

NEW JERSEY STATE LEGISLATURE
OFFICE OF LEGISLATIVE SERVICES

IN RE:) TRANSCRIPT
) OF
SENATE JUDICIARY) ELECTRONICALLY
COMMITTEE INVESTIGATION) RECORDED DEPOSITION
) OF
) PAUL ZOUBEK

SATURDAY, MARCH 10, 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 Labor Education Center, 50 Labor Center Way, New Brunswick, NJ 08901, commencing at 10:17 a.m.

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I N D E X1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25ExhibitsIdent.

Z-1	Large package of documents, 12-16-98	32
Z-2	Document	34
Z-3	Document	44
Z-4	Memo	66
Z-5	Memo, 5-26-98	77
Z-6	Memo, 10-30-98	78
Z-7	Memo	84
Z-8	Calendar	92
Z-9	Press Release	92
Z-10	Memo, 1-15-99	99
Z-11	Memo	102
Z-12	Press Release, 2-16	122
Z-13	Letter, 2-17-99	134
Z-14	Letter, 2-26	142
Z-15	Memo, 3-16	160
Z-16	Memo	170
Z-17	Document	195
Z-18	Certification	361
Z-19	Document	368

Examination - Zoubek

3

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
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P A U L Z O U B E K, SWORN

MR. CHERTOFF: Okay, Mr. Zoubek, as you know, you're here for a deposition in connection with the New Jersey Senate Judiciary Committee inquiry into racial profiling and certain related matters. And I know you're represented here by Mr. Miller.

THE WITNESS: On behalf of the Department of Law and Public Safety.

MR. CHERTOFF: Okay. And I think Mr. Miller has a copy of the resolution that empowers us to take this testimony. And I'll be asking the questions, along, I guess, with Jo Glading, who's counsel for the Minority, and also Senator Gormley and Senator Lynch are here today and they will be asking questions as well.

And if there's anything you don't understand, let us know so there's no unclarity about your answers.

Would you just spell your name for the record, please?

THE WITNESS: Z-o-u-b-e-k.

MR. CHERTOFF: Okay. Mr. Zoubek, what is your current position?

THE WITNESS: I am First Assistant Attorney General in the Department of Law and Public Safety for New Jersey.

1 MR. CHERTOFF: Now, when did you first join
2 the Department of Law and Public Safety?

3 THE WITNESS: July 21, 1997.

4 MR. CHERTOFF: Okay. And prior to that you
5 worked where?

6 THE WITNESS: At the United States Attorney's
7 Office.

8 MR. CHERTOFF: And how long had you been
9 there?

10 THE WITNESS: I started in the United States
11 Attorney's Office on October 13th, 1987.

12 MR. CHERTOFF: Now, how did you come to join
13 the Department of Law and Public Safety in July of
14 1997?

15 THE WITNESS: I received a call sometime in
16 the spring of 1997 from then Assistant Attorney General
17 Janice Mintz asking if I'd be interested in coming in
18 and speaking with her and then Attorney General
19 Verniero about a potential position in the Department
20 of Law and Public Safety.

21 MR. CHERTOFF: And when you came in July of
22 1997, what position did you take?

23 THE WITNESS: I was brought in at that time
24 to focus on healthcare fraud and insurance fraud issues
25 and I was specifically brought in to focus on the then-

1 existing Healthcare Fraud Task Force. And that's what
2 I was told my primary responsibility would be, in
3 addition to working on some special counsel matters on
4 the Eighth Floor.

5 MR. CHERTOFF: Okay, now when you --

6 THE WITNESS: What I mean by the Eighth
7 Floor, in the Office of the Attorney General.

8 MR. CHERTOFF: Just to break it down. When
9 you came in in July, was that as an Assistant Attorney
10 General?

11 THE WITNESS: I came in as an Assistant
12 Attorney General and that was my area of
13 responsibility.

14 MR. CHERTOFF: And who did you report to at
15 that point?

16 THE WITNESS: I think dual reporting to the
17 First Assistant Attorney General and would report
18 periodically to the Attorney General.

19 MR. CHERTOFF: Now, at that point, who was
20 the Director of the Division of Criminal Justice?

21 THE WITNESS: Terrence Farley.

22 MR. CHERTOFF: When did you become Director
23 of Criminal Justice?

24 THE WITNESS: I recall two days or
25 thereabouts after the election that November. I

1 received a call asking if I would like to become the
2 Director of the Division of Criminal Justice and I
3 accepted.

4 MR. CHERTOFF: And so that would be November
5 of 1997?

6 THE WITNESS: Yes. And then I was sworn in
7 on December 8th, 1997 as Director of Division of
8 Criminal Justice.

9 MR. CHERTOFF: Just so to be clear. When you
10 came over as Assistant Attorney General to work on
11 healthcare matters and insurance fraud matters, was it
12 with the understanding or promise that you would
13 eventually become Director of the Division of Criminal
14 Justice?

15 THE WITNESS: No, there was no discussion of
16 that at all.

17 MR. CHERTOFF: And in your capacity working
18 on healthcare and insurance fraud matters on what you
19 describe as the Eighth Floor, did you have any
20 involvement during that period of time or any
21 discussion during that period of time about the issue
22 of racial profiling as it related to the State Police
23 conduct on the highways?

24 THE WITNESS: No, I did not.

25 MR. CHERTOFF: Now, when you moved over to

1 the Division of Criminal Justice, give us just a very
2 brief summary of what your responsibilities were as of
3 December of 1997.

4 THE WITNESS: As of December 1997 I was sworn
5 in as Director of the Division of Criminal Justice,
6 which provides responsibility for supervision of the 21
7 county prosecutors, 527 law enforcement agencies in the
8 State of New Jersey, as well as supervision over grants
9 that are administered through the Division of Criminal
10 Justice, as well as the prosecutors utilizing the State
11 Grand Jury and the nearly 35 lawyers in the Appellate
12 Bureau of the Division of Criminal Justice.

13 MR. CHERTOFF: Now, in that job as Director
14 of the Division of Criminal Justice, to whom did you
15 report?

16 THE WITNESS: Directly to the Attorney
17 General.

18 MR. CHERTOFF: And who was the First
19 Assistant Attorney General at that time, in December of
20 '97?

21 THE WITNESS: Janice Mintz.

22 MR. CHERTOFF: Okay. When did Mr. Hespe
23 become First Assistant?

24 THE WITNESS: I believe he became First
25 Assistant sometime later -- early 1998. January or

1 thereabouts. January of February, I believe.

2 MR. CHERTOFF: And just to complete your
3 career, when did Mr. Hespe leave his position as First
4 Assistant?

5 THE WITNESS: It was announced sometime in
6 February of 1999 that he was going to become
7 Commissioner of the Department of Education and I was
8 asked by the Attorney General, Peter Verniero, to
9 become the First Assistant Attorney General. I believe
10 I was sworn in on March 22n, 1999.

11 MR. CHERTOFF: So you were head of the
12 Division of Criminal Justice from approximately
13 December '97 till March '99?

14 THE WITNESS: Yes, but I have to add to that.
15 I continued to hold both of those roles until June 4th,
16 the year 2000.

17 MR. CHERTOFF: Okay. Now, let me focus your
18 attention on the period of time you were Director of
19 Criminal Justice. What's the first point in time that
20 you had discussion with anybody concerning the issue of
21 racial profiling after you became Director of the
22 Division of Criminal Justice?

23 THE WITNESS: I don't recall anything in my
24 transition with former Director Farley that focused on
25 that issue whatsoever. Frankly, one of the major

1 focuses in my transition was Michael Bozza, who had
2 been the heart and soul of the prosecution side of the
3 Division of Criminal Justice, died two weeks before I
4 became Director of Division of Criminal Justice. So
5 during my first eight months I held the Director role
6 and I left the Deputy Director role of prosecutions
7 open. I don't really recall any specific
8 identification of the racial profiling issue to me
9 until April 23rd, 1998, after the shooting on the
10 Turnpike.

11 MR. CHERTOFF: Okay. Again, I want to focus
12 on the period right before April 23rd, 1998 when there
13 was the shooting.

14 In that period, let's say from December '97
15 to April 1998, were you familiar with the Soto case?

16 THE WITNESS: I may have been familiar with
17 it in coming in from the office, of having heard
18 through the papers that it was out there. But at that
19 point in time, the State's brief, I came to learn
20 later, had been filed in March of 1997 was pending and
21 so there were no decision points at all with respect to
22 the Soto case that came to my attention.

23 MR. CHERTOFF: Were you familiar when you
24 came in December 1997 with the fact that there was a
25 Civil Rights Division inquiry from the U.S. Department

1 of Justice relating to the issue of racial profiling?

2 THE WITNESS: I don't believe I was.

3 MR. CHERTOFF: Do you remember when you first
4 became aware of that?

5 THE WITNESS: I believe I learned about it
6 again after the -- afer the Turnpike shooting. I may
7 have -- I may have -- there may have been some
8 knowledge that there was some Justice Department
9 contact, but I had no specific discussion with anybody
10 until learning more about it after the shooting.

11 MR. CHERTOFF: Now, let me focus your
12 attention on April 1998 -- oh, let me ask you -- before
13 I do that, let me just ask you a couple other
14 questions.

15 When you came in as head of the Division of
16 Criminal Justice, did you meet or become familiar with
17 an individual by the name of John Fahy -- John M. Fahy,
18 also known as Jack Fahy?

19 THE WITNESS: At the time I became Director
20 of the Division of Criminal Justice, he was the
21 assistant to the head of the Grand Jury Unit, Neil
22 Cooper, and I think probably sometime in March of 1998
23 Neil Cooper was asked by Wayne Forrest, the Somerset
24 County prosecutor, to become his First Assistant. He
25 left and I promoted Jack Fahy to the head of the State

1 Grand Jury.

2 MR. CHERTOFF: Okay. What about George
3 Rover? Did you come to become familiar with him?

4 THE WITNESS: The only contact I had had or
5 knowledge I had of George Rover was when I was in the
6 United States Attorney's Office, knowing that he had
7 worked on a Bureau of Alcohol, Tobacco and Firearms
8 project known as Project LISA and I had heard his name
9 from Bureau of Alcohol, Tobacco and Firearms personnel,
10 but I don't believe -- but I don't believe I had any
11 professional interaction with him at the office.

12 MR. CHERTOFF: What about someone by the name
13 of Alexander Waugh?

14 THE WITNESS: I had contact with Alex as soon
15 as I joined the Office of the Attorney General on July
16 21st, 1997. He was the Executive Assistant Attorney
17 General and he focused on a number of matters and I
18 frankly used him -- well, I didn't report directly to
19 him, but I may have talked to him about issues at
20 times. Oh, the one thing I did, he had -- he had
21 formerly been the head of the Governor's Healthcare
22 Fraud Task Force and that responsibility got
23 transitioned to me.

24 MR. CHERTOFF: Now, when did Mr. Waugh leave,
25 approximately?

1 THE WITNESS: I believe it was sometime late
2 in January of 1998.

3 MR. CHERTOFF: So that would have been
4 shortly after you became head of Criminal Justice?

5 THE WITNESS: Correct.

6 MR. CHERTOFF: Now, let me ask you finally,
7 in your capacity as head of Criminal Justice, did you
8 have supervisory authority of the State Police?

