're not sure of?

4 THE WITNESS: Could be Fahy.

5 MR. CHERTOFF: Okay --

6 THE WITNESS: But I'm not --

7 MR. CHERTOFF: -- you're not sure about Fahy.

8 THE WITNESS: I'm not sure, I could say that.

9 MR. CHERTOFF: Who did most of the talking at  
10 the meeting?

11 THE WITNESS: Well, what little I remember  
12 about the meeting, I think it was -- everybody did some  
13 talking. Did anybody do most of the talking? I think  
14 that DAG Rover more or less filled in the Attorney  
15 General and DAG Waugh with regards to, you know, what  
16 was transpiring, what was -- what was happening,  
17 bringing him up to date on the -- on the Justice  
18 requests and what's going on.

19 MR. CHERTOFF: And with respect to the  
20 discussion of production of consent to search  
21 documents, who spoke -- did you have Sergeant Gilbert  
22 give a presentation to the people assembled at the  
23 meeting summarizing what he had found out concerning  
24 the Maryland statistics as they related to the New  
25 Jersey statistics?

1 THE WITNESS: I don't recall that  
2 specifically being done. I can't say it wasn't, I  
3 can't say it was.

4 MR. CHERTOFF: Well, what was -- what was  
5 said with respect to the Maryland case?

6 THE WITNESS: Again, you know, I'm trying to  
7 put in perspective and I can't recall specifically what  
8 was said with regard to that case other than the -- it  
9 was discussed.

10 MR. CHERTOFF: Did you -- did you or someone  
11 else from the State Police express a concern that if  
12 the consent to search forms were given to the  
13 Department of Justice it might make the State Police in  
14 New Jersey look bad?

15 THE WITNESS: I don't recall that statement  
16 being made by myself or any member -- other member of  
17 the State Police.

18 MR. CHERTOFF: I don't mean exact, I mean ins  
19 substance did you convey, or someone else from the  
20 State Police convey, a concern about what would happen  
21 if these consent to search forms were turned over?

22 THE WITNESS: I don't -- I don't recall that  
23 being said.

24 MR. CHERTOFF: Well, what was discussed about  
25 the Maryland case?

1 THE WITNESS: As I said, dir, I can't  
2 specifically recall what was said at that time.

3 MR. CHERTOFF: Well, was there discussion  
4 about filtering information requested by the Department  
5 of Justice?

6 THE WITNESS: Filtering information?

7 MR. CHERTOFF: Yeah.

8 THE WITNESS: No, sir, not that I recall.

9 MR. CHERTOFF: Well, did you do an affidavit  
10 in Williams v. Verniero? Did you sign an affidavit,  
11 Williams v. Verniero?

12 THE WITNESS: I guess I did. I don't know.  
13 I don't -- I'd have to see it.

14 MR. CHERTOFF: You have a doubt about whether  
15 you signed an affidavit in your own litigation?

16 THE WITNESS: No, I said I'd have to see  
17 exactly what it said.

18 MR. CHERTOFF: Well, first I want to know if  
19 you remember doing an affidavit or a certification?

20 THE WITNESS: I signed a lot of affidavits.

21 MR. CHERTOFF: Let me mark this.

22 MR. BOWEN: CW-14.

23 (Pause)

24 MR. CHERTOFF: Did you sign CW-14?

25 THE WITNESS: Yes.

1 MR. CHERTOFF: Under oath?  
2 THE WITNESS: Yes.  
3 MR. CHERTOFF: So it has to be true, right?  
4 THE WITNESS: Yes, sir.  
5 MR. CHERTOFF: Looking at paragraph number  
6 six, "On May 20, 1997 I again met with Verniero, Waugh  
7 and Fahy regarding claims of racial profiling. It was  
8 at that meeting that the defendant Verniero decided to  
9 filter the information requested by the Department of  
10 Justice." Is that statement true?  
11 THE WITNESS: Yes, sir.  
12 MR. CHERTOFF: Tell us about that. What did  
13 he say -- what did the Attorney General say about  
14 filtering information?  
15 THE WITNESS: Well, it was my understanding  
16 that the -- we were going to limit the information  
17 provided to the Justice Department to specifically what  
18 they had asked for with regards to those two stations  
19 on the Turnpike.  
20 MR. CHERTOFF: Well, wasn't that decided  
21 weeks before as of January 10th --  
22 THE WITNESS: Right.  
23 MR. CHERTOFF: -- at the January 10th  
24 meeting? So --  
25 THE WITNESS: Well, it was just

1 MR. CHERTOFF: -- so what --  
2 THE WITNESS: -- a rehash --  
3 MR. CHERTOFF: So the May 20th meeting --  
4 well, let's go -- this is your certification, right?  
5 THE WITNESS: Yes, sir.  
6 MR. CHERTOFF: Were you in a rush when you  
7 did it?  
8 THE WITNESS: Was I in a rush?  
9 MR. CHERTOFF: Right.  
10 THE WITNESS: No, sir.  
11 MR. CHERTOFF: Did you have an adequate  
12 opportunity to look it over before you signed it?  
13 THE WITNESS: Yes, I did.  
14 MR. CHERTOFF: And when it says here, it was  
15 at that meeting, namely, May 20th, 1997, that the  
16 defendant Verniero decided to filter the information  
17 requested by the Department of Justice, was that  
18 statement true?  
19 THE WITNESS: Well, again, it was true, a  
20 culmination of all that had been going on with regards  
21 to the dealing with the Department of Justice.  
22 MR. CHERTOFF: Well, according to Exhibit CW  
23 -- I'm sorry, G-12, which is in front of you, your  
24 handwriting on that exhibit, which is a memo dated  
25 1/9/97 to you from Sergeant Gilbert, records that in

1 the January 10th meeting there was a decision that the  
2 data requested be restricted to the Turnpike stations  
3 at Cranbury and Moorestown. Now, are you telling us  
4 that that decision wasn't made on January 10th, that it  
5 was actually made on May 20th?

6 THE WITNESS: No. I'm telling you that it  
7 was a continuation of the -- of the discussions as we  
8 progressed through this process with the Department of  
9 Justice.

10 MR. CHERTOFF: What does filter mean to you,  
11 by the way? What does the word filter mean to you when  
12 -- as you used it in this affidavit?

13 THE WITNESS: It means to put out the  
14 information that is requested and filter it through the  
15 proper chain and provided it to the Department of  
16 Justice.

17 MR. CHERTOFF: So you're telling us that the  
18 decision on May 20th was to take the information, send  
19 it up the proper chain and give it to the Department of  
20 Justice, is that what you meant by filter?

21 THE WITNESS: Right.

22 MR. CHERTOFF: So when you say here -- well,  
23 then what would be unfiltered information to the  
24 Department of Justice?

25 THE WITNESS: I don't -- I would assume that

1 -- you know, to me that would be the information that  
2 we didn't -- we just provided directly to the  
3 Department of Justice. By we, I'm talking about the  
4 State Police without going through the proper chain.

5 MR. CHERTOFF: Did the State Police ever  
6 provide information directly to the Department of  
7 Justice?

8 THE WITNESS: Not that I know of. When I was  
9 there we didn't, no.

10 MR. CHERTOFF: So was there ever an issue  
11 about sending information directly to the State -- to  
12 the Department of Justice from the State Police?

13 THE WITNESS: Not that I recall, no.

14 MR. CHERTOFF: So what was the decision that  
15 had to be made about filtering information? What was  
16 going to be filtered out?

17 THE WITNESS: Again, the information that was  
18 requested by the Department of Justice, to make sure  
19 that it was the proper information, it was what they  
20 wanted, how they wanted it, covered the period of time  
21 they wanted, et cetera, et cetera.

22 MR. CHERTOFF: So let me get this straight.  
23 You go to the meeting on May 20th and the sum total of  
24 the meeting is, let's give them the information they  
25 want in the form they want it? Is that what the

1 meeting was?

2 THE WITNESS: Well, that -- part of it, I  
3 guess, part of it.

4 MR. CHERTOFF: Now, have you ever made a cup  
5 of coffee?

6 THE WITNESS: Excuse me?

7 MR. CHERTOFF: Have you ever made a cup of  
8 coffee?

9 THE WITNESS: No, sir.

10 MR. CHERTOFF: Never? Have you ever seen a  
11 cup of coffee being made?

12 THE WITNESS: I'm sure I saw a cup of coffee  
13 being made, sir.

14 MR. CHERTOFF: You understand you put the  
15 grounds in the filter, you put the water through, and  
16 it's filtered, meaning something comes out and  
17 something's left, right?

18 THE WITNESS: Right.

19 MR. CHERTOFF: Under this determination here  
20 about deciding to filter the information, what was  
21 going to be left in the filter after the information  
22 was passed through to the coffee cup of the Department  
23 of Justice? What was going to be filtered out?

24 THE WITNESS: Nothing was going to be  
25 filtered out. As far as the contents of the reports

1 are concerned, nothing was going to be filtered out.

2 MR. CHERTOFF: Now, you come in and there's a  
3 discussion about the Maryland case, right?

4 THE WITNESS: Yes, sir.

5 MR. CHERTOFF: You've told us at this point  
6 you're clearly aware of the numbers that Sergeant  
7 Gilbert had given to you in this report comparing the  
8 Maryland situation with the New Jersey situation as it  
9 relates to consent to search, right?

10 THE WITNESS: Yes, sir.

11 MR. CHERTOFF: You were aware of the fact  
12 there was a consent decree in Maryland, right?

13 THE WITNESS: Yes, I was.

14 MR. CHERTOFF: And you were aware of the fact  
15 that these numbers put New Jersey on a par with the  
16 numbers that had been the basis of the consent decree  
17 in Maryland, right?

18 THE WITNESS: Right.

19 MR. CHERTOFF: And the Maryland case becomes  
20 an agenda item, right?

21 THE WITNESS: Yes, sir.

22 MR. CHERTOFF: So in the meeting someone from  
23 the State Police expresses to the people at the meeting  
24 that there's been a comparison made between what the  
25 situation is in New Jersey and the situation in

1 Maryland, right?

2 THE WITNESS: I think that's what happened.  
3 Again, I can't recall who or specifically when that  
4 came out, but --

5 MR. CHERTOFF: And someone from the State  
6 Police said that the numbers are basically on a par  
7 with each other, that the numbers we show for consent  
8 to searches in New Jersey are similar to the numbers  
9 that led to a Court order in Maryland, right?

10 THE WITNESS: Something along that line, yes,  
11 sir.

12 MR. CHERTOFF: And some concern was expressed  
13 about that, right?

14 THE WITNESS: Yes, sir.

15 MR. CHERTOFF: And there was concern  
16 expressed about getting into a consent decree like the  
17 Maryland State Police had to get into, right?

18 THE WITNESS: There was a concern about a  
19 consent decree, yes, sir.

20 MR. CHERTOFF: And then the Attorney General  
21 advised everybody that he would not consent to signing  
22 a consent decree, "They'd have to tie me to a train and  
23 drag me along the track before I'd sign a decree,"  
24 right?