9 THE WITNESS: No, I was to be a co-equal with
10 the Superintendent.

11 MR. CHERTOFF: All right. Now, let me direct
12 your attention to April 1998. You testified a little
13 bit earlier about a Turnpike shooting. What does that
14 refer to?

15 THE WITNESS: That refers to the incident,
16 mile marker 62.8 out on the Turnpike in which four
17 minority motorists were shot by two troopers in the
18 early morning hours of April 23rd, 1998.

19 MR. CHERTOFF: And how did you first become
20 involved in the investigation in that matter?

21 THE WITNESS: I believe I was -- well, how I
22 first learned about it, I was beeped either by Colonel
23 Williams or called by General Verniero and learned
24 about it sometime near dawn on that morning.

25 MR. CHERTOFF: And what did you do?

1 THE WITNESS: I spoke with -- I beeped
2 Colonel Williams on the scene to inquire about what had
3 happened. Spoke to him about what, if any, press
4 statements he would be making at that time about what
5 had happened. And ensured that at that time the
6 protocol would have been -- it occurred in Mercer
7 County, so our protocol would have been that the first
8 responders to that would be the Mercer County
9 Prosecutor's Office, because generally in shooting
10 cases they're generally handled by the county with
11 jurisdiction over them. And so I spoke -- must have
12 spoken with Debra Stone. She was Deputy Director of
13 Operations and in that capacity she was really the
14 person, while I was Director, that was a conduit to all
15 21 county prosecutors. And I spoke with her, asked her
16 to reach out to Mercer County and coordinate the
17 response.

18 MR. CHERTOFF: Did there come a point in time
19 that you actually personally became involved in
20 supervising and handling that investigation?

21 THE WITNESS: What became necessary -- yes.
22 And what became necessary was it was determined that
23 Prosecutor Giaquinto, who was a Mercer County
24 prosecutor, had represented Trooper Kenna's father, who
25 was a Captain in the State Police, at some point when

1 he was in private practice and it was determined
2 therefore that it was a conflict and we had to -- that
3 we had to supercede -- when there's a conflict in a
4 particular county, the Division of Criminal Justice
5 will supercede that matter, and we did, and then sought
6 out a Special Prosecutor to handle that case.

7 MR. CHERTOFF: Approximately when did that
8 happen?

9 THE WITNESS: I would say it was in four to
10 five days after the shooting.

11 MR. CHERTOFF: And who did you ultimately
12 select as Special Prosecutor?

13 THE WITNESS: James Gerrow of the Burlington
14 County Prosecutor's Office. We tried to examine
15 prosecutors who had had experience in shooting cases.

16 MR. CHERTOFF: Now, once you had a Special
17 Prosecutor appointed because you superceded the County
18 prosecutor, did you then have supervisory authority
19 over that Special Prosecutor?

20 THE WITNESS: As Director of Division of
21 Criminal Justice I was ultimately responsible for all
22 the prosecutions that came out of that Division, and I
23 worked with Debra Stone. I had a number of initial
24 meetings setting up the Task Force, if you will,
25 between the Division of Criminal Justice and the Major

1 Crimes Unit of State Police. And as that got set up, I
2 pulled back a little bit and that supervision was more
3 Debra Stone working with Prosecutor Gerrow, and I would
4 receive updates.

5 MR. CHERTOFF: And is it fair to say that the
6 investigation of the shooting on the Turnpike involving
7 Troopers Kenna and Hogan, really began essentially
8 within a very short period of time after the shooting
9 occurred?

10 THE WITNESS: It began immediately, I would
11 think, as the investigators arrived on the scene.

12 MR. CHERTOFF: Now, I'm going to come back to
13 Troopers Hogan and Kenna a little bit later, but I want
14 to move on to a different subject.

15 After the shooting, did there come a point in
16 time that you became aware of or had discussions with
17 someone about the issue of racial profiling?

18 THE WITNESS: Certainly. There were certain
19 -- there were certain facts that presented themselves
20 in that case that related to the issue of racial
21 profiling.

22 MR. CHERTOFF: And what were those facts?

23 THE WITNESS: Well, I'd like to, as we go in
24 this discussion, I'm concerned about anything in which
25 I may be characterizing the evidence in that particular

1 case while the case is pending. And as I -- there are
2 facts in that case that raise the issue of racial
3 profiling, but I would -- I think it would be most
4 appropriate if I didn't characterize the evidence in
5 that case during the course of this discussion.

6 MR. CHERTOFF: Well, just in terms of what
7 was in your mind, what triggered in your mind a sense
8 that there was a racial profiling issue involved? Tell
9 us generically what were the types of things that arose
10 in this investigation that triggered that in your mind.

11 THE WITNESS: Well, I think --

12 MR. MILLER: If that doesn't infringe on the
13 concern that the witness has -- characterize of the
14 witness --

15 MR. CHERTOFF: Well, let's see if we can do
16 it and we'll see if we can get what we need out of it
17 that way.

18 Go ahead.

19 THE WITNESS: I had a very strong view of
20 that case based upon my review of the facts of what
21 happened that night as to what I think may have
22 happened, but I really don't think it's appropriate for
23 me to characterize that given the fact that that case
24 is still pending.

25 MR. CHERTOFF: Well, putting aside the

1 specific attitudes you had about that case and those
2 troopers, did there come a point in time that generally
3 you became involved in discussion of racial profiling
4 as it related to more than just Hogan and Kenna?

5 THE WITNESS: Well, one of the things I think
6 is a matter of public record that happened in the
7 Hogan, Kenna investigation was an identification
8 sometime I believe in May, June of 1998 that there were
9 issues with respect to -- issues with respect to
10 falsification of records concerning stops which could
11 be characterized as "ghosting" the stop, which is
12 allegedly putting down the wrong race on your records
13 as to who you stopped.

14 MR. CHERTOFF: Okay. Just to make this clear
15 for the record. At this point in time was there a
16 practice or requirement that one list on some kind of a
17 form or report the race of people being stopped on the
18 highway by troopers?

19 THE WITNESS: I believe, and I'm happy to
20 check for the Committee after this discussion, but I
21 believe it was calling in, you were required to call in
22 the race.

23 MR. CHERTOFF: And so the issue that arose
24 out of this investigation was whether people were
25 falsely stating the race of the individuals who were

1 being stopped?

2 THE WITNESS: Correct.

3 MR. CHERTOFF: And in particular whether they
4 were saying they were stopping people who were white
5 rather than let's say a minority?

6 THE WITNESS: Correct.

7 MR. CHERTOFF: All right. Now, approximately
8 when did this issue percolate up in your mind?

9 THE WITNESS: I think, as I said, it was
10 sometime in May or June of 1998. I believe either
11 Debra Stone came to see me or Gerrow called me or we
12 had a status meeting where this was discussed. And it
13 was around that time that a decision was made in
14 conjunction with the State Police, primarily Lieutenant
15 Colonel Bob Dunlop, to begin a broader review of the
16 Turnpike, because the notion was is that perhaps we had
17 an issue that would allow you to examine the issue of
18 racial profiling. By that I mean whether or not there
19 was more widespread issue of falsification that might
20 be consistent with the issue of ghosting your stops.

21 MR. CHERTOFF: All right. Let me step back
22 and take this in pieces.

23 There comes a point in time that you at least
24 form an opinion that there might be a possibility of
25 falsification of stop data in connection with these two

1 troopers, correct?

2 THE WITNESS: Correct.

3 MR. CHERTOFF: And then based on that, you
4 say there's a discussion about the possibility of
5 looking more broadly at the issue of falsification of
6 records by troopers.

7 THE WITNESS: Yes. Well, falsification of
8 records by troopers in conjunction with seeing if it
9 helped examine the issue of racial profiling.

10 MR. CHERTOFF: Now, what was the reason you
11 -- or whose decision was it to broaden this
12 examination?

13 THE WITNESS: I think it was something in
14 conjunction that may have been -- it was a discussion
15 with Lieutenant Colonel Dunlop that I had. I think Bob
16 came to me with a proposal and we did a number of
17 things at that time. One was "seizing" the records on
18 the Turnpike so that if we were going to be examining
19 that issue, we didn't have any issue as to destruction
20 or loss of the evidence that might deal with that
21 particular issue. And then we had further discussions
22 about setting up a methodology as it relates to getting
23 to that issue.

24 MR. CHERTOFF: Was this based on some kind of
25 information that there was widespread practice among

1 troopers in general of falsely reporting the race of
2 people being stopped?

3 THE WITNESS: It was on a combination of
4 things. And frankly, the deep concern that if the
5 ghosting -- if there was a potential that ghosting was
6 occurring, that it was our obligation to find out if it
7 was.

8 MR. CHERTOFF: Now, when you had this
9 conversation with Mr. Dunlop -- or Colonel Dunlop, who
10 else did you talk to about inaugurating this
11 investigation?

12 THE WITNESS: I think I would have, within
13 the Division of Criminal Justice staff working on that
14 case, would have been Gerrow, Deputy Attorney General
15 Chuck Grinnell, Debra Stone and I advised the Attorney
16 General as to the findings as it relates to Hogan and
17 Kenna and the broadening to the Troop D -- what became
18 known as the Troop D audit.

19 MR. CHERTOFF: Okay. When you -- when did
20 you advise Attorney General Verniero about this?

21 THE WITNESS: I'm sure it would have been --
22 I'm sure it would have been within 24 hours of -- let
23 me break that down. I think I would have advised him
24 very soon about finding out about that issue,
25 specifically with respect to Hogan and Kenna. And I

1 kept him advised of the discussions with Bob Dunlop and
2 he asked me to continue to keep him advised of the
3 progress of that and that we had to get to the bottom
4 of this.

5 MR. CHERTOFF: In terms of the broadening of
6 the investigation --

7 THE WITNESS: Correct.

8 MR. CHERTOFF: -- about falsification.

9 THE WITNESS: Correct.

10 MR. CHERTOFF: Now, other than Attorney
11 General Verniero, was there anybody else in the Office
12 of the Attorney General that you talked to about this
13 investigation into falsification of data?

14 THE WITNESS: I think -- I don't think so and
15 let me explain why. I think typically the way it
16 worked and worked during that period of time was the
17 Director of Division of Criminal Justice would keep the
18 Attorney General advised as to criminal matters, but
19 that typically would not be shared with the then First
20 Assistant Attorney General.

21 MR. CHERTOFF: Now, at the time that you
22 began -- or you made the decision to broaden the
23 investigation into falsification, you said this project
24 became known as the Troop D audit?