25 THE WITNESS: Yes, sir.

1 MR. CHERTOFF: And that was a relief to you,  
2 right?

3 THE WITNESS: Well, I felt good about it,  
4 yes, sir.

5 MR. CHERTOFF: You were concerned that you  
6 might be in that meeting and there might be a decision  
7 made that, we have a problem, maybe we'd better go sign  
8 a consent decree, right?

9 THE WITNESS: There was -- I didn't feel that  
10 that was going to happen, but that was always a  
11 possibility, yes, sir.

12 MR. CHERTOFF: And you were worried that when  
13 the information was presented concerning the numbers in  
14 New Jersey as compared to the numbers in Maryland,  
15 perhaps the people in the Attorney General's Office  
16 would kind of back away and go wobbly and try to cut a  
17 deal, right? You worried about that?

18 THE WITNESS: I don't say I worried about it,  
19 no. I was --

20 MR. CHERTOFF: But it crossed your mind it  
21 could happen?

22 THE WITNESS: I might have been a little  
23 concerned, but not worried.

24 MR. CHERTOFF: And then you were relieved  
25 after the presentation was made about the numbers, and

1 about the relationship between the New Jersey numbers  
2 and the Maryland numbers, that there wasn't any backing  
3 off, right?

4 THE WITNESS: No, sir, there wasn't.

5 MR. CHERTOFF: And that's when the Attorney  
6 General said, essentially, they'd have to tie me to a  
7 train and drag me down the track before I'd sign a  
8 consent decree, right?

9 THE WITNESS: Yes, sir.

10 MR. CHERTOFF: Is there any doubt in your  
11 mind that in this meeting there was a clear discussion  
12 about the fact that the consent to search numbers in  
13 New Jersey were on a par with the consent to search  
14 numbers in Maryland?

15 THE WITNESS: I'm sure that that was brought  
16 out, sir.

17 MR. CHERTOFF: And it's -- and it was also  
18 brought out that that was a point of vulnerability that  
19 was much greater to the State Police than the stop  
20 data, which is where the investigation had originally  
21 begun, right?

22 THE WITNESS: It was -- it was a major  
23 concern, yes, sir.

24 MR. CHERTOFF: And the reason you brought  
25 Sergeant Gilbert around was to explain the analysis

1 that you had asked him to perform, in substance, not  
2 every word, but in substance, right?

3 THE WITNESS: Yes, sir.

4 MR. CHERTOFF: And as you said to us earlier,  
5 you understood when you got this analysis from Sergeant  
6 Gilbert you'd have to share it with the Attorney  
7 General's Office, correct?

8 THE WITNESS: Correct

9 MR. CHERTOFF: What else was said in the  
10 meeting?

11 THE WITNESS: Again, there was a lot of  
12 things said that I can't specifically recall, you know,  
13 who said what and at what time --

14 MR. CHERTOFF: Well, was there discussion --

15 THE WITNESS: There was --

16 MR. CHERTOFF: I'm sorry. Go ahead.

17 THE WITNESS: There was a decision that, you  
18 know, that they were going to continue to support the  
19 State Police with regards to the Department of Justice,  
20 and that we would go forward.

21 MR. CHERTOFF: Looking at the fourth agenda  
22 item, it says, DEA Operation Pipeline -- and other  
23 documents, Justice Department. Was there a discussion  
24 by Deputy Attorney General Rover about the fact that  
25 there was a, he perceived, an inconsistency between the

1 position of the narcotics enforcers at the Department  
2 who were putting out tapes and information about how to  
3 track, you know, narcotics traffickers, and then the  
4 civil rights people on the other hand who seemed to be  
5 kind of pushing in the other direction, did Deputy  
6 Attorney General Rover make that point at the meeting?

7 THE WITNESS: That point was constantly being  
8 made, sir, and I would see no reason why it wasn't made  
9 at that meeting also.

10 MR. CHERTOFF: And in response to that did  
11 Attorney General Verniero say, should I call Attorney  
12 General Reno and talk to her about this?

13 THE WITNESS: I don't recall him specifically  
14 making that statement.

15 MR. CHERTOFF: Do you remember him mention --

16 THE WITNESS: It's possible.

17 MR. CHERTOFF: Do you remember him mentioning  
18 Attorney General Reno?

19 THE WITNESS: I remember the name being  
20 mentioned, yes, sir.

21 MR. CHERTOFF: When you and Captain Blaker  
22 and Sergeant Gilbert left the meeting, did you talk  
23 between -- among yourselves about what happened at the  
24 meeting?

25 THE WITNESS: I'm sure we did.

1 MR. CHERTOFF: And was your conclusion that  
2 you were happy and relieved that the decision had been  
3 made to try to hold the line and not agree to a  
4 broadening of the Justice Department inquiry into a  
5 consent to search focused inquiry as opposed to a stop  
6 focused inquiry?

7 THE WITNESS: I was pleased that we were  
8 receiving the support from the Attorney General's  
9 Office that I thought we deserved, yes, sir.

10 MR. CHERTOFF: When there was discussion  
11 about this consent to search data, did anybody at the  
12 meeting say in substance, let's put aside how we deal  
13 with Washington, do we need ourselves to do an  
14 investigation of exactly how serious the situation with  
15 racial profiling is?

16 THE WITNESS: I don't recall anybody making  
17 that specific statement, but I think that there was an  
18 investigation ongoing at the time by the Division of  
19 State Police looking into that exact concept.

20 MR. CHERTOFF: Did you say that to the people  
21 at the meeting on May 20th?

22 THE WITNESS: I don't recall making that  
23 statement, no, sir.

24 MR. CHERTOFF: Did the Attorney General turn  
25 to you in that meeting and say point blank, Colonel

1 Williams, is there racial profiling at the Division of  
2 State Police?

3 THE WITNESS: I don't recall him making that  
4 statement, no, sir.

5 MR. CHERTOFF: Would you remember that?

6 THE WITNESS: I might.

7 MR. CHERTOFF: Did he ever ask you that point  
8 blank?

9 THE WITNESS: Not that I -- not that I  
10 recall.

11 MR. CHERTOFF: Did he ever ask you point  
12 blank to let him see the result of any examination or  
13 investigation you did, meaning the State Police did, in  
14 -- about this question of racial profiling?

15 THE WITNESS: Not specifically, no.

16 MR. CHERTOFF: Did anybody from the Office of  
17 Attorney General ever say to you, are you guys looking  
18 at this issue yourselves, and can you give us the  
19 results?

20 THE WITNESS: Well, I think that they knew we  
21 were looking at the issue because they were part of the  
22 -- you know, being provided with the reports that we  
23 were generating and the information that was coming  
24 forward.

25 MR. CHERTOFF: How do you know they were

1 being provided with that?

2 THE WITNESS: Well, you know, I had faith in  
3 Sergeant Gilbert, that he was providing the information  
4 to DAG Rover.

5 MR. CHERTOFF: Had you instructed him to do  
6 that?

7 THE WITNESS: Yes, I had.

8 (Pause)

9 MR. SOKOL: Yeah, a few.

10 MR. CHERTOFF: Go ahead --

11 MR. SOKOL: The investigation that you said  
12 the State Police were conducting at the time in May,  
13 '97, is the -- is that the investigation that Sergeant  
14 Gilbert was conducting, or was there another  
15 investigation that we're talking about?

16 THE WITNESS: That was the Internal Affairs  
17 Bureau, and I think Colonel Dunlop was basically  
18 responsible for that.

19 MR. SOKOL: And was that investigation  
20 discussed at this meeting with the Attorney General?

21 THE WITNESS: I can't recall, sir.

22 MR. SOKOL: Earlier in your testimony this  
23 morning, when you were asked about profiling, I believe  
24 your response was that when the Soto decision came down  
25 it was your belief that there may have been one or two

1 troopers, I think those are your words, that might have  
2 been involved, but it was not -- but that there was --  
3 there wasn't racial profiling within the State Police  
4 that was pervasive. Is that a fair characterization of  
5 what you said this morning?

6 THE WITNESS: I think I said it's a  
7 possibility that there were some troopers out there who  
8 were racially profiling but it was not prevalent  
9 throughout the entire organization.

10 MR. SOKOL: And you communicated that belief  
11 to then Attorney General Poritz, is that correct, when  
12 asked?

13 THE WITNESS: That I felt that there were --

14 MR. SOKOL: What you just said.

15 THE WITNESS: -- troopers --

16 MR. SOKOL: That there -- that racial  
17 profiling was not pervasive within the State Police and  
18 it may have been --

19 THE WITNESS: That racial --

20 MR. SOKOL: -- that to the extent it  
21 existed--

22 THE WITNESS: -- profiling was not pervasive,  
23 yes, sir.

24 MR. SOKOL: And did you communicate that to  
25 Attorney General Verniero?

1 THE WITNESS: Did -- specifically? I don't  
2 recall, you know, telling him that specifically, but  
3 generally, yes.

4 MR. SOKOL: And when this report was  
5 communicated at the meeting on May 20th, '97 to the  
6 group assembled did you conclude at the time that the  
7 problem was greater than what you had originally  
8 thought it to be back in '96?

9 THE WITNESS: This report, are you referring  
10 to the synopsis of the Maryland --

11 MR. SOKOL: The data -- the report that was  
12 generated by Sergeant Gilbert, which we've marked as  
13 CW-12, which, from what I understood your testimony to  
14 be, was discussed by and presented by Deputy Attorney  
15 General Rover, and I guess to the extent that he was  
16 questioned, Sergeant Gilbert was questioned about it?

17 THE WITNESS: Yes, sir.

18 MR. SOKOL: So based upon that report and the  
19 statistics contained in that report did your opinion  
20 change from your opinion -- your earlier opinion that  
21 it was not pervasive and restricted only to one or two  
22 troopers to the extent that it existed at all?

23 THE WITNESS: Well, again, sir, I think, you  
24 know, you have to take in the whole scope of what the  
25 arrest entailed, how it came down, what the -- what the

1 probable cause was, you know, was there -- was there a  
2 complaint from the individual that was arrested. You  
3 know, it's more -- to me it's more encompassing than  
4 just because there happens to be a statistic there that  
5 says something, and without checking each one of those  
6 statistics as to what the basis for it is and how it  
7 comes about it's kind of unfair to the troopers.

8 MR. SOKOL: I understand that, but I'm just  
9 thinking about your state of mind at the time and  
10 whether -- and what your conclusion was on May 20th,  
11 '97 as to the scope of the problem compared to what you  
12 believed the scope of the problem to be a year earlier.

13 THE WITNESS: Well, as I said, I was -- I was  
14 concerned and -- but I also wanted, you know, more  
15 definitive information with regards to the total  
16 background of each of the individual, we'll call them  
17 each arrest that ultimately ended in that culmination  
18 of those statistics.