25 THE WITNESS: Yes, ultimately.

1 MR. CHERTOFF: Okay. Now, Troop D is the
2 troop that's responsible for the Turnpike?

3 THE WITNESS: Correct.

4 MR. CHERTOFF: And I believe there are three
5 subdivisions of Troop D?

6 THE WITNESS: Three barracks, as I say;
7 Newark -- at that time, Newark, Cranbury and
8 Moorestown.

9 MR. CHERTOFF: Now --

10 MS. GLADING: Excuse me. What time was that?

11 THE WITNESS: This would have been sometime
12 within a month to six, to seven weeks after the
13 shooting.

14 MS. GLADING: So we're talking about --

15 THE WITNESS: Sometime in May.

16 SENATOR GORMLEY: May 1st to May 15th of --

17 THE WITNESS: No, I think it was probably the
18 middle of May towards June.

19 MS. GLADING: And you represented it was
20 Moorestown, Cranbury and Newark the audit was covering?

21 THE WITNESS: No. It ultimately involved all
22 three. And I said it became known as the Troop D
23 audit. We were focusing in on the Cranbury barracks
24 initially in large part because of issues, as I said,
25 that were discovered in the Hogan and Kenna case that

1 not only related to Hogan and Kenna, but also related
2 to supervisors in that office.

3 MR. CHERTOFF: Now, I want to make sure I
4 understand what the scope of the Troop D audit was.
5 Was this an audit directed at the issue of
6 falsification only?

7 THE WITNESS: It was -- when it was begun, it
8 was begun as falsification to examine the issue of
9 racial profiling. One of the most difficult aspects of
10 trying to look at the issue of racial profiling and be
11 able to prove it on an individual basis, because it's
12 hard to get into the specific intent of a trooper on a
13 particular occasion, we were looking at falsification
14 as it may relate to the practice of ghosting.

15 MR. CHERTOFF: But when you say audit, were
16 you auditing to determine the extent of falsification
17 or were you auditing to look at the records as they
18 were to determine the percentage of minorities being
19 stopped or searched?

20 THE WITNESS: Well, I think -- let me make it
21 clear. If there was falsification that somebody was
22 stopped at 10:00 in the evening versus 4:00 in the
23 afternoon, that really wasn't the focus. What we were
24 looking at was a follow-up to the concern which was
25 falsification with respect to race. And I believe that

1 as it progressed, the State Police was looking at
2 various discrepancies. You know, did they have the
3 wrong time of day? Were there other ways they were
4 trying to hide the stop, but it was -- it was to be
5 focused with respect to the issue of race.

6 SENATOR GORMLEY: Whose idea was it to look
7 at ghosting? Was it your idea or did somebody suggest
8 that you look at ghosting?

9 THE WITNESS: I think it was in combination
10 with Lieutenant Colonel Dunlop.

11 SENATOR GORMLEY: So it came from the State
12 Police we ought to look at ghosting -- or from
13 Lieutenant Colonel --

14 THE WITNESS: Well, I mean I was -- at that
15 point in time I was having meetings on a reasonably
16 frequent basis as to the status of the investigation
17 and we would sit down with the State Police and make
18 determinations as to where we should go on matters and
19 that happened in one of those discussions.

20 MR. CHERTOFF: Now, at this point in time
21 when you started this Troop D audit with respect to
22 ghosting, were you -- did you then become familiar with
23 the fact that there was a Department of Justice -- U.S.
24 Department of Justice inquiry into the issue of racial
25 profiling?

1 THE WITNESS: At some point in time I was
2 aware that there was that inquiry, but I didn't have
3 any contact with the Justice Department nor had I seen
4 any of the documents relative to that investigation.

5 MR. CHERTOFF: To your knowledge, who was
6 responsible for dealing with the Department of Justice
7 on that inquiry when you started this examination in
8 mid-1998?

9 THE WITNESS: I don't think -- I don't think
10 I knew the answer to that question at that time.

11 MR. CHERTOFF: Well, when you went to speak
12 to the Attorney General about broadening this inquiry
13 into ghosting beyond Hogan and Kenna into a Troop D
14 audit, did he raise with you the issue about the impact
15 this might have upon ongoing negotiations with the U.S.
16 Civil Rights Division?

17 THE WITNESS: No.

18 MR. CHERTOFF: Did you raise that with him?

19 THE WITNESS: I didn't have a basis to at the
20 time. That was not raised with him, no.

21 MR. CHERTOFF: Did he point out to you at
22 that point or advise you of the fact that there was an
23 ongoing issue with the U.S. Department of Justice
24 concerning racial profiling?

25 THE WITNESS: Well, I don't recall a specific

1 discussion of that, but I think at that point in time,
2 whether it was either from State Police, from the
3 Attorney General or someone else, I knew that there was
4 an investigation involving the Department of Justice.

5 MR. CHERTOFF: What about Soto, did you have
6 any discussion with someone in the middle of 1998 once
7 you began this Troop D audit about the effect, if any,
8 this might have on the Soto litigation?

9 THE WITNESS: No, and that really wasn't a
10 concern for me. My obligation I thought at that time
11 was to do an investigation.

12 MR. CHERTOFF: And again, you were not
13 responsible for the Soto litigation at this point, is
14 that fair to say?

15 THE WITNESS: I was Director of the Division
16 of Criminal Justice, I was responsible for any appeal
17 that came and any Appellate work out of the Division of
18 Criminal Justice Appellate Bureau, so in that way I was
19 responsible for it. I had not had any direct contact
20 with it myself.

21 MR. CHERTOFF: Now, when you said about
22 ordering that this Troop D audit begin, did you ask --
23 who did you deal with at the State Police?

24 THE WITNESS: I dealt with Lieutenant -- the
25 way the State Police -- Lieutenant Colonel Bob Dunlop.

1 He was the investigative Lieutenant Colonel.

2 MR. CHERTOFF: Was there anybody else from
3 the State Police that you dealt with in connection with
4 this ghosting investigation?

5 THE WITNESS: I was present at meetings in
6 which others were in the room or others may have made
7 presentations along the way, including Lieutenant
8 Sachetti, but the level of contact with the State
9 Police is usually quite formal and by that I mean in
10 terms of hierarchy. And my level of contact was either
11 Superintendent or Lieutenant Colonel most of the time.

12 MR. CHERTOFF: When this examination of
13 ghosting began, did you ask the State Police to furnish
14 you with any audit data that they had previously
15 accumulated regarding the issue of racial profiling?

16 THE WITNESS: I did not myself but it's my
17 understanding, based upon the review of my file, that
18 Chuck Grinnell made a request sometime in June and
19 received a limited number of some of the audits that
20 had been done in the past by the New Jersey State
21 Police.

22 MR. CHERTOFF: Now, who is Chuck Grinnell?

23 THE WITNESS: Chuck Grinnell was the
24 principal Deputy Attorney General in the Division of
25 Criminal Justice assigned to assist Jim Gerrow in the

1 7A shooting investigation.

2 MR. CHERTOFF: And do you know why he
3 requested this audit data?

4 THE WITNESS: I think it -- what we were
5 focused on at that point in time was to see if there
6 had ever been any audits with respect to the
7 falsification issue and the frequency of the calling in
8 of the stops, which would be relevant to an evaluation
9 of a potential criminal case with respect to the
10 falsification.

11 MR. CHERTOFF: I want to make sure we're
12 clear on the scope of this investigation that you've
13 described as a Troop D audit.

14 Am I correct that what you were focused on
15 was not an audit of the figures how ever they were
16 recorded to see what the proportions were in terms of
17 minorities versus non-minorities being stopped or
18 searched, but that you were focused on the narrower
19 question of whether people were falsifying the identity
20 of who was being stopped?

21 THE WITNESS: That's correct. But let me
22 make sure that it's clear. As part of accomplishing
23 the goal of finding out about falsification, there was
24 an analysis that was made of comparing some of the
25 aggregate percentages of individual troopers to then

1 focus inquiries as to falsification further.

2 MR. CHERTOFF: Let me --

3 MS. GLADING: In what time frame were those
4 analyses made to your recollection?

5 THE WITNESS: I'm sorry, there was a pending
6 question?

7 MS. GLADING: In what time frame were those
8 analyses made?

9 THE WITNESS: I received updates on what was
10 known as the Troop D audit in December of '98 and then
11 I received a delivery of documents summarizing those on
12 February 10th, 1999. So it would have been during that
13 period of time.

14 MS. GLADING: I meant the analyses of
15 individual troopers. Is that what you're referring to?

16 THE WITNESS: Yeah, that's what I'm referring
17 to. On February 10th I received for the first time a
18 breakdown by squad and by individual of those
19 percentages.

20 MS. GLADING: Okay.

21 MR. CHERTOFF: Now, with respect to the Troop
22 D audit and the issue of falsification, were you
23 focused on falsification of stop data or did you also
24 focus on possible falsification of consent-to-search
25 data?

1 THE WITNESS: We were focused initially on
2 stop data, but we didn't have any specific discussions
3 on that. If something was discovered as it relates to
4 falsification of any record during the course of the
5 encounter with the motorist, that would have been
6 relevant.

7 MR. CHERTOFF: Who was actually in charge on
8 a day-to-day basis of conducting the Troop D audit?

9 THE WITNESS: I think that was the Internal
10 Affairs Bureau of the New Jersey State Police. It was
11 my understanding it was Lieutenant Sachetti. My
12 contact was, as I said again, my contact would be
13 directly with Lieutenant Colonel Bob Dunlop when I had
14 contact with State Police. But Debra Stone was also,
15 and Chuck Grinnell, were having contact with State
16 Police. And either during my bi-weekly -- I had staff
17 meetings once or twice a week. I might get an update
18 from Ms. Stone, Debra Stone, during that.

19 MR. CHERTOFF: Well, during the second half
20 of 1998, what were you hearing from Ms. Stone or
21 anybody else, including people from the State Police,
22 about what was being discovered with respect to this
23 audit, Troop D audit?

24 THE WITNESS: Well, let me make one thing
25 clear. I was -- she would come to see me and at times

1 she wouldn't necessarily break down in the information
2 that she was getting was Hogan and Kenna specific or
3 Troop D specific. It wasn't until later on in 1998
4 that I received a more specific briefing on what was
5 discovered in the Troop D audit.

6 MR. CHERTOFF: Well, when did you get that
7 more specific briefing about the Troop D audit?

8 THE WITNESS: I think we were concerned as to
9 how long the Troop D audit was taking and I asked for
10 an update in late 1998 and I believe there was a
11 meeting in mid-December of 1998 and it went through the
12 phases of what they were doing and I had asked for them
13 to expedite what they were doing and as soon as they
14 had completed those results to meet again. And we met
15 again on February 10th, 1999.

16 MR. CHERTOFF: Now, in this mid-December 1998
17 meeting, who was present at the meeting?

18 THE WITNESS: I would presume Lieutenant
19 Colonel Dunlop would have been there. Lieutenant
20 Sachetti would have been there. And I would presume
21 Debra Stone and Chuck Grinnell would have been there.
22 And Jim Gerrow may or may not have been there.

23 MR. CHERTOFF: Did somebody prepare minutes
24 or a report about what transpired at the meeting?

25 THE WITNESS: Not -- not that I'm aware of.

1 And I also -- I provided copies of the calendar that I
2 had for 1999 during the relevant period to the
3 Committee. I did not have my 1998 calendar that might
4 reflect who specifically was there. I do have -- there
5 is a synopsis that I was given on February 10th, 1999
6 that gives a little bit of the history of the Troop D
7 audit that talks about the December 14th -- that talks
8 about a meeting in December, I believe.