19 MR. SOKOL: Did Mr. Verniero at the meeting  
20 express a concern that the problem was greater than  
21 what he had believed prior to that meeting?

22 THE WITNESS: I don't recall that being said,  
23 sir.

24 MR. SOKOL: Do you recall Mr. Waugh at the  
25 meeting saying that he was concerned that the -- that

1 the problem was greater than what he believed it to be  
2 prior to that meeting?

3 THE WITNESS: Again, I don't -- I don't  
4 recall that happening either, sir.

5 MR. CHERTOFF: All right -- step back. We  
6 were talking about the January 10th, '97 meeting and  
7 the May 20th, '97 meeting. On March 6th, 1997 did you  
8 meet with Mr. Rover and Mr. Fahy as well as a number of  
9 State Police Officers?

10 THE WITNESS: I think that was a Division  
11 headquarters?

12 MR. CHERTOFF: Yeah.

13 THE WITNESS: Yes, sir --

14 MR. CHERTOFF: How long --

15 THE WITNESS: -- to the best of my  
16 recollection.

17 MR. CHERTOFF: -- how long was that meeting?

18 THE WITNESS: I have no idea, sir.

19 MR. CHERTOFF: Do you know what the purpose  
20 of the meeting was?

21 THE WITNESS: I'm sure it was to discuss the  
22 Soto case and the Department of Justice --

23 MR. CHERTOFF: Do you know why called that --

24 THE WITNESS: -- Department of Justice  
25 inquiry.

1 MR. CHERTOFF: Do you know why you called  
2 that particular meeting?

3 THE WITNESS: I don't know if I called it or  
4 not, sir.

5 MR. CHERTOFF: Well, if it was a meeting at  
6 the State Police, wouldn't it be something you called?

7 THE WITNESS: Not necessarily. George Rover  
8 or Jack Fahy could have called me up and said, we want  
9 to come down and have a meeting with you, and, you  
10 know, when's a convenient time for you to be there.

11 MR. CHERTOFF: On the next day, March 7th,  
12 did you meet with Attorney General Verniero and  
13 Lieutenant Colonel Littles and Lieutenant Colonel  
14 Roberson on the profiling issues?

15 THE WITNESS: To the best of my recollection,  
16 yes, sir.

17 MR. CHERTOFF: What was that meeting about?

18 THE WITNESS: I think we discussed where the  
19 -- where the process was going and, you know, where --  
20 what was happening within the -- in the Division and  
21 the Attorney General's Office.

22 MR. CHERTOFF: Why'd you have that meeting  
23 without the presence of Mr. Fahy and Mr. Rover?

24 THE WITNESS: The meeting with the Attorney  
25 General?

1 MR. CHERTOFF: Yeah, on March 7th.

2 THE WITNESS: I think the Attorney General  
3 called the meeting, and he's the one that made the  
4 decision who was going to be there and who wasn't.

5 MR. CHERTOFF: Did he say -- well, were there  
6 other occasions that brought both Lieutenant Colonel  
7 Littles and Lieutenant Colonel Roberson to a meeting on  
8 profiling?

9 THE WITNESS: With the Attorney General?

10 MR. CHERTOFF: Yeah.

11 THE WITNESS: Not that I recall, no.

12 MR. CHERTOFF: Do you know why he wanted to  
13 have the two Lieutenant Colonel's present as well as  
14 yourself?

15 THE WITNESS: No, I don't, sir.

16 MR. CHERTOFF: Do you remember what was  
17 discussed at the meeting?

18 THE WITNESS: I don't recall specifically,  
19 no, sir.

20 MR. CHERTOFF: Was it the process of turning  
21 over documents?

22 THE WITNESS: I don't recall, sir.

23 MR. CHERTOFF: At the meeting on January  
24 10th, the meeting on March 6th, the meeting on March  
25 7th and the meeting on May 20th, did you talk about the

1 audit that was being done in Moorestown?

2 THE WITNESS: It's a possibility.

3 MR. CHERTOFF: Did you talk about the fact  
4 that there had been complaints by minority troopers in  
5 Moorestown about racial profiling?

6 THE WITNESS: It's a possibility.

7 MR. CHERTOFF: Aren't these things that you  
8 would naturally want to disclose to the Attorney  
9 General in discussion about the Department of Justice  
10 inquiry?

11 THE WITNESS: Again, the information was  
12 shared, and I can't specifically remember what was  
13 talked about at each one of those meetings.

14 MR. CHERTOFF: Let me take the meetings as a  
15 group. Let me take the three meetings you had with the  
16 Attorney General in 1997, on January 10th, on March 7th  
17 and on May 20th. At the time of those meetings you  
18 understood there was a Justice Department inquiry into  
19 racial profiling by the State Police on the Turnpike,  
20 correct?

21 THE WITNESS: Yes, sir.

22 MR. CHERTOFF: It was certainly focused on  
23 Moorestown, correct?

24 THE WITNESS: Yes, sir.

25 MR. CHERTOFF: You also understood that there

1 had been a consent decree imposed on the Maryland State  
2 Police, correct?

3 THE WITNESS: Yes, sir.

4 MR. CHERTOFF: You did not want there to be a  
5 consent decree on the New Jersey State Police, right?

6 THE WITNESS: Not -- I wasn't -- wouldn't  
7 like to have that happen, no, sir.

8 MR. CHERTOFF: And you obviously knew the way  
9 in which the Department of Justice investigation was  
10 conducted and the information that they got might have  
11 an effect upon whether they would ultimately seek a  
12 Court order with respect to the New Jersey State  
13 Police, right?

14 THE WITNESS: Yes, sir.

15 MR. CHERTOFF: So you obviously had a keen  
16 interest in discussing with the Attorney General what  
17 was the likelihood and what was the exposure to the  
18 possibility of having the Department of Justice  
19 ultimately try to obtain a consent decree, correct?

20 THE WITNESS: Yes, sir.

21 MR. CHERTOFF: Now, in that context it was  
22 obviously very important that you conveyed what the  
23 underlying facts were about the situation in Moorestown  
24 to the Attorney General, right?

25 THE WITNESS: Yes, sir.

1 MR. CHERTOFF: And that included the fact  
2 that there had been not only statistical indications of  
3 more minorities getting searched than non-minorities,  
4 but that there was also actual complaints from minority  
5 troopers that there was profiling going on, right?

6 THE WITNESS: Well, there were complaints,  
7 but also there was an investigation done into that, and  
8 I think the investigation showed that there might have  
9 been a perception but no facts to back that up.

10 MR. CHERTOFF: But you knew if the Department  
11 of Justice got its hands on that material, the  
12 investigative material and the statistics, that would  
13 really give them something to use to kind of push the  
14 State Police into some kind of a settlement, right?

15 THE WITNESS: I didn't know that to be a  
16 fact, no, sir.

17 MR. CHERTOFF: You suspected that that was a  
18 possibility, right?

19 THE WITNESS: There's a possibility.

20 MR. CHERTOFF: So you'd want to lay that out  
21 on the table to the lawyers so the lawyers would have  
22 an understanding of what the weak spots were and the  
23 strong spots were in their dealing with the Department  
24 of Justice, right?

25 THE WITNESS: I don't see why not.

1 MR. CHERTOFF: And you had Sergeant Gilbert  
2 writing you memos that we've seen here where he  
3 analyzed what the State Police exposure was and how  
4 responding to particular requests could either increase  
5 the exposure or decrease the exposure, right?

6 THE WITNESS: Yes, sir.

7 MR. CHERTOFF: And you did that because you  
8 knew -- you got those reports because you knew it was  
9 important, this was your own analysis of how to deal  
10 with the Department of Justice, right?

11 THE WITNESS: Yes, sir.

12 MR. CHERTOFF: But you weren't dealing with  
13 the Department of Justice directly, you were dealing  
14 through the lawyers at the Department of Law and Public  
15 Safety, right?

16 THE WITNESS: Correct.

17 MR. CHERTOFF: So it was important to make  
18 sure those lawyers knew what you knew, right?

19 THE WITNESS: Yes, sir.

20 MR. CHERTOFF: And when you went to meetings  
21 to have discussions, I take it you didn't hold  
22 information back because you didn't want to share it  
23 with the people at the meeting in the Attorney  
24 General's Office, right?

25 THE WITNESS: That's correct, sir.

1 MR. CHERTOFF: So is it fair to say that in  
2 these three meetings you essentially conveyed the fact  
3 that there were statistical indications of greater  
4 percentages of minorities being searched than non-  
5 minorities as well as anecdotal information from  
6 troopers that could potentially be a problem?

7 THE WITNESS: I don't recall if I was that  
8 broad, but I'm sure that information was imparted, yes,  
9 sir.

10 MR. CHERTOFF: In meetings you were present  
11 at?

12 THE WITNESS: Yes, sir.

13 MR. CHERTOFF: In these three -- in one -- in  
14 one or more of these three meetings on January 10th --

15 THE WITNESS: -- It's a possibility.

16 MR. CHERTOFF: Now let's move on to what I'm  
17 going to mark as --

18 MR. BOWEN: CW-15.

19 (Pause)

20 MR. CHERTOFF: You see this document, CW-15?

21 THE WITNESS: Sir?

22 MR. CHERTOFF: You see CW-15, right?

23 THE WITNESS: Yes, sir.

24 MR. CHERTOFF: It's a memo to you from the  
25 Acting Commander of Troop D, right?

1 THE WITNESS: Troop D, yes, sir.

2 MR. CHERTOFF: Right. Troop D is a Turnpike  
3 Troop, right? Correct?

4 THE WITNESS: Yes, sir.

5 MR. CHERTOFF: And it contains a radio log  
6 synopsis and consent to search and probable cause  
7 synopsis for May, '97 for Cranbury and Moorestown,  
8 right?

9 THE WITNESS: Yes, sir.

10 MR. CHERTOFF: You had started to, not you  
11 specifically, but in general the State Police had  
12 started to generate these reports in response to the  
13 suggestion of Sergeant Gilbert back in 1996, right?

14 THE WITNESS: Yes, sir.

15 MR. CHERTOFF: And you got these yourself,  
16 right?

17 THE WITNESS: I did what, sir?

18 MR. CHERTOFF: You got copies of this  
19 yourself, right?

20 THE WITNESS: I don't know if I specifically  
21 received this or not, I --

22 MR. CHERTOFF: Well, it was addressed to you,  
23 right?

24 THE WITNESS: Well, everything that came to  
25 the State Police, sir, was basically addressed to me.

1 MR. CHERTOFF: Well, this didn't come to the  
2 State Police, this came from an officer in the State  
3 Police through your Field Operations Chief to you. So  
4 would you have seen this?

5 THE WITNESS: Well, again, it could have --  
6 it could have gotten to me and it could not have gotten  
7 to me.

8 MR. CHERTOFF: So you don't know whether you  
9 reviewed this?

10 THE WITNESS: Excuse me, sir?

11 MR. CHERTOFF: You don't know whether you  
12 reviewed this?

13 THE WITNESS: Looking through it I don't  
14 recall the -- seeing this type of document, no.

15 MR. CHERTOFF: Do you know whether this  
16 document was conveyed to the lawyers at the Department  
17 of Law and Public Safety?

18 THE WITNESS: No, I don't.

19 MR. CHERTOFF: Now, in this period after the  
20 May meeting did you continue to get reports from  
21 Sergeant Gilbert about how the running totals of  
22 statistics on stops and consents to searches were in  
23 Cranbury and Moorestown and in other stations as they  
24 compared to the Maryland numbers?

25 THE WITNESS: If I remember correctly there

1 was an ongoing dialogue, yes, sir.

2 MR. CHERTOFF: I'm going to show you what I'm  
3 going to mark as CW --

4 MR. BOWEN: Sixteen --

5 MR. CHERTOFF: -- 16 and 17, both documents  
6 dated July 10th, 1997, both to you through Lieutenant  
7 Blaker from Sergeant Gilbert, one saying DOJ inquiry  
8 and one saying, Turnpike stats, Moorestown, Cranbury,  
9 April, May, 1997.

10 (Pause)

11 MR. CHERTOFF: Now, CW-16 is an analysis of  
12 consent to search and probable cause and arrest data  
13 with respect to the 30 sample dates that the Department  
14 of Justice had requested from the Moorestown and  
15 Cranbury Stations, correct?

16 THE WITNESS: I guess so, yes, I don't --

17 MR. CHERTOFF: Do you remember -- do you  
18 remember seeing this?

19 THE WITNESS: Do I remember seeing this?  
20 Yes, sir.

21 MR. CHERTOFF: And did the numbers strike you  
22 as noteworthy?

23 THE WITNESS: Significant, yes, sir.

24 MR. CHERTOFF: And did you take note of the  
25 comparison between the percentages of minorities being

1 asked to consent to search or being searched in New  
2 Jersey as they compared to the percentages that were  
3 found in Maryland and used ultimately as a basis for a  
4 consent order?

5 THE WITNESS: Did I compare them at --

6 MR. CHERTOFF: Yeah.

7 THE WITNESS: -- that time when I --

8 MR. CHERTOFF: Based on --

9 THE WITNESS: -- when I was reading --

10 MR. CHERTOFF: -- well, the memo does the  
11 comparison.

12 THE WITNESS: -- when I was reading this?

13 MR. CHERTOFF: Yes.

14 THE WITNESS: I don't know if I did it at  
15 that time, no, sir.

16 MR. CHERTOFF: Did you see the -- well, did  
17 you see the comparison in the memo itself? The memo  
18 itself makes the comparison.

19 THE WITNESS: You're -- I'm looking at --  
20 you're looking at the one from the 10th.

21 MR. CHERTOFF: I'm looking at CW-16, 7/10/97.

22 THE WITNESS: Okay. I'm sorry. I was  
23 looking at the other one.

24 MR. CHERTOFF: Okay. Now, I'm looking at the  
25 one that says, analysis of the report from Moorestown

1 and Cranbury Stations I've been collecting for the 30  
2 sample dates requested by DOJ, CW-16. And you see how  
3 the percentages of minorities consenting and being  
4 searched are comparable or worse than the percentages  
5 that were found in Maryland.

6 THE WITNESS: Yes, sir.

7 MR. CHERTOFF: Did that concern you?

8 THE WITNESS: Excuse me, sir?

9 MR. CHERTOFF: Did that concern you?

10 THE WITNESS: Well, again, it concerned me,  
11 but, as I stated earlier, you know, I wanted to see the  
12 whole picture with what precipitated the stop, what  
13 precipitated the arrest, et cetera, et cetera.

14 MR. CHERTOFF: What'd you do to make sure you  
15 got the whole picture?

16 THE WITNESS: Well, we continued the  
17 investigation.

18 MR. CHERTOFF: Well, how many months went by  
19 before you felt you had completed the investigation and  
20 understood what was going on with respect to these 30  
21 sample dates?

22 THE WITNESS: Well, I was never there when  
23 the investigation was finished. I was terminated by  
24 then.

25 MR. CHERTOFF: So would it be fair to say

1 from July, 1997 to February, 1999 this investigation of  
2 these 30 dates was ongoing?

3 THE WITNESS: To the best of my recollection  
4 we were still collecting data, yes, sir.

5 MR. CHERTOFF: Is it your testimony that it  
6 took over 20 months to collect sufficient data to form  
7 conclusions about what was going on on 30 sample dates  
8 in 1995 and 1996?

9 THE WITNESS: Not 30 sample dates but to  
10 conclude what was going on throughout the entire  
11 Division.

12 MR. CHERTOFF: Who was doing this  
13 investigation?

14 THE WITNESS: If I remember correctly it was  
15 the Internal Affairs Bureau.

16 MR. CHERTOFF: And did they produce -- what  
17 was the actual work plan for the investigation? Were  
18 they -- were they supposed to actually look at each  
19 file and analyze what the basis for the stop or the  
20 consent to search was?

21 THE WITNESS: It was my understanding that  
22 they were supposed to do an in depth look at the -- at  
23 each case to find out what was -- what was going on,  
24 yes, sir.

25 MR. CHERTOFF: Were they supposed to

1 interview the troopers that were involved in the cases?

2 THE WITNESS: I don't know if at that time we  
3 had made a decision to interview the troopers or not.

4 MR. CHERTOFF: Well, did there come a point  
5 between 1997 and 1999 when you left that you made a  
6 decision about interviewing the troopers?

7 THE WITNESS: I don't recall doing that, no,  
8 sir.

9 MR. CHERTOFF: Is -- was this like -- was  
10 this -- did you set a deadline for this investigation?

11 THE WITNESS: Deadline?

12 MR. CHERTOFF: Yeah, like, did you say, I  
13 want this thing done in 60 days, or 90 days, or 180  
14 days?

15 THE WITNESS: I don't think I put -- imposed  
16 a deadline, no, sir.

17 MR. CHERTOFF: And did you pass the  
18 information in CW-16 on to anybody -- Department of Law  
19 and Public Safety?

20 THE WITNESS: Me specifically? Not that I  
21 recall, no, sir.

22 MR. CHERTOFF: Did you direct that it be  
23 passed on to somebody else?

24 THE WITNESS: As I stated earlier, Sergeant  
25 Gilbert was instructed to share all the information

1 with the Department -- the AG -- the AG's Office.

2 MR. CHERTOFF: Okay. What about CW-17? Now,  
3 this is not an analysis of the sample dates requested  
4 by DOJ, this is a run of the stop, consent and searches  
5 for April and May for Moorestown and Cranbury.

6 THE WITNESS: Yes, sir.

7 MR. CHERTOFF: Did you look at this?

8 THE WITNESS: I recall seeing this, yes, sir.

9 MR. CHERTOFF: and what was your reaction to  
10 this?

11 THE WITNESS: Again, the, you know, the  
12 statistics were there, and we had to look into what the  
13 process was that precipitated the arrests being made by  
14 the troopers.

15 MR. CHERTOFF: Well, what did -- I mean,  
16 after you get a document like this what did you -- what  
17 further action did you take? Were you satisfied with  
18 this? Were you pleased with this report? Were you  
19 displeased with it? Was there some further action you  
20 directed to be taken?

21 THE WITNESS: I don't say I was -- I was  
22 pleased with it, but I wasn't -- I didn't ask that the  
23 process be changed in any way.

24 MR. CHERTOFF: Did you ask for some further  
25 information?

1 THE WITNESS: I instructed them to continue  
2 with the -- with the process that was ongoing at the  
3 time with the, you know, direction of the Attorney  
4 General's Office.

5 MR. CHERTOFF: Am I -- does it really boil  
6 down to this, Colonel? After the May meeting were you  
7 confident that the State Police had the support of the  
8 Attorney General's Office such that you didn't really  
9 have to worry anymore about -- worry about these  
10 statistics and whether there was profiling going on  
11 because the Attorney General's Office was going to  
12 resist the Department of Justice getting beyond that  
13 very limited scope that had been agreed upon in January  
14 of 1997?

15 THE WITNESS: I wouldn't say that I wasn't  
16 worried about it. I was -- I was satisfied that the  
17 Attorney General's Office was supporting the State  
18 Police and -- you know, with the -- with the ongoing  
19 investigation from the Department of Justice.

20 MR. CHERTOFF: So you didn't feel you needed  
21 to do your own investigation on any kind of accelerated  
22 basis to actually find out if there really is a  
23 problem, right?

24 THE WITNESS: Well, we -- as I said, we had  
25 an ongoing investigation with, you know, within the

1 Division at the time.  
2 MR. CHERTOFF: But with no deadline, right?  
3 THE WITNESS: No specific deadline, no, sir.  
4 MR. CHERTOFF: No general deadline, right?  
5 THE WITNESS: Not that I recall.  
6 MR. CHERTOFF: No specific work plan about  
7 how to do the investigation, right?  
8 THE WITNESS: Oh, work plan?  
9 MR. CHERTOFF: Yeah, like no memo or order  
10 that says, you know, get the following records,  
11 interview the following people or something of that --  
12 you have nothing like that, right?  
13 THE WITNESS: Well, there was, you know,  
14 basic police practices that one would follow to do an  
15 investigation that I'm sure were being followed.  
16 MR. CHERTOFF: And no decision made about  
17 whether anyone would be interviewed in connection with  
18 this investigation, right?  
19 THE WITNESS: Not initially, no.  
20 MR. CHERTOFF: And no time frame to be  
21 investigated, right?  
22 THE WITNESS: In other words, did I put a  
23 deadline on the -- on the investigation? No.  
24 MR. CHERTOFF: And the Attorney General's  
25 Office didn't request you to provide them with the

1 results of any investigation?  
2 THE WITNESS: Not that I recall.  
3 MR. CHERTOFF: Okay. Let me show you CW --  
4 MR. BOWEN: CW-18.  
5 MR. CHERTOFF: -- 18.  
6 (Pause)  
7 MR. CHERTOFF: I'm going to show you this  
8 exhibit. Have you seen it before?  
9 (Pause)  
10 THE WITNESS: Right. There's parts I have  
11 seen and there's parts I haven't seen.  
12 MR. CHERTOFF: Okay. Have you ever seen the  
13 cover memo?  
14 THE WITNESS: No.  
15 MR. CHERTOFF: Okay. And have you ever seen  
16 it packaged in the form that it is in the exhibit --  
17 packaged in the form that it is in the exhibit as a  
18 group with the cover memo?  
19 THE WITNESS: From Captain Touw?  
20 MR. CHERTOFF: No. Have you ever seen this  
21 exhibit packaged the way it is before you --  
22 THE WITNESS: No, sir --  
23 MR. CHERTOFF: -- with a cover memo? Okay.  
24 But you've --  
25 THE WITNESS: No, sir.