9 MR. CHERTOFF: Do you know if that was a
10 document, a heavily-redacted document that was provided
11 to us?

12 THE WITNESS: The Troop D audit results --
13 there should be a synopsis on the front page of that
14 that talks about meetings. It's not specific to
15 troopers. And there is a portion of that towards the
16 end that has specific information as to individual
17 troopers that may have been redacted.

18 MR. CHERTOFF: Well, let me ask you this.
19 I'm going to mark as Z-1 for identification a large
20 package of documents bearing the stamps OAG8727 through
21 8841. It's heavily redacted but it is to Captain Van
22 Tassel from the Investigation Unit. And I'm going to
23 ask you if you recognize this document. It's dated
24 December 16th, 1998.

25 THE WITNESS: No, this is -- let me make it

1 perfectly clear. This is the Hogan and Kenna results.

2 MR. CHERTOFF: Okay. This is not --

3 THE WITNESS: Not the Troop D. This is not
4 Troop D.

5 MR. CHERTOFF: Was this --

6 THE WITNESS: I mean let me -- I think it's
7 important to set for the record that there were -- the
8 Hogan and Kenna was with respect to a look at a
9 criminal investigation and prosecution. And this
10 December 16th, 1998 is the result of that
11 investigation, the conclusion of the State Police
12 Internal Affairs investigation that would have been
13 forwarded over to the Division of Criminal Justice.
14 What I'm talking about is a document that is called
15 Synopsis of Troop D Audit and that's what it says on
16 the top of it.

17 MR. CHERTOFF: All right. Now, at the
18 December 14th meeting, therefore, am I to understand
19 that the Hogan and Kenna specific investigation was not
20 the subject of that meeting?

21 THE WITNESS: That's correct.

22 MR. CHERTOFF: All right. Now, again, I'm
23 going to put the Hogan and Kenna issue to one side for
24 a moment, I want to get back just on the general Troop
25 D audit.

1 Let me mark for identification Z-2.

2 THE WITNESS: Now, that's -- yes. That
3 document is only with respect to Hogan and Kenna, Z-1.

4 MR. CHERTOFF: I'm going to show you Z-2 for
5 identification.

6 MS. GLADING: Scott, I only brought one copy
7 of that with me, so why don't you just give it to him.

8 MR. WEBER: Okay.

9 MR. CHERTOFF: We have extra copies.

10 THE WITNESS: Yes, I believe -- let me check.
11 I believe this the document, Z-2, is a document that I
12 was referring to. For example, I mean if you look on
13 Page 2 under Moorestown Station it says, "Phase two of
14 the Moorestown audit has not been completed. They
15 expect it to be completed in February of 1999." And
16 there's a reference here that says, "Phase three of
17 Cranbury was initiated on December 14th, 1998." I
18 received this at a meeting that's reflected on my
19 calendar on the morning of February 10th, 1999.

20 MR. CHERTOFF: All right. So you did not
21 have the synopsis in the December meeting.

22 THE WITNESS: Not in this -- they may have
23 given me an update as to where they were as of
24 December, but I do not recall receiving -- I recall the
25 first time I received the breakdown by squad and by

1 individual trooper. That was on February 10th, 1999.

2 MR. CHERTOFF: Now, in connection with the
3 December meeting, did you report to Attorney General
4 Verniero after the meeting about the status of the
5 Troop D investigation?

6 THE WITNESS: I believe I did and I had had
7 prior conversations with him, that we were both
8 concerned that the Troop D audit was taking as long as
9 it was.

10 MR. CHERTOFF: Let's go back in time. From
11 the time you inaugurated the Troop D audit in mid-1998,
12 tell us what discussions you had with Attorney General
13 Verniero concerning the progress of that audit.

14 THE WITNESS: I think I would have -- I would
15 have spoken to him that it was underway and informed
16 him that it was underway and talked about what the
17 concept of it was at the time, let's say in May/June of
18 1998. We had not heard back results other than
19 anecdotally that they were identifying some other
20 troopers that there may be problems with. And I kept
21 him advised of that and I would have -- I certainly
22 advised him of what happened at the December meeting
23 and that they expected to be completing some portions
24 of this by sometime in February.

25 MR. CHERTOFF: Did he ask you for any written

1 reports or memos about the progress of the audit
2 through the balance of 1998?

3 THE WITNESS: No.

4 MR. CHERTOFF: Now --

5 THE WITNESS: And that wasn't the normal
6 practice.

7 MR. CHERTOFF: Again, focusing you in the
8 second half of 1998, in any of these discussions with
9 Attorney General Verniero, did either he or you ever
10 raise the question of whether the audit that you were
11 conducting about falsification was relevant to the U.S.
12 Civil Rights Division inquiry that was then going on
13 with respect to racial profiling?

14 THE WITNESS: No.

15 MR. CHERTOFF: Did Attorney General Verniero
16 ever suggest to you that the existence of falsification
17 of data might have to be disclosed to the Civil Rights
18 Division in terms of their investigation?

19 THE WITNESS: We did not have a discussion of
20 the impact of the Troop D audit which was in progress
21 as it related to obligations to the Department of
22 Justice, no.

23 MR. CHERTOFF: What about with respect to the
24 Soto appeal, did you have any discussion with Mr.
25 Verniero again during the period of 1998 from the time

1 you started the Troop D audit till the end of the year
2 about whether the results of the audit could have an
3 impact on the Soto litigation?

4 THE WITNESS: I recall having discussions
5 with him about that in early 1999.

6 MR. CHERTOFF: When?

7 THE WITNESS: I think it would have been
8 sometime in -- sometime in January, February of 1999.
9 I believe what happened was that the case was pending
10 argument. The ACLU and two other amicus -- filed an
11 amicus at the end of January. And the argument that
12 was originally scheduled for the middle of February was
13 postponed so that amicus arguments could be heard. But
14 my calendar reflects a meeting on January 21st with
15 Jack Fahy. It might be Stone and Gerald Simms, who was
16 the DAG handling that case, and Ann Paskow, regarding
17 the status of that case at that time. I know that
18 Debra Stone, during the course of late 1998, 1999, was
19 raising concerns as to the continuation of the Soto
20 case.

21 MR. CHERTOFF: I'm sorry. Because I was
22 distracted, I missed the last part of that answer.
23 Could you repeat that?

24 THE WITNESS: I believe --

25 MR. CHERTOFF: You were concerned about the

1 impact of --

2 THE WITNESS: -- Ms. Debra Stone identified
3 to me as the later -- as '98 progressed, her concerns
4 as to the impact of some of what was being found on the
5 Soto case.

6 MR. CHERTOFF: Okay. Let me see if I can
7 explore that for a minute. Am I correct, in the
8 discussions you had with Ms. Stone in 1998 about the
9 impact of the Troop D audit on the Soto case, she
10 expressed a concern that if it emerged there was
11 significant falsification of data, that might have to
12 be disclosed to the court?

13 THE WITNESS: Now, let me clarify that. My
14 discussions with her were not just limited to -- you
15 can't just limit it to the Troop D audit. My
16 discussions were with respect to things that she was
17 learning in both the Hogan and Kenna case and the Troop
18 D audit, as I mentioned, really we didn't learn
19 ultimately until later in 1998. And she had those
20 discussions -- but at that point in time, it did not
21 raise to a level of an obligation with respect to
22 discovery. It had it more as it relates to the
23 continuation of the appeal.

24 MR. CHERTOFF: Well, all right.

25 THE WITNESS: Those discussions happened

1 later.

2 MR. CHERTOFF: Amending my question as
3 follows: Whether it be the Hogan and Kenna information
4 or the Troop D information or any other information
5 that Ms. Stone was learning in the latter part of 1998,
6 did she have conversations with you about whether that
7 information would have some impact on the way the Soto
8 litigation was going to be handled?

9 THE WITNESS: No. The conversation was more
10 that she was advising me that she had been previously
11 opposed to take the Soto appeal and that certain of the
12 things that she was finding were consistent, you know,
13 reinforced that position. But we did not receive the
14 aggregate numbers on the Troop D audit until February,
15 and that's really when, after that point in time is
16 when we started to have those discussions more
17 completely.

18 MR. CHERTOFF: Why did -- why did she tell --
19 let me withdraw the question.

20 What did she tell you was the reason she
21 originally opposed the Soto appeal?

22 THE WITNESS: Her position to me, and this
23 would have been during the period of time when we're
24 having the more specific discussions about withdrawing
25 Soto was, and based upon her evaluation of the record

1 that was developed in that case involving stops in 1988
2 to 1991.

3 MR. CHERTOFF: And what did she tell you?
4 What was her concern?

5 THE WITNESS: She thought it was a bad and
6 difficult record for the State to ultimately win it
7 from the Appellate Division.

8 MR. CHERTOFF: Did you respond to her?

9 THE WITNESS: Well, we had a number of
10 discussions and my calendar actually reflects a number
11 of meetings that I had in March on this very
12 specific issue.

13 MR. CHERTOFF: March of what year?

14 THE WITNESS: 1999.

15 MR. CHERTOFF: I want to stay back in 1998,
16 before we get to -- just in 1998. Did you have
17 discussions with Debra Stone about the wisdom of
18 pursuing the appeal in Soto?

19 THE WITNESS: She had informed me about what
20 her position was, but not as to we have to go and
21 immediately withdraw the Soto case.

22 MR. CHERTOFF: She told you she thought it
23 was a bad idea to appeal it, right.

24 THE WITNESS: She told me that she had -- at
25 the -- that she had -- that her view was it was a bad

1 idea to appeal.

2 MR. CHERTOFF: And the reason she gave you
3 was because she thought if you looked at the underlying
4 data it was going to be difficult ultimately for the
5 State to defend?

6 THE WITNESS: No. She advised me that in
7 particular that she thought Colonel Pagano's testimony
8 in the case was very harmful to the State's case and
9 that because the record was a 1988 to 1991 record, that
10 it was -- it was going to be a difficult case on
11 appeal.

12 MR. CHERTOFF: Now, then also, again focusing
13 you still in 1998, did you have conversations with Ms.
14 Stone about the fact that information she was
15 discovering about either Hogan and Kenna or about Troop
16 D, or any other information, was reinforcing her view
17 that the State was going to have a problem in the Soto
18 litigation?

19 THE WITNESS: It evolved over a period of
20 time, yes.

21 MR. CHERTOFF: And what did she tell you in
22 1998 about what was evolving in her mind about it?

23 THE WITNESS: What she would do is she would
24 come and say that certain things she was finding was
25 that she was concerned as to whether racial profiling

1 was occurring and that was the reports that she gave me
2 during 1998. And as I said, we had more specific
3 discussions about the withdrawal of Soto in 1999.

4 MR. CHERTOFF: But I want to stay with 1998,
5 okay?

6 THE WITNESS: Okay.

7 MR. CHERTOFF: So in 1998 she is telling you,
8 at least generally, that what she's finding out is
9 raising additional concerns about racial profiling,
10 correct?