1 MR. CHERTOFF: -- seen the attachments to the  
2 cover memo before, right?  
3 THE WITNESS: Just some of them.  
4 MR. CHERTOFF: Okay. Which ones? You saw  
5 Lieutenant Hinkle's right -- to Captain Touw? That's  
6 Bates number 976, 977. You've seen that before, right?  
7 MR. WEBER: Very front of the packet.  
8 MR. CHERTOFF: Very front, first two pages,  
9 OAG-976 and 977. You've seen that before, right?  
10 THE WITNESS: I don't -- I don't recall  
11 seeing that, no.  
12 MR. CHERTOFF: Well, isn't the same as  
13 Exhibit F-17 you have before you that you previously  
14 testified about?  
15 MR. FISHER: F-17?  
16 MR. CHERTOFF: Yeah.  
17 (Pause)  
18 MR. FISHER: I don't see an F-17 at all.  
19 MR. CHERTOFF: It's part of CW --  
20 MR. FISHER: I have a note of F-16 being  
21 shown to the witness.  
22 MR. CHERTOFF: How about CW-8? Look at -- it  
23 may be attached to CW-8 --  
24 MR. FISHER: CW-8?  
25 MR. CHERTOFF: Exhibit CW-8.

1 THE WITNESS: Okay. Right. They're the same  
2 reports.  
3 MR. CHERTOFF: So you had seen that before,  
4 right?  
5 THE WITNESS: I guess in conjunction with  
6 that other report, yes, sir.  
7 MR. CHERTOFF: Okay. What other parts of  
8 Exhibit CW-18 had you see before in the year 1997?  
9 (Pause)  
10 THE WITNESS: I think I saw the memo on  
11 7/5/96.  
12 MR. CHERTOFF: From who to who?  
13 THE WITNESS: Excuse me, sir?  
14 MR. CHERTOFF: From who to who is that memo?  
15 THE WITNESS: That's from Captain Touw to  
16 Major Fedorko.  
17 (Pause)  
18 THE WITNESS: I saw the May 14th, 1996 from  
19 Major Sparano -- or, actually, it started with Captain  
20 Roberson through Major Sparano to me, and again, the  
21 attached special report that's on that report. I don't  
22 recall seeing the -- this special report from  
23 Lieutenant Gilbert to Captain Silvert, reference,  
24 4/24/96, where they talk about Trooper Ogg. It's April  
25 24.

1 MR. CHERTOFF: Trooper Ogg, um-hmm.  
2 THE WITNESS: Right. And the various  
3 attachments to that -- to that report, I don't recall  
4 seeing that. The report, special report from -- again,  
5 from Lieutenant Gilbert to Captain Silvert on 4/15/96,  
6 saw that, recall seeing that.  
7 MR. CHERTOFF: All right. I want to -- did  
8 you ever have any discussions with anybody concerning a  
9 decision made not to turn over the material in Exhibit  
10 CW-18 to the Department of Justice as part of its  
11 request for information?  
12 THE WITNESS: Not to turn --  
13 MR. CHERTOFF: Yeah.  
14 THE WITNESS: No, sir.  
15 MR. CHERTOFF: All right. I'm going to show  
16 you a series of other documents --  
17 (Pause)  
18 MR. CHERTOFF: -- and what I'll do is I'll  
19 hand them to you in a group, maybe a little easier to  
20 work with, I think.  
21 (Pause)  
22 MR. CHERTOFF: All right. I'm going to show  
23 you --  
24 MR. WEBER: Nineteen, 20, 21 and 22.  
25 MR. CHERTOFF: And I want to go through them

1 briefly. With respect to CW-19, do you remember  
2 receiving this document?  
3 THE WITNESS: Yes.  
4 MR. CHERTOFF: Okay. This shows samples of  
5 randomly selected dates, percentages of -- racial  
6 percentages with respect to stops during 1995 and 1996.  
7 Do you remember seeing this -- do you remember  
8 analyzing this document?  
9 THE WITNESS: Do I remember analyzing it?  
10 MR. CHERTOFF: Um-hmm.  
11 THE WITNESS: No, sir.  
12 MR. CHERTOFF: Now if you turn page marked  
13 GC-2306--  
14 THE WITNESS: Oh six?  
15 MR. CHERTOFF: -- 2306 at the bottom --  
16 actually, let's do it this way. Take a look at the  
17 page marked GC-2300. It's the first page after the  
18 cover memo. You got that?  
19 THE WITNESS: Yes, sir.  
20 MR. CHERTOFF: It's -- you see it shows about  
21 a 23 percent, you know, black for drivers who were  
22 stopped and about five percent Hispanic, right?  
23 THE WITNESS: Yes, sir.  
24 MR. CHERTOFF: And then if you go to the next  
25 page, which is -- that would -- the prior page was

1 Cranbury, the next page is Moorestown, very similar,  
2 it's 23.2 percent black being stopped, right?

3 THE WITNESS: Yes, sir.

4 MR. CHERTOFF: And then if you go to the next  
5 page, which is, again, 1996 for Cranbury, it shows 24  
6 percent being stopped black, correct?

7 THE WITNESS: Yes, sir.

8 MR. CHERTOFF: And 20 -- and then the  
9 following page is 28 percent in Moorestown being  
10 stopped who were black, right?

11 THE WITNESS: Yes, sir.

12 MR. CHERTOFF: So you'd agree with me for the  
13 period of time in question on the sample days  
14 essentially you did about one in four drivers were  
15 being stopped are black, correct?

16 THE WITNESS: Yes, sir.

17 MR. CHERTOFF: Now if you look at the next  
18 set of data, that has to do with consents to search,  
19 right?

20 THE WITNESS: Yes, sir.

21 MR. CHERTOFF: Now, let's go to page 2306,  
22 which talks about search activity. Where it shows  
23 Moorestown, the first entry is Moorestown for  
24 particular dates. Type C would be consent searches,  
25 right?

1 THE WITNESS: Yes, sir. That's what it says.

2 MR. CHERTOFF: And does it indicate total  
3 minority, 89 percent?

4 THE WITNESS: Yes, sir.

5 MR. CHERTOFF: And then underneath that for  
6 the next period is total minority, 89 percent?

7 THE WITNESS: Yes, sir.

8 MR. CHERTOFF: And for the next period, it's  
9 New Brunswick, I guess, is NB, right?

10 THE WITNESS: New Brunswick, yes, sir.

11 MR. CHERTOFF: That's 94 percent?

12 THE WITNESS: Yes, sir.

13 MR. CHERTOFF: And then as you go down for  
14 Cranbury and Moorestown and Cranbury, successive  
15 periods into 1996 it shows 73 percent, 79 percent?

16 THE WITNESS: Yes, sir.

17 MR. CHERTOFF: And then there's a comparison  
18 between those numbers and the Maryland search rates  
19 used against them regarding the consent decree, right?  
20 At the bottom of the page, right?

21 THE WITNESS: Yes, sir.

22 MR. CHERTOFF: And that shows an 80 percent  
23 minority search -- right?

24 THE WITNESS: Yes, it does.

25 MR. CHERTOFF: Now if you look at just this

1 page, it tells you, and you look at this report, it  
2 tells you, does it not, that as far as stops are  
3 concerned the percentages of whites versus minorities  
4 in terms of stops, it's about one in four blacks,  
5 right?

6 THE WITNESS: Yes, sir.

7 MR. CHERTOFF: But when you get to consent to  
8 search it's really somewhere in the nature of 75 to 95  
9 percent of the searches are black or minorities.

10 THE WITNESS: Yes, sir.

11 MR. CHERTOFF: That is -- did you -- when you  
12 saw  
13 -- let me withdraw -- you can see that as a disturbing  
14 figure, a troubling figure?

15 THE WITNESS: I wouldn't say disturbing, I  
16 would say concerned with the -- with the -- you know,  
17 what these statistics show here.

18 MR. CHERTOFF: I mean, doesn't it strike you  
19 as remarkable that in a given period of time virtually  
20 everybody who was asked to consent to search was a  
21 minority, of all the people who were stopped?

22 THE WITNESS: As I said, it was a concern,  
23 yes.

24 MR. CHERTOFF: And then you see that rates  
25 that were actually not as unfavorable were sufficient

1 to result in a consent decree in Maryland, right?

2 THE WITNESS: Yes, sir.

3 MR. CHERTOFF: Now, you had this information  
4 in 1998, correct?

5 THE WITNESS: Yes, sir.

6 MR. CHERTOFF: Did you raise your red flag to  
7 anybody about, this appears to be a problem that's  
8 still going on, we got to do something about this?

9 THE WITNESS: I was concerned that there was  
10 a, you know, disparity out there, but there was also --  
11 as I said, each individual arrest has to be looked at  
12 as to what precipitated why that trooper asked for that  
13 consent search.

14 MR. CHERTOFF: So did you inaugurate an  
15 investigation into each individual arrest to find out  
16 the answer?

17 THE WITNESS: Not that I recall.

18 MR. CHERTOFF: So now let's go to CW-20.  
19 These are consent searches. And again, this is now for  
20 April, '97 through September, '97, right? It went to  
21 you, right?

22 THE WITNESS: This is CW-20?

23 MR. CHERTOFF: Right. It's -- it looks to me  
24 like it's February 20th, 1998.

25 THE WITNESS: Correct.

1 MR. CHERTOFF: You got this, right?  
2 THE WITNESS: Right.  
3 MR. CHERTOFF: That's your initials --  
4 THE WITNESS: Yes, sir.  
5 MR. CHERTOFF: -- right?  
6 THE WITNESS: Yes, sir.  
7 MR. CHERTOFF: You said, okay, right?  
8 THE WITNESS: Yes, sir.  
9 MR. CHERTOFF: You got it on March 5th, 1998,  
10 right?  
11 THE WITNESS: Yes, sir.  
12 MR. CHERTOFF: Now, this actually captures  
13 information, not from 1995 and 1996, but now we're into  
14 1997, right?  
15 THE WITNESS: Yes.  
16 MR. CHERTOFF: And this is -- this is -- 1997  
17 is the very period of time that the State is literally  
18 involved in negotiating and dealing with the Department  
19 of Justice on its racial profiling inquiry, correct?  
20 THE WITNESS: Yes, sir.  
21 MR. CHERTOFF: So were you curious to see how  
22 the State Police were doing in 1997 as compared to  
23 prior years when, you know, you had preexisting  
24 problems?  
25 THE WITNESS: Yes, sir.

1 MR. CHERTOFF: So if you look at the data,  
2 did you draw any conclusions -- involving consent to  
3 searches with respect to Cranbury Station and  
4 Moorestown Station?  
5 THE WITNESS: Again, it was high for  
6 minorities.  
7 MR. CHERTOFF: What'd you do in order to  
8 address that issue?  
9 THE WITNESS: Again, we were constantly  
10 looking into our operation. You know, I was putting  
11 out informational bulletins, et cetera, et cetera, and  
12 having the overall arrests being looked at with regards  
13 to why the -- what precipitated the stop and what  
14 precipitated the consent to search.  
15 MR. CHERTOFF: Are you telling us that as of  
16 this point in early 1999 you actually had assigned  
17 somebody to go out and look at the underlying files  
18 with respect to the individual consents to search to  
19 get a feeling of what the reasons were underneath the  
20 statistical information?  
21 THE WITNESS: I don't recall if I -- if I had  
22 somebody do that, if I did it or if somebody else did  
23 it on my behalf, I don't recall that.  
24 MR. CHERTOFF: So you don't remember anybody  
25 doing that?

1 THE WITNESS: I -- like I say, I don't know  
2 if it was done or not.

3 MR. CHERTOFF: So as far as you're concerned,  
4 you're just getting numbers, they don't look good, and  
5 so you're waiting to get more numbers, right?

6 THE WITNESS: No, I was -- as I said, we were  
7 still compiling the information and looking into the  
8 situation as it was progressing.

9 MR. CHERTOFF: In 1998, from your  
10 understanding where -- was the Department of Justice  
11 inquiry fairly quiet and fairly inactive?

12 THE WITNESS: I don't recall, sir.

13 MR. CHERTOFF: Let me show you CS-21 for  
14 identification, which is in front of you. This is a  
15 memo to you from Sergeant Gilbert regarding training re  
16 profiling issues and formation of a standing committee.  
17 You see that?

18 THE WITNESS: Yes, sir.

19 MR. CHERTOFF: You see here where it says,  
20 "We can easily format this," in bold letters, "We can  
21 easily format this training to include enforcement  
22 issues arising from the racial profiling angle. We  
23 would then be satisfying representations made by the AG  
24 in the press release." What does that refer to?

25 THE WITNESS: Evidently the Attorney General

1 put out a press release saying that the State Police  
2 was doing such and such and such and such, and we  
3 would, by instituting this program, would be adhering  
4 to that press release that went out.

5 MR. CHERTOFF: Is it -- is it -- would it be  
6 fair to draw the conclusion that in terms of getting  
7 things done and making changes the most -- in -- within  
8 the State Police at this point in time the most  
9 effective way to make a change was not issuing a SOP or  
10 an order or a directive but to have a press release go  
11 out that would then force everybody to live up to what  
12 was in the press release?

13 THE WITNESS: No, sir.

14 MR. CHERTOFF: At the time the press release  
15 went out -- was the press -- did the press release go  
16 out in the wake of a meeting that you and the Attorney  
17 General had with black ministers?

18 THE WITNESS: I know we had a meeting around  
19 that time with the -- with the black ministers. I  
20 don't specifically recall the contents of the press  
21 release.

22 MR. CHERTOFF: And that was after the Hogan  
23 and Kenna shooting, right?

24 THE WITNESS: This was in May the 27th --

25 MR. CHERTOFF: Right, so that would be after

1 the Hogan and Kenna shooting, right?

2 THE WITNESS: Yes, sir.

3 MR. CHERTOFF: And is it your recollection  
4 that in the wake of that shooting there was a press  
5 release issued that talked about all the training and  
6 things of that that were going on with respect to  
7 racial profiling?

8 THE WITNESS: I know the Attorney General's  
9 Office put out a press release and -- if I remember  
10 correctly, it did include just what you said.

11 MR. CHERTOFF: And did you understand this  
12 memo to be an effort to get the reality to catch up to  
13 what was in the press release?

14 THE WITNESS: It was -- it was an attempt to  
15 verify or justify what the Attorney General had put  
16 out, yes, sir.

17 MR. CHERTOFF: Okay. Now let me show you CW-  
18 22. This is a memo in November 25th, 1998 to you,  
19 right?

20 THE WITNESS: Yes, sir.

21 MR. CHERTOFF: And again, now this covers the  
22 stop data and the consent search data for six months in  
23 1998, right?

24 THE WITNESS: Right, April, '98 through  
25 September, '98.

1 MR. CHERTOFF: Right. And if you look at the  
2 first page after the cover sheet it shows the radio log  
3 data, which is the stop data, right?

4 THE WITNESS: From Cranbury and Moorestown  
5 Station.

6 MR. CHERTOFF: Correct?

7 THE WITNESS: Yes, sir.

8 MR. CHERTOFF: And the -- and the next page  
9 comes from consent searches from Moorestown and  
10 Cranbury, right?

11 THE WITNESS: Yes, sir.

12 MR. CHERTOFF: Was this from the CAD system,  
13 C-A-D system?

14 THE WITNESS: I think by this time the CAD  
15 system had become, if I remember correctly, operational  
16 at the Cranbury headquarters.

17 MR. CHERTOFF: Okay. Do you -- when you look  
18 at consent searches, do you still see the minority, the  
19 total minority searches, as running somewhere between  
20 50 and 75 or 80 percent?

21 MR. FISHER: What was the question? I'm -- I  
22 didn't --

23 MR. CHERTOFF: When you look at the consent  
24 searches do you see the percentage of blacks and  
25 Hispanics being searched as running somewhere between

1 50 and 75 percent of total searches?

2 THE WITNESS: Yes, sir.

3 MR. CHERTOFF: Did that trouble you?

4 THE WITNESS: Yes, sir.

5 MR. CHERTOFF: Now, this is now two years  
6 after all this began in 1996 with the Justice  
7 Department inquiry. You keep being troubled. What are  
8 you doing at this -- is there a point where you said to  
9 yourself, you know, I think we have a real problem here  
10 because of the consent to search numbers?

11 THE WITNESS: Well, what we're doing is we're  
12 try to bestow upon the troopers with in service  
13 trainings and communications to adhere to the mandates  
14 as described in the SOPs, the various Court decisions,  
15 et cetera, et cetera. We're trying to make them more  
16 aware of the -- of the perceived problems out there  
17 with the amount of -- the inequities in the stops with  
18 regards to -- the searches with regards to whites and  
19 minorities.

20 MR. CHERTOFF: Take a minute to take CW-22  
21 and CW-20, put them next to each other. And in each  
22 case turn to the page that has consent searches. CW-20  
23 covers the period April, '97 to September, '97, and  
24 then CW-22 is April, '98 through September, '98. So  
25 essentially they are -- they cover the April to --

1 through September periods in 1997 and 1998, with one  
2 year separation, right?

3 THE WITNESS: Yes, sir.

4 MR. CHERTOFF: And you'd agree with me that's  
5 a good comparison because it covers basically the same  
6 time of year, right? You're getting, you know, a  
7 little bit of spring, summer and a little bit of fall  
8 in '97 and '98, right?

9 THE WITNESS: Yes, sir.

10 MR. CHERTOFF: Did you ever make a comparison  
11 with respect to how you were doing in '97 and how you  
12 were doing in '98?

13 THE WITNESS: I don't recall doing that, no,  
14 sir.

15 MR. CHERTOFF: Well, if you look at '97, for  
16 example, in Cranbury, in '97 you had blacks and  
17 Hispanics were, if my math is correct, is about 56  
18 percent being searched in Cranbury, whereas when you  
19 get to 1998, if you add blacks and Hispanics together,  
20 you get about 73 percent. So that's actually worse in  
21 '98 than in '97, right?

22 MS. GLADING: I'm sorry. What number did you  
23 say for '97?

24 MR. CHERTOFF: I'm adding blacks and  
25 Hispanics. I'm getting searches for six months -- I'm

1 sorry, as being -- I was wrong, I -- look -- 70 -- 68  
2 percent in '90 --

3 MR. FISHER: What month are you looking --

4 MR. CHERTOFF: -- in '97, six months totals.

5 MR. FISHER: Six month total figure.

6 MR. CHERTOFF: Right. That would be  
7 approximately 68 percent. And then if you look at the  
8 following year, Cranbury, same time frame, it's about  
9 73 percent, 74 percent, so it's actually gotten  
10 somewhat worse, right?

11 THE WITNESS: Yes, sir.

12 MR. CHERTOFF: And if we go down to  
13 Moorestown --

14 THE WITNESS: Says there's an increase.

15 MR. CHERTOFF: I beg your pardon?

16 THE WITNESS: There is an increase.

17 MR. CHERTOFF: In the minorities?

18 THE WITNESS: Yes, sir.

19 MR. CHERTOFF: And both are high, right?

20 THE WITNESS: Yes, sir.

21 MR. CHERTOFF: And then if you look at  
22 Moorestown you have in '97 basically 76 percent in '97,  
23 and then in '98 you have basically 76 percent again,  
24 right? So it's high and the same, right? Correct?

25 THE WITNESS: Yes, sir.

1 MR. CHERTOFF: That doesn't show any  
2 improvement, does it?

3 THE WITNESS: It shows about the same amount.

4 MR. CHERTOFF: Did anybody at your direction,  
5 or you, ever take, now you had this computer generated  
6 stuff, ever take it and look at it and say, hmm, we're  
7 not doing any better, we ought to fix it a little bit?

8 THE WITNESS: We're not doing any better?

9 MR. CHERTOFF: In terms of our very, very  
10 high percentage of minorities who were being asked to  
11 consent to search, we're still with very, very high  
12 numbers.

13 THE WITNESS: No, I did not put out any -- I  
14 did not --

15 MR. CHERTOFF: Compare them?

16 THE WITNESS: -- compare them.

17 MR. CHERTOFF: Or ask anybody to compare  
18 them?

19 THE WITNESS: Well, I think that they were  
20 compared here.

21 MR. CHERTOFF: But from year to year, did you  
22 ask anybody to -- or take any action based upon this  
23 information?

24 THE WITNESS: Not that I recall.

25 MR. CHERTOFF: Did anybody from the Attorney

1 General's Office through the end of '98 say to you,  
2 how're we doing with respect to this issue of consent  
3 searches?

4 THE WITNESS: Not specifically that I can  
5 recall, no, sir.

6 MR. CHERTOFF: Did you pass this information  
7 from these reports, this CAD reports, these six-month  
8 assessments, on to anybody at the Department of Law and  
9 Public Safety?

10 THE WITNESS: Did I personally? No, sir.

11 MR. CHERTOFF: Did you direct that somebody  
12 else do it?

13 THE WITNESS: Well, again, as I stated  
14 earlier, I

15 -- initially when we started this process then Sergeant  
16 -- or Detective Gilbert was instructed to pass all the  
17 information on.

18 MR. CHERTOFF: I'm going to show you --

19 MR. BOWEN: CW-23.

20 MR. CHERTOFF: CW-23 is a memo to Paul Zoubek  
21 from George Rover dated February 26, 1999. I don't --  
22 I don't have any reason to think you've seen it, but I  
23 do want you to look --

24 (Pause)

25 MR. CHERTOFF: If you look at the third page

1 of that, which has OAG-2190 on the bottom, it says,  
2 "These are" -- "These are numerous documents I have not  
3 produced to DOJ, and they include the following, July  
4 5th 1996 IAB motor vehicle stop ordered of Moorestown  
5 Station, Lieutenant Gilbert." Now you previously  
6 indicated you had seen that July 5th report from  
7 Lieutenant Gilbert, right?