11 THE WITNESS: About racial profiling,
12 correct.

13 MR. CHERTOFF: Did you communicate that to
14 Attorney General Verniero?

15 THE WITNESS: I did communicate to Attorney
16 General Verniero that there were findings in our
17 investigations that raised concerns with respect to
18 racial profiling, yes.

19 MR. CHERTOFF: And what did he say in
20 response?

21 THE WITNESS: He said in response that we
22 have to continue to push, and whatever resources are
23 necessary to complete the Troop D audit, we should put
24 into the Troop D audit, and whatever resources are
25 necessary to complete the Hogan and Kenna investigation

1 on a timely basis we should put into it.

2 MR. CHERTOFF: Putting aside the issue of
3 falsification though, did you have any conversation in
4 1998 with Attorney General Verniero more generally
5 about the question of whether there was profiling based
6 on the existing statistics or what you were hearing
7 from Ms. Stone?

8 THE WITNESS: I had more conversations with
9 him at that time as it relates to what was being found
10 in the Hogan and Kenna case and what we were doing in
11 the Troop D audit, not in aggregate statistics.

12 MR. CHERTOFF: Did you have any conversations
13 with him about aggregate statistics in 1998?

14 THE WITNESS: I don't believe I did.

15 MS. GLADING: Can we clarify what aggregate
16 statistics you had available to you at this point?

17 THE WITNESS: Aggregate statistics, my
18 understanding as from a review of my file, that I
19 received -- and we talked about this a little bit
20 earlier, that when we were looking at the issue of
21 falsification, that some, a very limited number of
22 audits, four or five, about 12 pages, was provided to
23 Chuck Grinnell and my file reflects that that was
24 forwarded to me. I was particularly interested at that
25 time in the Hogan portion of those audits. And I

1 believe that document has some reference to Perryville
2 and Washington. Some numbers in Moorestown. But
3 again, I can't say that I was focusing on the aggregate
4 data at that time. I was particularly concerned that
5 there had been an audit in '95 and '96 with respect to
6 Trooper Hogan and his activities.

7 MS. GLADING: Can we mark this?

8 I'm trying to ascertain based on Debra
9 Stone's testimony and your testimony just now which
10 audits you were seeing at this point. And I guess the
11 period of time we're talking about is May, June of '98,
12 is that correct?

13 THE WITNESS: Yes. I actually believe that
14 there was a -- I thought there was a cover note that
15 reflected when I received this. I believe the letter
16 that went to Grinnell was sometime in late June of 1998
17 and then it was forwarded to me sometime in late June
18 or July of 1998.

19 MS. GLADING: Okay. Can you look through the
20 document I just gave you which is marked -- what is
21 that marked?

22 MR. CHERTOFF: Z-3.

23 THE WITNESS: Z-3.

24 MS. GLADING: Z-3.

25 THE WITNESS: Yes, I'm familiar with it.

1 MS. GLADING: And you indicated this is what
2 you saw in late June or July of '98?

3 THE WITNESS: Yes. It was forwarded -- it
4 was forwarded to me in late June, early July of 1998.

5 MS. GLADING: Okay. And if you could just
6 look carefully at the pages, because I want to make
7 sure we're talking about the same numbers and the same
8 audits.

9 THE WITNESS: Right.
10 (Pause)

11 Yes.

12 MS. GLADING: Okay, great. Did you discuss
13 these documents with Debra Stone?

14 THE WITNESS: I discussed in particular the
15 Hogan -- the Hogan audit with Debra Stone at that time,
16 that's what my recollection is.

17 MS. GLADING: Did you discuss the statistics
18 with Debra Stone?

19 THE WITNESS: I don't recall discussing the
20 aggregate statistics at that time. I recall a focus
21 again on that she was concerned that there had been a
22 previous audit and a previous focus on Trooper Hogan
23 and that's what I was focused on when I reviewed those
24 documents.

25 SENATOR LYNCH: When are we talking about now

1 specifically when you say you had this discussion with
2 Debra Stone? What time frame were you talking about?

3 THE WITNESS: I would presume sometime in
4 late June, July of 1998.

5 SENATOR LYNCH: Why wouldn't you have seen
6 this document or this data for a month or two after its
7 preparation?

8 THE WITNESS: I thought my testimony was that
9 it was my recollection that there was a forwarding note
10 that Meddis, who forwarded these documents over to
11 Chuck Grinnell, in late June of 1998. And then it went
12 from Grinnell to Stone to me and that's how I was
13 trying to refresh my recollection as to when I had
14 received it.

15 MR. WHEELER: Did you at anytime instruct --

16 THE WITNESS: I did not -- it did not go --
17 again, this would not have gone from Sachetti to Van
18 Tassel to me, it went over to Grinnell, who then later
19 brought it to Stone's attention, who brought it to my
20 attention.

21 MR. WHEELER: Did you at anytime instruct
22 Grinnell to request all related documents from the
23 State Police?

24 THE WITNESS: No, I had not. He and Gerrow
25 were handling that matter and they would have -- they

1 would have done -- they would have done that on their
2 own.

3 MR. WHEELER: Did you instruct Deb Stone?

4 THE WITNESS: No, as I said, they did that
5 and we requested -- the documents were requested. I
6 can't specifically -- asking for the documents myself.

7 MS. GLADING: Okay. Did you have any
8 discussions with Peter Verniero about these statistics
9 that had been forwarded to you in July?

10 THE WITNESS: I may have mentioned to him
11 that there was -- we found that there was a prior audit
12 done on Trooper Hogan that identified there were prior
13 concerns with respect to Trooper Hogan.

14 MS. GLADING: Did you have any discussions
15 with anyone else about the numbers reflected in these
16 audits?

17 THE WITNESS: I would have talked to Debra
18 Stone perhaps about it. But again, my focus at that
19 time was not on the aggregate data issue, but it was on
20 the pursuit of the Hogan and Kenna case.

21 MR. WHEELER: Did she convey to you any
22 concerns that she had with respect to those numbers?

23 THE WITNESS: What was the question?

24 MR. WHEELER: Did she convey to you, Deb
25 Stone, did she convey to you any concerns with respect

1 to those numbers that were contained in the documents
2 that you were just provided?

3 THE WITNESS: She did during the course of
4 1998. It may have been at that time, I can't recall.

5 MR. WHEELER: It was her testimony that as a
6 basis of reviewing those numbers that she actually
7 expressed to you concern about continuing the Soto case
8 at that time. Do you recall that conversation?

9 THE WITNESS: I do not recall that -- I
10 recall having conversations with her like that in 1998.
11 I don't necessarily recall whether it was in
12 conjunction with these numbers or not.

13 MR. WHEELER: This is now -- I'm talking
14 about May, June of 1998.

15 THE WITNESS: I understand, yes. And my
16 answer is that I recall having discussions with her in
17 1998 with respect to the issue of the Soto case, but I
18 don't recall whether it was in conjunction with these
19 statistics here or whether it was in one of my other
20 conversations with her during the progress of the case.

21 MS. GLADING: Do you recall or do these
22 statistics help you recall any closer when these
23 conversations were in 1998 with Debra Stone about the
24 Soto case and the viability of the appeal?

25 THE WITNESS: No. No, they don't.

1 MS. GLADING: Okay. So your testimony
2 earlier, just so we're clear, Debra Stone actually
3 characterized herself as being on nag patrol about the
4 Soto appeal and that she felt pretty strongly it should
5 be withdrawn or dropped. Your testimony was to the
6 best of your recollection, when did you start -- begin
7 having these conversations?

8 THE WITNESS: During 1998 with her --

9 MS. GLADING: When in --

10 THE WITNESS: -- during the course of the
11 Hogan and -- the beginning of the Hogan and Kenna case
12 and the information that she received during the course
13 of that case. What I'm saying is I don't recall it
14 being specific as to this document, but I do recall her
15 having discussions in which she identified to me that
16 she had had concerns with respect to the efficacy of
17 originally filing the Soto appeal.

18 MR. WHEELER: Do you recall --

19 MS. GLADING: Just to clarify. Roughly when?
20 I mean August, October, December? What period of time
21 were these conversations beginning?

22 THE WITNESS: I was aware of the Soto case
23 and I was aware that Debra Stone had advised me that
24 she was originally opposed to it and she continued to
25 hold that position very strongly. And so that almost

1 all the times in which the Soto case was discussed, she
2 identified that she was opposed to that appeal.

3 MS. GLADING: I'm asking about her newly
4 reinvigorated concern based upon what she was learning
5 in the course of the Hogan and Kenna investigation.
6 When did those discussions begin?

7 THE WITNESS: When it got to the point in
8 time in which she and I had discussions which we
9 absolutely should and absolutely have to withdraw the
10 case, was in 1999. She identified concerns but in
11 terms of when we have to file our next brief in that
12 case. We discussed her concerns and my concerns as to
13 why we ought to be withdrawing the case.

14 MS. GLADING: When did she begin identifying
15 concerns in the context of Hogan and Kenna about the
16 Soto case?

17 THE WITNESS: Well again, I think what she
18 said to me was, "I was opposed to appealing that case.
19 I am still opposed to appealing that case." But it was
20 not in the context, Director, we have to withdraw the
21 Soto case tomorrow.

22 MS. GLADING: When did she begin saying
23 there's evidence coming up in the Hogan and Kenna
24 investigation that indicates we really have to -- we
25 have to withdraw Soto, we should consider withdrawing

1 Soto? When did she begin putting it together with
2 Hogan and Kenna?

3 THE WITNESS: We had that, I believe as I
4 said, I have a calendar date that reflects in late
5 January of 1999, January 21, of 1999, where we started
6 to have discussions about concerns of going forward
7 specifically with the Soto appeal.

8 SENATOR LYNCH: But you don't have a 1998
9 calendar?

10 THE WITNESS: I do not.

11 SENATOR LYNCH: And what happened to it?

12 THE WITNESS: At transition from the Division
13 of Criminal Justice, Fifth Floor up to the Eighth
14 Floor, and that did not -- that was not retained.

15 SENATOR LYNCH: Your daily schedules aren't
16 on your computer?

17 THE WITNESS: I wish they had been, but I
18 learned in terms of the transition that I transitioned
19 from one system to another and they were not -- they
20 were not available. I did look for those and I had
21 wished they were available.

22 MS. GLADING: Just one more --

23 MR. WHEELER: Let's go back for one second.
24 A few points of clarification.

25 Deb Stone testified that, this is now talking

1 about the June, July of 1998 -- actually May, June,
2 July 1998 time frame during these conversations that
3 you had with her. That when she reviewed the Sachetti
4 synopsis, which are the documents which you were just
5 provided, that those numbers to her were very similar
6 to the numbers that were presented in the Soto case and
7 that that really was the reason why she was like hey,
8 listen, we better do something about it, you know, at
9 least looking at our position in Soto. Do you recall
10 that ever taking place?