8 THE WITNESS: Yes, sir.

9 MR. CHERTOFF: Okay. The statistical  
10 breakdown of motor vehicle stops from the sample date,  
11 and you saw those here at -- a memo to you from  
12 Sergeant Gilbert back in July of 1997, correct?

13 THE WITNESS: Yes, sir.

14 MR. CHERTOFF: And your understanding was  
15 that stuff was being turned over to Mr. Rover, right?

16 THE WITNESS: Yes, sir.

17 MR. CHERTOFF: Okay. And then, negative OPR  
18 probable cause searches. Do you know what that refers  
19 to?

20 THE WITNESS: Well, in my opinion it's -- in  
21 other words, when you either ask for a consent to  
22 search and the person refused and/or the consent to  
23 search was granted and there were no fruits of a crime  
24 discovered.

25 MR. CHERTOFF: With -- okay. Do you see -- do

1 you know whether the documents we've just looked at,  
2 CW-20 and CW-22, fall within any of the categories  
3 listed on this page three of this memo from Mr. Rover  
4 to Mr. Zoubek?  
5 MR. FISHER: Which one, C-20?  
6 MR. CHERTOFF: C-20 or -- CW-20 or CW-22.  
7 MR. FISHER: That they -- that they have  
8 what, sir? That they --  
9 MR. CHERTOFF: If they appear on that list on  
10 page three of Mr. Rover's memo.  
11 MR. FISHER: The one through eight list that  
12 you were referencing before --  
13 MR. CHERTOFF: Right.  
14 MR. FISHER: -- is that correct?  
15 THE WITNESS: And you're talking about this -  
16 - there's two --  
17 MR. CHERTOFF: I beg your pardon?  
18 THE WITNESS: You're talking about the two --  
19 just the two front pages?  
20 MR. CHERTOFF: -- those two -- those two  
21 documents, CW-20 and CW-22, are those --  
22 THE WITNESS: The whole document?  
23 MR. CHERTOFF: Yeah, are those documents --  
24 can you tell whether they're listed in -- as one  
25 through eight in that memo from Mr. Rover, if you know?

1 THE WITNESS: I don't, you know, look -- I  
2 don't see those specific documents mentioned in this --  
3 these two reports.  
4 MR. CHERTOFF: Now, I want to direct your  
5 attention to February 10th, 1999. I'm going to show  
6 you CW --  
7 MR. BOWEN: Twenty-four.  
8 MR. CHERTOFF: -- 24 for identification. Do  
9 you see that press release?  
10 THE WITNESS: Yes, sir.  
11 MR. CHERTOFF: Now, on February 10th, 1999  
12 there was an announcement that there was going to be a  
13 State Police review.  
14 THE WITNESS: Yes, sir.  
15 MR. CHERTOFF: With an initial report in four  
16 months relating to the issue of, among other things,  
17 racial profiling, correct?  
18 THE WITNESS: Yes, sir.  
19 MR. CHERTOFF: How did you come -- how did  
20 you first learn this review was going to take place?  
21 THE WITNESS: I think we might have had a  
22 meeting with First Assistant Attorney General Zoubek --  
23 I was advised.  
24 MR. CHERTOFF: When was that?  
25 THE WITNESS: Sometime prior to this February

1 10th date.  
2 MR. CHERTOFF: Like a day prior, or two days  
3 prior, or what?  
4 THE WITNESS: I don't recall.  
5 MR. CHERTOFF: Were you told what  
6 precipitated the desire to have this review?  
7 THE WITNESS: Was I told specific --  
8 MR. CHERTOFF: Yes.  
9 THE WITNESS: No, sir.  
10 MR. CHERTOFF: Well, you come into the  
11 meeting. What are you told?  
12 THE WITNESS: If I remember correctly, I was  
13 told that the Attorney General had made a decision that  
14 we're going to look a little further into the State  
15 Police with regards to the issues that are mentioned  
16 here in the -- in the press release.  
17 MR. CHERTOFF: And what was your reaction?  
18 THE WITNESS: I had no problem.  
19 MR. CHERTOFF: Well, was this a surprise?  
20 THE WITNESS: Was I surprised?  
21 MR. CHERTOFF: Yeah.  
22 THE WITNESS: No, not really. No, sir.  
23 MR. CHERTOFF: Did you expect that --  
24 something like this to be coming?  
25 THE WITNESS: Did I expect it?

1 MR. CHERTOFF: Yeah.  
2 THE WITNESS: I didn't -- I didn't unexpect  
3 it, let's put it that way. I wasn't looking forward to  
4 it, but, you know, I --  
5 MR. CHERTOFF: Would you have a sense that --  
6 THE WITNESS: -- well, the -- you know, the  
7 rumor mill within the organization had that, you know,  
8 that something like this was going to transpire.  
9 MR. CHERTOFF: What was the rumor mill  
10 telling you about why this was going to transpire?  
11 THE WITNESS: Well, because the statistics  
12 that were coming out were, as we've gone through today,  
13 were high with regards to minority stops; that the  
14 Attorney General and the administration were receiving  
15 pressure from various interest groups outside the  
16 organization with regards to the State Police and  
17 racial profiling; and that, you know, they were going  
18 to take a proactive approach.  
19 MR. CHERTOFF: And up to then there was no  
20 proactive approach, right?  
21 THE WITNESS: Well, there's always been a  
22 proactive approach. Maybe I should have said a more  
23 proactive --  
24 MR. CHERTOFF: Let me -- did anyone give you  
25 some idea, or did you have a hunch about why at this

1 particular moment in time, February 10th, 1999,  
2 approximately two years after this whole issue with the  
3 Department of Justice inquiry got started, why all of a  
4 sudden someone decided they're going to have an outside  
5 review of the State Police?

6 THE WITNESS: Well, as I stated earlier,  
7 there's, you know, with the -- with the culmination of  
8 the statistics that had been provided to the -- through  
9 the various investigations that were going on and the  
10 statistic gathering that the organization was doing  
11 that a determination was made that there needed to be a  
12 broader and more in depth look at the State Police.

13 MR. CHERTOFF: Wasn't there a newspaper  
14 series that reflected poorly on the State Police?

15 THE WITNESS: I don't specifically recall  
16 that, could have been.

17 (Pause)

18 MR. CHERTOFF: Now, is it your testimony that  
19 when you heard that there -- an outside group was going  
20 to come in and look at your Division that you didn't  
21 respond to that at all, you were okay with that?

22 THE WITNESS: The Attorney General's my --  
23 was my direct boss, and, you know, he makes the  
24 decision.

25 MR. CHERTOFF: But did you argue that you had

1 been taking care of this yourself and there wasn't any  
2 need because you had all the information at your  
3 fingertips because you'd been compiling it?

4 THE WITNESS: Well, apparently the  
5 information that we had wasn't satisfactory and, you  
6 know, the Attorney General wanted more input --

7 MR. CHERTOFF: Well, did you have --

8 THE WITNESS: -- and direction --

9 MR. CHERTOFF: -- discussion with any -- did  
10 you have discussion with Mr. Zoubek about why now, all  
11 of a sudden you're coming to us and saying you're going  
12 to bring an outside agency in, as if what we'd done  
13 isn't good enough?

14 THE WITNESS: It was my understanding, if I  
15 remember correctly, that it would give -- in other  
16 words, an outside organization would give more  
17 credibility to the -- to the State Police looking at  
18 the -- looking at the organization.

19 MR. CHERTOFF: And why did you -- why did you  
20 -- was it your understanding there was a need for more  
21 credibility?

22 THE WITNESS: Because it would be an outside  
23 organization.

24 MR. CHERTOFF: Did you feel you lacked  
25 credibility in terms of your own handling of this

1 matter?

2 THE WITNESS: I didn't think I lacked  
3 credibility, no, sir.

4 MR. CHERTOFF: Did you go to the Attorney  
5 General

6 -- you ever have a discussion with him about this

7 THE WITNESS: No, sir.

8 (Pause)

9 MR. CHERTOFF: You know, occasionally I  
10 venture away from the normal asking of questions in  
11 doing depositions or in Court. In this proceeding I  
12 observed something. I want to make an observation, and  
13 then I'd like to hear your reaction to it. In all the  
14 years I've experienced the way people work in  
15 government agencies, and I don't take myself out of  
16 this, I'm in the same category, I've never once  
17 encountered anybody who welcomed having an outsider  
18 come in and pick over their own work to see whether it  
19 came up to snuff or not. And usually the person whose  
20 work is going to be picked over wants to have a pretty  
21 good understanding of why that's going to happen, in  
22 other words, whether they've let somebody down or  
23 they've fouled up in some way. So I have to ask you, I  
24 mean, objectively speaking this looks a lot like what  
25 you would consider to be kind of a slap in the face to

1 the State Police with --

2 THE WITNESS: It was.

3 MR. CHERTOFF: It was?

4 THE WITNESS: Yes, sir.

5 MR. CHERTOFF: And usually when people are  
6 slapped in the face they react. And even with the  
7 chain of command and the respect for the Office of the  
8 Attorney General, it is astonishing to me that you  
9 would not have requested a meeting with the Attorney  
10 General to personally ask him why he felt it was  
11 necessary to do this. Why didn't you do that?

12 THE WITNESS: Well, because, again, I was a  
13 soldier. I had the, you know, the direct orders from  
14 them that this was going to happen. And I had also at  
15 that time got the feeling, a personal feeling, that the  
16 administration was looking for a scapegoat and that I  
17 was going to be that person.

18 MR. CHERTOFF: Why did you have that feeling?  
19 Why did you feel there was a sudden desire for someone  
20 to look for a scapegoat?

21 THE WITNESS: I think this press release kind  
22 of speaks for itself.

23 MR. CHERTOFF: And you got no heads up about  
24 this outside review?

25 THE WITNESS: No, sir.

1 MR. CHERTOFF: And you have no idea what  
2 triggered this?

3 THE WITNESS: No, sir.

4 MR. CHERTOFF: Before February, 1999 had you  
5 been given any sense from the Office of the Attorney  
6 General that there was dissatisfaction with the way you  
7 were dealing with the racial profiling issue?

8 THE WITNESS: No, sir.

9 MR. CHERTOFF: Had you gotten any indications  
10 of approval that -- about the way you were handling the  
11 racial profiling issue prior to January, 1999?

12 THE WITNESS: I felt that the way the  
13 Attorney General's Office and the people involved in  
14 the Attorney General's Office who were shepherding the  
15 case were doing so in a vigorous manner and with as  
16 much, say, you know, drive as they could and interest  
17 in the State Police to preserve that -- to preserve the  
18 State Police, but I had never -- you know, to answer  
19 your question as far as had I been told specifically,  
20 no.

21 MR. CHERTOFF: Took the fact that they were  
22 vigorously representing the State Police as a sign that  
23 basically they were happy with the way you were  
24 handling it?

25 THE WITNESS: That's correct. I was never

1 brought in and told that I was doing anything wrong, by  
2 anybody.