11 THE WITNESS: I recall her having discussions
12 with me, but I don't recall it ever being in that she
13 came to me at that time and said we just absolutely now
14 withdraw the Soto case. As I said, it was --

15 SENATOR LYNCH: That's not the question.

16 THE WITNESS: Did I -- repeat the question.

17 MR. WHEELER: Deb Stone, as you know, she was
18 involved in the initial decision to appeal the Soto
19 case. She was part of all those conversations with
20 then Attorney General Poritz back in '96. So she's
21 aware of the numbers that were presented in the Soto
22 case that Judge Francis based his decision on. She
23 then sees the synopsis, the Sachetti synopsis, which
24 you just testified that you've seen as well. And she
25 testified that she saw those numbers in the Sachetti

1 synopsis and to her they looked very similar to the
2 numbers that were present in the Soto appeal, in the
3 Soto case. And she conveyed those feelings to you
4 saying, "Listen, Paul, we have a problem here, these
5 numbers are similar to the Soto numbers, you know, we
6 better reconsider our position in Soto." Do you recall
7 that taking place?

8 SENATOR LYNCH: In June.

9 MR. WHEELER: In June of 1998.

10 THE WITNESS: I do not recall her saying to
11 me at that time we must withdraw the Soto case. I do
12 recall that she provided these to me and we had a
13 discussion on them. Sitting here today, my
14 recollection was the focus of our conversation was on
15 Hogan and Kenna and the Hogan audits, but not that
16 there was a request at that time to withdraw the Soto
17 case.

18 SENATOR LYNCH: Do you recall that she
19 specifically talked to you about the similarity between
20 the numbers in the Sachetti report to those in the Soto
21 case back in June of 1998?

22 THE WITNESS: I recall having a discussion
23 with her about the statistics --

24 SENATOR LYNCH: Would you answer that
25 question? Do you recall that or not?

1 THE WITNESS: I recall having a discussion
2 with her about the statistics, yes.

3 SENATOR LYNCH: And do you recall her saying
4 that she -- that these numbers were similar, the
5 statistics were similar to what they found in the Soto
6 case?

7 THE WITNESS: I do not recall her having that
8 specific discussion with me at that time. I do recall
9 having similar discussions with her during 1998 and I
10 can't place it being June of 1998.

11 SENATOR LYNCH: Similar discussions about the
12 similarity between the data here in the Sachetti report
13 and the Soto data?

14 THE WITNESS: No. All the data that she was
15 gathering, not just this -- not just these statistics,
16 but all the data that was being gathered.

17 SENATOR LYNCH: Did she ever have that
18 discussion with you to your recollection about the
19 similarity in the data in Soto to the similarity to the
20 data collected here in the Sachetti report?

21 THE WITNESS: Yes.

22 SENATOR LYNCH: When?

23 THE WITNESS: And that discussion became more
24 in 1999 when we were looking at having just received
25 the brief for amicus of the ACLU to get involved in

1 that case, and then that's when the discussions got
2 framed as it relates to going forward with responding
3 to that --

4 SENATOR LYNCH: Framed, crystallized? I mean
5 did she have -- did some of this discussion occur in
6 June of 1998? Do you recall any of it?

7 THE WITNESS: She has, as she testified, I
8 did have discussions with her in which she continued to
9 advise me that she was opposed to the Soto appeal and
10 that she believed that things that were being
11 discovered during the course of all of what we were
12 doing there, reinforced that position. And what I'm
13 saying is, I don't recall having that specific
14 discussion with respect to these numbers at that time,
15 but I do recall speaking with her about that issue
16 throughout 1998.

17 SENATOR LYNCH: Do you recall in 1998
18 speaking to her about the issue of the similarity in
19 the numbers between the Sachetti report and Soto?

20 THE WITNESS: Not specifically as it relates
21 to the Sachetti report, but that what was being found
22 was reinforcing her view that the appeal should be
23 withdrawn.

24 SENATOR LYNCH: All right. So when Ms. Stone
25 says that she told you this in June of 1998, are you

1 saying she's wrong or you just don't remember?

2 THE WITNESS: I don't remember -- I do not
3 say she's wrong at all. I reemphasize that she did
4 tell me consistently that she was opposed to Soto and
5 that she believed there are reasons to be opposed to
6 Soto. What I'm saying is as it relates to these
7 statistics, I don't recall the specific comparison
8 discussion at that time.

9 MS. GLADING: And just to clarify when you
10 were talking about the Sachetti numbers just now, we
11 were talking about the synopsis of audits that was
12 prepared by Sachetti, not the Troop D audit?

13 SENATOR LYNCH: Right.

14 MS. GLADING: Right. Did you have -- when
15 you mentioned to Peter Verniero -- or when you said you
16 may have mentioned to Peter Verniero that there were
17 some audits that had come over from State Police, did
18 he indicate to you that he had also seen some audits in
19 the past?

20 THE WITNESS: No.

21 MR. CHERTOFF: Let me -- I want to make sure
22 we're completely clear as to this document, Z-3. You
23 received Z-3 with a cover memo from the State Police
24 through Mr. Grinnell, right?

25 THE WITNESS: I think there actually would

1 have been two additional documents on top of it. One
2 was a forwarding from Meddis, who is at State Police,
3 to Grinnell. And then Grinnell gave it to Stone and
4 either Stone forwarded it to me and that's how I
5 received it at the end of 19 -- June of 1998.

6 MR. CHERTOFF: But with the exception of
7 those additional pages, am I correct that Z-3 is
8 material you received in approximately June of 1998?

9 THE WITNESS: Yes.

10 MS. GLADING: Which additional pages? I'm
11 sorry.

12 THE WITNESS: I said there were two cover
13 pages.

14 MS. GLADING: Cover pages, okay.

15 And so for the record, let's just clarify
16 that it's OAG2055 through 2081 that is Z-3.

17 THE WITNESS: Correct.

18 MS. GLADING: Thank you.

19 MR. CHERTOFF: Did you give a copy of this to
20 Attorney General Verniero?

21 THE WITNESS: No.

22 MR. CHERTOFF: Did you discuss it with him?

23 THE WITNESS: I discussed the fact that --
24 the findings with respect to Hogan and there had been a
25 prior audit with respect to Hogan. But I don't recall

1 providing these aggregate numbers to the Attorney
2 General at that time.

3 MR. CHERTOFF: Did he ask for them?

4 THE WITNESS: I didn't make him aware of
5 them.

6 MR. CHERTOFF: You didn't make him aware you
7 had the numbers?

8 THE WITNESS: I did not.

9 SENATOR GORMLEY: Mr. Rover, during this
10 period of time would there have been an alternate
11 chain-of-command going to the Attorney General directly
12 through Mr. Rover? In other words, information
13 generated by Mr. Rover, would that have gone to the
14 Attorney General at that time without going through
15 you?

16 THE WITNESS: I learned at some point in time
17 that as it relates to the Department of Justice
18 investigation, that the Department of Justice
19 investigation was being handled at all times outside
20 the chain of the Division of Criminal Justice.

21 SENATOR GORMLEY: So we had a different chain
22 for the Department of Justice investigation?

23 THE WITNESS: Correct. That was being
24 handled out of the Office of the Attorney General.

25 MR. CHERTOFF: When you went to the Attorney

1 General and talked to him about the substance of this
2 memo, Z-3, again I want to be completely clear, did he
3 in any way, shape or form suggest to you that you ought
4 to communicate this to the separate group that were
5 handling the Department of Justice investigation?

6 THE WITNESS: Let me make sure I clarify it.
7 I think all that I said was I think I advised him at
8 some point in time that we had information that Hogan
9 had been audited before and Hogan had been subject to
10 prior audits and concerns. And I did not review the
11 substance or describe to him the aggregate data at that
12 time because that was not what I was focused on at that
13 time.

14 MR. CHERTOFF: But in terms of his focus, did
15 he at any point in time in 1998 say, what have you
16 discovered in general, not specific to Hogan and Kenna,
17 in general about what the situation is with respect to
18 racial profiling?

19 THE WITNESS: We had discussions that I had
20 -- we had concerns as to that racial profiling was
21 occurring. And we had discussions as it relates to the
22 resources that have to be invested in the Hogan and
23 Kenna case and the Troop D audit.

24 MR. CHERTOFF: Forget Hogan and Kenna for a
25 second. What was the discussion in 1998 with Peter

1 Verniero concerning what was going on in racial
2 profiling that you were having with him? Did he
3 express concern about it?

4 THE WITNESS: Yes. He expressed concern. He
5 wanted to get to the bottom of it and I was -- as it
6 relates to my discussions with the Attorney General,
7 there are times I was present when the Attorney General
8 discussed it with Superintendent Williams.

9 MR. CHERTOFF: Well, but I want to -- okay.
10 Whether Superintendent Williams was there or not in
11 1998, you'll agree with me that there were times that
12 he expressed concern about racial profiling.

13 THE WITNESS: Yes.

14 MR. CHERTOFF: Did you say to him, well, you
15 know, we actually have some audit numbers that we've
16 received concerning racial profiling from the State
17 Police in 1998?

18 THE WITNESS: I did not.

19 MR. CHERTOFF: Why not?

20 THE WITNESS: I had -- again, in looking at
21 these documents, I recall that my focus at the time was
22 as a prosecutor in the Hogan and Kenna case and what I
23 was looking for when I looked at these documents was
24 information that was going to be helpful to the Hogan
25 and Kenna case. I did not focus on the aggregate data

1 at the time.

2 MR. CHERTOFF: Did the Attorney General ever
3 ask you whether there was aggregate data you were
4 receiving apart from Hogan and Kenna?

5 THE WITNESS: No.

6 MR. HOLDEN: Did you communicate this to the
7 Attorney General that Ms. Stone did not want to proceed
8 with the Soto appeal and was discussing with you other
9 reasons in June of 1998?

10 THE WITNESS: I do recall that I began to
11 discuss with the Attorney General Stone's concerns and
12 my concerns about going forward with the Soto appeal,
13 but I do not recall those occurring contemporaneous to
14 the document that Ms. Glading showed me.

15 MR. HOLDEN: And when you indicate concerns
16 about going forward, did you communicate what the basis
17 for those concerns about going forward were?

18 THE WITNESS: Yes. And that would be more
19 towards the very specific discussions we had once the
20 amicus brief was filed in January of 1999.

21 MR. HOLDEN: But you indicated that in June
22 of '98 you and Mr. Verniero had a discussion about the
23 audit process going too slow, is that correct?

24 THE WITNESS: Yes. That was as it relates to
25 the audit as it relates to Troop D going too slow. And

1 the Troop D audit numbers I did not receive until
2 February 10th, 1998, which would have been relevant to
3 the most recent -- 1999, which would have been relevant
4 to what was happening now in the New Jersey State
5 Police.

6 MR. HOLDEN: But in that discussion about
7 slow going with regard to Troop D, isn't it correct
8 that there was a general concern expressed by you with
9 the issue of or the existence of the issue of racial
10 profiling?

11 THE WITNESS: Yes, and he shared that
12 concern.

13 MR. HOLDEN: And was the purpose of the
14 collection of data to prove that racial profiling
15 existed or to disprove that racial profiling existed?

16 THE WITNESS: I would think the purpose of
17 that investigation was to find out what was happening.

18 MR. HOLDEN: And was there additional
19 discussion about what other efforts were being
20 undertaken to find out what's happening, between you
21 and Mr. Verniero in June of 1998?

22 THE WITNESS: Yes. And that was a discussion
23 with respect to on the one hand what was moving forward
24 with the Hogan and Kenna investigation and the other
25 side, moving forward with the Troop D audit which we

1 believe was potentially going to shed new light on the
2 issue.

3 SENATOR LYNCH: Well, when you saw the Troop
4 D, the audit numbers, some preliminary numbers in
5 February of '99, your only interest was as they related
6 to Hogan and Kenna.

7 THE WITNESS: No, that's not what I said.
8 And this is very important. When I saw Z-3, which was
9 in late June of 1998, having just had the shooting
10 occur, I was focused on the Hogan and Kenna
11 investigation and furthering that and in particular on
12 the data that's in here with respect to Trooper Hogan
13 in Z-3. When I received -- and we were pushing the
14 Troop D audit along which dealt with more recent
15 numbers, that I received those numbers on February
16 10th, 1999 that had aggregate statistics as it relates
17 to Troop D from January of 1998 to April of 1998.
18 That's a distinction I want to make sure that's clear.

19 SENATOR LYNCH: You wanted to complete that
20 Troop D audit expeditiously.

21 THE WITNESS: Yes.

22 SENATOR LYNCH: For what purpose?

23 THE WITNESS: Because we believed that we had
24 to a handle on what was happening out in Troop D around
25 the time of the shooting and what was actually

1 happening out on the Turnpike at that time.

2 MR. CHERTOFF: Mr. Zoubek, I want to just
3 again focus on Z-3 for a minute. If you look at the
4 page marked OAG2074, and then the next one is 2075, you
5 see there's a document called Patrol Issues, Concerns
6 at Moorestown Station from Lieutenant F. Hinkle. Do
7 you see that?

8 THE WITNESS: Yes.

9 MR. CHERTOFF: And it lists stops by non-
10 minority troopers and minority troopers based on
11 whether the stop of individuals are white, black or
12 other minorities, correct?

13 THE WITNESS: Yes.

14 MR. CHERTOFF: And I take it you were -- this
15 was again part of the package you received in June of
16 1998, right?

17 THE WITNESS: Yes.

18 MR. CHERTOFF: Did you discuss this -- did
19 you read this memo?

20 THE WITNESS: I reviewed the memo, yes.

21 MR. CHERTOFF: Did this -- now, this doesn't
22 relate to the issue of falsification, correct?

23 THE WITNESS: No, it did not.

24 MR. CHERTOFF: Did you, based on reading this
25 memo, form any impression about whether there was an

1 issue about the statistics in general concerning racial
2 profiling?

3 THE WITNESS: I don't understand your
4 question.

5 MR. CHERTOFF: Well, when you read this, did
6 you say to yourself, did you form any opinion about the
7 statistics in terms of whether they're proportionate or
8 disproportionate showing minority stops by troopers?

9 THE WITNESS: I had -- I did not and I had
10 not read the Soto opinion at that time.

11 MR. CHERTOFF: Did you discuss this
12 particular document with Mr. Verniero?

13 THE WITNESS: No.

14 MR. CHERTOFF: Now, Jack Fahy was working for
15 you at this point in time, right?

16 THE WITNESS: Yes, as the head of the State
17 Grand Jury Unit.

18 MR. CHERTOFF: And did he also have some
19 continuing responsibilities involving the Soto matter?

20 THE WITNESS: Yes and no. He was the lawyer
21 who had -- who had tried the case, so Gerald Simms, who
22 was the DAG who was handling the appeal, may at times
23 deal with Mr. Fahy as related to that appeal.

24 MR. CHERTOFF: And again, in this period of
25 time in mid-1998, was Jack Fahy dealing with the

1 Attorney General on the issue of racial profiling in
2 general?

3 THE WITNESS: He was one of the people that
4 the Attorney General consulted with on that issue.

5 MR. CHERTOFF: And he reported to you, right?

6 THE WITNESS: He did report to me as the head
7 of the State Grand Jury Unit.

8 MR. CHERTOFF: Did he have conversations with
9 you or did you have conversations with him in 1998
10 concerning this information about stop data as it might
11 relate to his responsibilities on racial profiling?

12 THE WITNESS: I did not.

13 MR. CHERTOFF: Did you know he was dealing
14 with the Attorney General on the issue of racial
15 profiling?

16 THE WITNESS: I knew at times the Attorney
17 General was consulting with him.

18 MR. CHERTOFF: I'm going to show you what
19 we're making as Z-4 for identification. It's a memo to
20 Attorney General Verniero from SDAG John Fahy dated May
21 21, 1998.

22 THE WITNESS: Yes.

23 MS. GLADING: Mr. Chertoff, before we move
24 off of Z-3, I wonder if I can ask one quick question --

25 MR. CHERTOFF: Sure.

1 MS. GLADING: -- on it before we get too far
2 off it.

3 On Z-3 on Page OAG2072, I'm looking at the
4 consent-to-search figures that are discussed in the
5 second and third sets of numbers there. I wonder if
6 you have any recollection -- and I've just done the
7 math on it, there are no total percentages on this
8 page, but it reflects that 98 out of a 109 consent-to-
9 search forms executed were minority in Moorestown and
10 in Cranbury it was half, it was 114 out of 232. I
11 wonder if you have any recollection when you got this
12 document about the consent-to-search figures that were
13 contained in it?

14 THE WITNESS: What I recall is that, and
15 again I don't recall was it specific as in the
16 connection with the receipt of this document, but that
17 during the course of my conversations with Debra Stone,
18 she identified that consents was an issue. I can't sit
19 here right now and say specifically as it relates to
20 this document that I focused on those specific numbers
21 at that time.

22 MS. GLADING: Okay. Did she indicate -- did
23 she in the context of discussing consents, did she
24 discuss the Maryland settlement at that time -- the
25 Maryland court decree, I should say?

1 THE WITNESS: I don't recall whether I
2 discussed the Maryland numbers with her. We did have
3 -- in '98 we did have conversations about that
4 certainly in our discussions of the withdrawal of Soto
5 and the State Police review. I don't recall whether I
6 had that discussion with her in 1998.

7 MS. GLADING: Do you recall when in '98 you
8 learned about the Maryland court decree?

9 THE WITNESS: I may have heard about it at
10 some point in the newspapers. I did not -- I started
11 researching that more in February of 1999.

12 MR. WHEELER: What was your understanding of
13 the Maryland court decree in 1998?

14 THE WITNESS: I don't think I had an
15 understanding of the Maryland court decree in 1998.

16 MR. WHEELER: How about the Maryland numbers?

17 THE WITNESS: I didn't have an understanding
18 of the Maryland numbers in 1998, I don't think.

19 MR. WHEELER: I thought you just said that
20 you discussed that with Deb Stone?

21 THE WITNESS: Yes, later, as I said, with
22 respect to the State Police review.

23 MR. WHEELER: Okay.

24 THE WITNESS: Which would have been in 1999.

25 MR. CHERTOFF: All right. Let's get to Z-4

1 for a second. Have you seen this before?

2 THE WITNESS: I have seen it before and I
3 have seen it in preparation for today.

4 MR. CHERTOFF: All right. Now, this is a
5 memo to Attorney General Verniero from supervisory
6 Deputy Attorney General John Fahy?

7 THE WITNESS: Yes.

8 MR. CHERTOFF: Relating to racial profiling,
9 correct?

10 THE WITNESS: Yes.

11 MR. CHERTOFF: All right. And it attaches a
12 draft statement that was supposed to be issued by
13 Attorney General Verniero and was drafted by Mr. Fahy?

14 THE WITNESS: Yes.

15 MR. CHERTOFF: And it's dated May 1998,
16 correct?

17 THE WITNESS: Yes.

18 MR. CHERTOFF: And it talks, among other
19 things, about new initiatives announced, including
20 monitoring and evaluation of stop data.

21 THE WITNESS: Right.

22 MR. CHERTOFF: And it goes on to say, "Please
23 note the last two initiative items are intentionally
24 somewhat general, and that includes the initiative item
25 of monitoring and evaluation of stop data." Do you see

1 that?

2 THE WITNESS: Yes.

3 MR. CHERTOFF: And it goes on to say, "Before
4 more specific recommendations can be made, all issues,
5 including those associated with complicating the
6 discovery process in ongoing and future litigation,
7 must be analyzed." Now, you got a copy of this memo at
8 the time it was issued, right?

9 THE WITNESS: I did.

10 MR. CHERTOFF: Did you read it?

11 THE WITNESS: I did review it.

12 MR. CHERTOFF: Did you have a conversation
13 with Mr. Fahy about what he meant in terms of keeping
14 recommendations about monitoring and evaluation of stop
15 data at a general level so that there could be an
16 analysis of all the related issues potentially
17 complicating the discovery process?

18 THE WITNESS: I did not. Mr. Fahy's practice
19 was when he was communicating something to the Attorney
20 General that he would copy me on that. I did not
21 attend the meeting that's referred to there with the
22 black ministers and it was my understanding that
23 essentially Mr. Fahy was updating the Attorney General
24 and keeping me advised of what he was doing besides
25 being head of the State Grand Jury. But I did not,

1 other than reading this memo, I did not have any
2 follow-up or further discussions with Mr. Fahy at that
3 time.

4 MR. CHERTOFF: What about with the Attorney
5 General about this memo, did you have any conversation
6 with him? Did he come to you or have discussion with
7 you about this memo?

8 THE WITNESS: No.

9 MR. CHERTOFF: Is it your testimony then that
10 with respect to this memo, for example, Mr. Fahy, who
11 you normally supervised, essentially went outside --
12 was told to go outside the normal chain of command and
13 deal directly with the Attorney General, with you being
14 essentially kept informed but out of the loop?

15 THE WITNESS: That's correct. My role, as I
16 viewed it at that time, was as the head of the Division
17 of Criminal Justice, as a prosecutor investigating
18 matters, and I was not involved in these other issues
19 with respect to racial profiling.

20 MR. CHERTOFF: Do you know what the reference
21 to ongoing and future litigation referred to in the
22 memo?

23 THE WITNESS: Sitting here today I can
24 presume that it talks about impacting criminal or civil
25 cases.

1 MR. CHERTOFF: Well, at the time did you know
2 what he was referring to?

3 THE WITNESS: I would have had the same
4 reaction, I presume, at the time.

5 MR. CHERTOFF: Did you consider at the time
6 that you got the memo whether this was a reference to
7 the Soto case or whether it was a reference to issues
8 with the Department of Justice in Washington or what?

9 THE WITNESS: I understood it generally as it
10 was written. I didn't think about it in terms of the
11 Department of Justice.

12 MR. CHERTOFF: Do you see the reference to
13 Detective Thomas Gilbert in the second page?

14 THE WITNESS: Yes.

15 MR. CHERTOFF: Do you know who that was? Did
16 you know at the time?

17 THE WITNESS: Not at the time.

18 MR. CHERTOFF: You had not dealt with him at
19 the time?

20 THE WITNESS: No, not at all.

21 MR. CHERTOFF: Did you deal with him in 1998?

22 THE WITNESS: Not at all.

23 MR. CHERTOFF: Let me ask you this.

24 THE WITNESS: I met him for the first time in
25 1999.

1 MR. CHERTOFF: In your capacity as head of
2 the Division of Criminal Justice, you clearly had
3 responsibility for litigating criminal cases for the
4 State of New Jersey, correct?