3 MR. CHERTOFF: Did you believe -- well, let  
4 me ask, did you have some reason to believe that the  
5 figures that you were seeing about percentages of  
6 consents to search in '97 and '98 were getting to the  
7 Office of the Attorney General?

8 THE WITNESS: Did I believe that?

9 MR. CHERTOFF: Yeah.

10 THE WITNESS: Yes, sir.

11 MR. CHERTOFF: What was your basis for  
12 believing that?

13 THE WITNESS: Again, I was trusting the  
14 people that were responsible for putting the statistics  
15 together, gathering the statistics and bringing them  
16 forward.

17 MR. CHERTOFF: And your understanding is  
18 Sergeant Gilbert was the person who was doing that and  
19 communicating it to Mr. Rover?

20 THE WITNESS: He was one of the people that  
21 were gathering -- he was the facilitator, yes, sir.

22 MR. CHERTOFF: As far as you know, in January  
23 or February, 1999, was there any new fact or set of  
24 facts that came to light concerning racial profiling  
25 that was different from what you knew in '97 and '98

1 concerning the operations of the State Police in  
2 stopping people and getting consents to search on the  
3 highway?

4 THE WITNESS: Not that I can recall.

5 MR. CHERTOFF: So you don't remember any  
6 action forcing event in terms of new information about  
7 stops or consents to search that came to light in  
8 January, 1999?

9 THE WITNESS: Other than, you know, when you  
10 say other action from the communities, the minority  
11 community --

12 MR. CHERTOFF: I don't mean -- I don't mean  
13 from -- I mean --

14 THE WITNESS: -- action there meaning by that  
15 time, or thereabouts, it was, if I remember correctly,  
16 it was Reverend Jackson had called for my removal and -  
17 -

18 MR. CHERTOFF: But I mean outside community,  
19 you know, people expressing opinions, I meant was there  
20 any factual -- were there new facts in terms of  
21 statistical data or anecdotal data from, you know, from  
22 the highway that was significantly different from what  
23 was available in '97 and '98 as of January, '99?

24 THE COURT: I can't recall anything  
25 significant at that time.

1 MR. CHERTOFF: Now, I want to ask you some  
2 general questions going back to really your entire  
3 tenure as Superintendent. Did you ever hear the  
4 expression, Johnnies?

5 THE WITNESS: The expression, Johnny?

6 MR. CHERTOFF: Johnnies.

7 THE WITNESS: Not that I recall.

8 MR. CHERTOFF: Have you ever heard the  
9 expression, diggers?

10 THE WITNESS: Diggers?

11 MR. CHERTOFF: Diggers.

12 THE WITNESS: Yes.

13 MR. CHERTOFF: What did -- what does the  
14 expression, or the term, diggers, mean in kind of State  
15 Police colloquialisms?

16 THE WITNESS: It means the active troopers  
17 are out there making patrol related arrests.

18 MR. CHERTOFF: Are you familiar with the  
19 practice of putting coaches in cars with people who  
20 leave the Academy?

21 THE WITNESS: That's standard procedure in  
22 the State Police.

23 MR. CHERTOFF: And what's the function of  
24 coaches?

25 THE WITNESS: Coach the new trooper for

1 approximately two months, or however long it takes, to  
2 impart upon them the knowledge of the coach to what to  
3 do as a trooper, how to investigate accidents, how to  
4 handle domestic complaints, a B and E, a murder,  
5 highway stop, how to write a summons, how to make out  
6 an accident report, an arrest report, criminal  
7 investigation report. You're like -- you know, you  
8 could also call it a mentor.

9 MR. CHERTOFF: Were you aware of a practice  
10 when you were Superintendent of the State Police where  
11 coaches would give new recruits information about how  
12 to catch potential drug carriers on the highway based  
13 on, at least in part, racial or ethnic characteristics?

14 THE WITNESS: No, sir.

15 MR. CHERTOFF: We had testimony from you a  
16 little earlier about the practice of spotlighting. Did  
17 you ever -- were you ever aware of an instance where a  
18 trooper was punished for spotlighting?

19 THE WITNESS: I can't specifically remember  
20 an incident. That I don't think -- I don't know if  
21 it's covered under, you know, it was covered under our  
22 rules and regulations at the time to outlaw  
23 spotlighting, because I think later on I even modified  
24 that initial order about spotlighting.

25 MR. CHERTOFF: Modify it in what way?

1 THE WITNESS: Well, I got feedback from the -  
2 - from the rank and file that situations might exist  
3 where it was needed, where a car -- they might be in a  
4 center median, monitoring traffic with radar, and there  
5 was a group of cars go by, maybe you got one at 75, 80,  
6 85 miles an hour, and as I say, there was a heavy  
7 traffic concentration such as you would have on an  
8 interstate highway or the Turnpike or Parkway, and the  
9 trooper might want to at night time hit the spotlight  
10 to make sure that he could identify that car, because  
11 by the time he got out into traffic to chase the car  
12 down there'd be a period of time go by before he could,  
13 you know, number one, safely get out into the -- into  
14 the flow of traffic; number two, catch up to that car;  
15 and number three, identify that car.

16 MR. CHERTOFF: But that would be consistent  
17 with the practice of only spotlighting once you've  
18 decided to make the stop?

19 THE WITNESS: Yes, sir.

20 MR. CHERTOFF: That would not allow  
21 spotlighting before you decide to make a stop, right?

22 THE WITNESS: Yes.

23 MR. CHERTOFF: Now, let me ask you, you're  
24 currently in litigation with the State with various  
25 current or former State officials?

1 THE WITNESS: Well, we kind of lost all of  
2 them. I don't know if we're going to --

3 MR. CHERTOFF: What's the status of the case?  
4 I mean --

5 THE WITNESS: Well, my attorney's making a  
6 decision now if we're going to appeal or not.

7 MR. CHERTOFF: Is there anything that -- were  
8 the elements of the case dismissed?

9 THE WITNESS: Excuse me?

10 MR. CHERTOFF: -- all the claims dismissed by  
11 the Superior Court trial Judge?

12 THE WITNESS: It's my understanding they  
13 were, yes, sir.

14 MR. CHERTOFF: And so that there's a  
15 possibility of an appeal is pending?

16 THE WITNESS: Yes, sir.

17 MS. GLADING: I just have a couple of quick  
18 questions. Do you recall a meeting in November of 1998  
19 with Lieutenant Colonel Dunlop, Lieutenant Colonel  
20 Fedorko, Sergeant Gilbert and Mr. Rover?

21 THE WITNESS: Not specifically, no.

22 MS. GLADING: No? Do you recall any  
23 discussion with those individuals about whether or not  
24 the Department of Justice should be provided with the  
25 six-month audit figures that were being kept? And

1 specifically I'm referring to CW-20 and CS-18. No, CW-  
2 20, is that -- that's not 20 --

3 THE WITNESS: CW-18's about the Turnpike.

4 MS. GLADING: CW-20 and CW-22, my mistake.

5 THE WITNESS: No, I don't recall that  
6 specific discussion taking place at that time.

7 MS. GLADING: Do you recall any discussion  
8 with Lieutenant Colonel Dunlop about whether or not he  
9 had met with Department of Justice officials, either  
10 formally or informally, during the month of November  
11 and mentioned to them that the State Police was keeping  
12 statistics like that?

13 THE WITNESS: Would that have been the IACP  
14 meeting that --

15 MS. GLADING: Yes.

16 THE WITNESS: It's possible he told me that,  
17 but I -- right now I can't say for sure that he did, or  
18 he didn't.

19 MS. GLADING: So does that refresh your  
20 recollection at all as to whether or not you had a  
21 meeting with Dunlop, Fedorko, Gilbert and Rover about a  
22 request that came out of the IACP meeting?

23 THE WITNESS: Well, as I sit, I'm sure I had  
24 the meeting, but I can't specifically recall what was  
25 discussed at that meeting.

1 MS. GLADING: Okay. Do you recall making any  
2 decision about whether or not to share that audit  
3 information with the Department of Justice?

4 THE WITNESS: Again, that wouldn't be my  
5 decision to make, that would be the Attorney General's  
6 Office -- through George Rover and on up.

7 MS. GLADING: Do you recall the Attorney  
8 General's Office making a decision about whether to  
9 share that data with the Department of Justice?

10 THE WITNESS: No, I don't.

11 MS. GLADING: Okay. Thank you. That's all I  
12 have, Mr. Chertoff.

13 MR. CHERTOFF: Okay. I don't think we have  
14 anything further. And I do think that we're probably  
15 going to want to have Colonel Williams testify at the  
16 hearing. The dates now are the 19th and the 20th. My  
17 best guess is we're talking about probably the 20th, it  
18 could be the 19th. We'll certainly let you know -- in  
19 advance -- believe -- week or so notice, one of those  
20 two dates, though. Is that okay? All right.

21 MS. ACCURSO: Mike I was confused. Did you  
22 say -- I thought you said the 20th and the 21st, and  
23 then you said--

24 MR. CHERTOFF: No, 19th and 20th is going to  
25 be --

1 MS. ACCURSO: -- 19th and 20th --

2 MR. CHERTOFF: -- as far as we know -- it'll  
3 be the 19th and 20th, and then the following week.

4 A SPEAKER: 26th and the 27th.

5 MR. CHERTOFF: So --

6 MS. ACCURSO: 19th and 20th, and 26 -- so you  
7 moved them back a day?

8 MR. CHERTOFF: No.

9 A SPEAKER: No. It was --

10 MR. CHERTOFF: It was always the 19th and  
11 20th and 26th and 27th.

12 A SPEAKER: Yeah, let me look at the calendar

13 --

14 MS. GLADING: I had 27 and 28. That's  
15 Tuesdays, Wednesday.

16 A SPEAKER: Oh, no, that's -- 27 and 28.

17 MR. CHERTOFF: Yeah.

18 A SPEAKER: 19th, the 20th --

19 MS. ACCURSO: 19 and 20 --

20 A SPEAKER: -- 27th --

21 MR. CHERTOFF: Yeah, it's basically Monday,  
22 Tuesday, Tuesday, Wednesday.

23 A SPEAKER: And the Tuesday and Wednesday.

24 MS. ACCURSO: Oh.

25 MR. FISHER: The Colonel is not available the

following week, that 26th and 27th.

MR. CHERTOFF: That's -- we don't need him for the -- we need him for the week -- sir, if you'll just hold those two days, it'll be one of those two days, the 19th and the 20th. All right. Thanks.

(Hearing adjourned)

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CERTIFICATION

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, the witness was duly sworn by me to testify to the truth, the whole truth and nothing but the truth.

I DO HEREBY CERTIFY that the foregoing is a true and accurate transcript of the testimony as taken by electronic sound recording before me at the time, place and on the date hereinbefore set forth. I do hereby certify that I am neither a relative, nor employee, nor attorney nor 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.

DATED:

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Notary Public of State of NJ

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