5 THE WITNESS: Correct.

6 MR. CHERTOFF: And you understood that in
7 terms of the issue of racial profiling that if there
8 was profiling, that would become a recurrent problem in
9 criminal litigation for the Division, right?

10 THE WITNESS: Correct.

11 MR. CHERTOFF: So that was a matter that
12 normally should have fallen within your responsibility,
13 right?

14 THE WITNESS: The investigation as to that
15 problem, yes.

16 MR. CHERTOFF: And is it also fair to say
17 that in your capacity as head of the Division, any
18 steps that would be taken with respect to the racial
19 profiling issue that could potentially impact on cases
20 you had responsibility for, would be something you'd
21 normally want to be involved in?

22 THE WITNESS: Yes and no.

23 MR. CHERTOFF: Well, why yes and why no?

24 THE WITNESS: Well, I would want to be aware
25 of what was going on, but the way in which, as we

1 talked about a co-equal arrangement at that time, the
2 Office of the Attorney General at the time was working
3 with the State Police as it related to these issues
4 regarding racial profiling. And my role within the
5 Division of Criminal Justice was yes, as it relates
6 back to the impact of cases, but I was not involved at
7 that time in decisions or supervision of the State
8 Police as it relates to decisions as to whether they
9 would be monitoring or evaluating stop data.

10 MR. CHERTOFF: Well, in 1998, again I want to
11 still focus you in this period of time, in 1998 did
12 Attorney General Verniero ever call you in and say in
13 substance, Paul, we're dealing with issues about
14 monitoring and stop data and State Police behavior,
15 this might impact positively or negatively on cases you
16 guys are bringing. Participate in the discussion about
17 how we ought to proceed. Did he ever invite you to do
18 that or ask you to do that?

19 THE WITNESS: No.

20 MR. CHERTOFF: Is it fair to say that you as
21 of this point in time, you personally had a lot of
22 experience litigating criminal cases?

23 THE WITNESS: Yes.

24 MR. CHERTOFF: And to your knowledge the
25 Attorney General had very little, if any, experience

1 litigating criminal cases?

2 THE WITNESS: Yes.

3 MR. CHERTOFF: It would also be fair to say
4 at this point in time in 1998 you were within the
5 Department in terms of rank the senior advisor on
6 Criminal Justice policy issues?

7 THE WITNESS: Yes.

8 MR. CHERTOFF: Now, let me go to the next
9 document, Z-5.

10 MS. GLADING: Before we go off this document,
11 I just have a quick question.

12 I'm looking at Page -- the bottom of Page
13 GC2364 to the top --

14 THE WITNESS: Is that within Z-4?

15 MS. GLADING: Yes. To the top of GC2365.

16 THE WITNESS: 2365?

17 MS. GLADING: Right. It discusses ongoing
18 efforts being made to ensure that supervisors within
19 the State Police have sufficient information to monitor
20 the stopping practices and any resulting enforcement
21 action taken by road troopers. Was it your
22 understanding that there was ongoing monitoring at this
23 time?

24 THE WITNESS: I did not have any knowledge
25 with respect to that whatsoever. As I said, I didn't

1 have any supervisory authority or involvement over the
2 New Jersey State Police. I did not know what the
3 monitoring practices were at that time.

4 MS. GLADING: When you got this memo did you
5 know it at that point?

6 THE WITNESS: Did I know -- you just asked me
7 what they were.

8 MS. GLADING: Was it your understanding when
9 you got this memo --

10 THE WITNESS: "Besides, ongoing efforts are
11 also being made to ensure that supervisors within the
12 State Police" -- the information I would have had on
13 that would have been gleaned from that statement.

14 MS. GLADING: Okay.

15 THE WITNESS: I didn't do any -- what I'm
16 saying is, I didn't do any further inquiry as it
17 relates to that statement.

18 MS. GLADING: And on the cover page of Z-4
19 where it says, "New or continued initiatives announced
20 discusses monitoring and evaluation of stop data." Was
21 it your understanding that this was a continuing
22 initiative?

23 THE WITNESS: As I said, I did not have an
24 understanding at that time. I mean based upon what the
25 document says, it refers to the last two items in that

1 list are new initiatives. So from reading the document
2 -- but again, I was Director of the Division of
3 Criminal Justice. I was not aware of the internal
4 handling of the matter by the State Police, other than
5 what I was doing as a prosecutor at that time.

6 MS. GLADING: Okay. It actually indicates
7 that these are not new initiatives, but they are new or
8 continued initiatives that were being announced.

9 THE WITNESS: And that doesn't change my
10 answer. I was not aware of what exactly was happening
11 within the State Police on that issue.

12 MR. CHERTOFF: All right. I've got Z-5 in
13 front of you. Again, it's a document you've seen
14 before?

15 THE WITNESS: I have -- it indicates that
16 I've seen it at the time, yes.

17 MR. CHERTOFF: All right. It was copied to
18 you but it's to Attorney General Verniero from John
19 Fahy, correct?

20 THE WITNESS: Right.

21 MR. CHERTOFF: Dated May 26th, 1998 and
22 entitled Violator Survey.

23 THE WITNESS: Right.

24 MR. CHERTOFF: And again, this memorandum
25 talks about the issue of whether it makes sense to

1 conduct a violator survey or traffic survey as part of
2 the process of analyzing whether stop data shows racial
3 profiling, correct?

4 THE WITNESS: Yes.

5 MR. CHERTOFF: Again, did you discuss the
6 memo with Mr. Fahy before he sent it out?

7 THE WITNESS: No.

8 MR. CHERTOFF: Did Mr. Verniero call you in
9 to ask you to discuss this issue with him?

10 THE WITNESS: Not that I can recall.

11 MR. CHERTOFF: So again, is it fair to say
12 that on this issue of the monitoring, this was not a
13 matter about which Attorney General Verniero consulted
14 with you in mid-1998?

15 THE WITNESS: Not that I recall.

16 MR. CHERTOFF: Now, I want to show you what
17 I'm going to mark as Z-6, which is a memo that's
18 directed to you now from SDAG Fahy dated October 30,
19 1998. And we'll hand it to you in a second. And the
20 subject is motion to place Troopers Kenna and Hogan's
21 cases on inactive list. Attached to it is some
22 proposed motion papers.

23 THE WITNESS: I recall that -- I recall the
24 -- Z-6, I have seen Z-6. I did receive it. I recall
25 the document. I recall being involved in the decisions

1 relating to that document.

2 MR. CHERTOFF: Okay. Now, why is it that
3 SDAG Fahy was the person who got involved in this issue
4 at this point as opposed to Special Prosecutor Gerrow
5 or Mr. Grinnell?

6 THE WITNESS: That's because it dealt with --
7 there are times in which he has gotten involved in
8 similar motions and issues as it relates to the courts
9 and has filed motions like that in other cases when
10 there's an impact -- he's in charge of the Grand Jury
11 and this is ancillary to in a Grand Jury investigation
12 as having impact on some pending cases. So therefore,
13 he was the one who did it. It may have added to the
14 fact that he had been involved in -- he had previously
15 been involved in the investigation, but it was out of
16 his role of State Grand Jury head.

17 MR. CHERTOFF: So it is a coincidence that
18 the same Jack Fahy was involved in dealing with the
19 Attorney General on profiling issues was the Jack Fahy
20 who signed this motion or filed this motion with
21 respect to the Kenna and Hogan matter?

22 THE WITNESS: No. I think this really
23 related to his role as head of the State Grand Jury
24 Unit because it was a problem that had come out of that
25 issue and he had -- he had previously -- this issue had

1 come up before in the Division and he had handled it
2 when there were pending investigations. And so that's
3 why he handled this.

4 MR. CHERTOFF: Now, this makes reference to
5 the fact that there are ongoing investigations relating
6 to Kenna and Hogan and that's why these cases should be
7 placed on the inactive list, correct?

8 THE WITNESS: Correct.

9 MR. CHERTOFF: And did those ongoing
10 investigations being referred to include the
11 investigations about falsification of records?

12 THE WITNESS: Yes.

13 MR. CHERTOFF: So is it fair to say that SDAG
14 Fahy at this point in time by necessity had to be
15 familiar with the fact that there was an ongoing
16 investigation about falsification of records with
17 respect to stops on the highway, at least as it relates
18 to these two troopers?

19 THE WITNESS: It's logical that he would. I
20 can't sit here and say that he was. But I would think
21 it would be logical that he would given his position.

22 MR. CHERTOFF: Because it would be --

23 THE WITNESS: And given the statement that he
24 had here that he was advised of generally the status of
25 that case. I don't recall him, however, having been

1 present in any of the investigative planning meetings
2 up until that point in time.

3 MR. CHERTOFF: But it would be almost
4 impossible for him to make the representations that are
5 made in his affidavit without him being aware, at least
6 in general, that there was an ongoing investigation
7 concerning the issue of falsification of records?

8 THE WITNESS: Not necessarily. He could have
9 certainly filed a motion if he had only had knowledge
10 on the shooting case.

11 MR. CHERTOFF: Well, is it just the shooting
12 cases that your understanding is the basis for this
13 motion, or was it also the falsification
14 investigations?

15 THE WITNESS: I think the shooting case would
16 have been sufficient. I am not able to recall whether
17 there was a discussion of the falsification case in
18 that time. I know that it was as it relates to the
19 shooting case. Either way, those troopers were not
20 going to be able to be witnesses in those cases.

21 MR. CHERTOFF: Well, let's go to the brief,
22 the letter brief to the Court. It's OAG6389 is the
23 page I'm focused on.

24 THE WITNESS: Right.

25 MR. CHERTOFF: And it would have been signed

1 by John M. Fahy. It says here, "The present
2 application to place cases on the inactive list is
3 necessitated by the unique situation which the State is
4 responsible for conducting an ongoing investigation
5 which concerns the activities of two State troopers who
6 are also relevant witnesses in the subject criminal
7 prosecutions. The nature of the ongoing investigation
8 in part involves the action of the officers in another
9 matter in which a motor vehicle stop on the Turnpike
10 resulted in the shooting."

11 Would you agree with me that that indicates
12 that there was another aspect to the investigation
13 besides the shooting, the use of the term "in part"?

14 THE WITNESS: I believe it could include
15 that.

16 MR. CHERTOFF: But it suggest there was
17 another matter being investigated besides just that
18 shooting and that's what the phrase in part connotes,
19 correct?

20 THE WITNESS: I believe so.

21 MR. CHERTOFF: Now, there was no particular
22 reason you would have ordered anybody to keep John Fahy
23 away from information relating to this investigation of
24 Hogan and Kenna, correct?

25 THE WITNESS: No, not at all.

1 MR. CHERTOFF: So as far as you know, he had
2 available to him whatever information he needed to
3 adequately prepare this motion paper which was
4 submitted to you.

5 THE WITNESS: I would presume so and that
6 would be my expectation.

7 MR. CHERTOFF: Now, did there come a point in
8 time that you did become aware of this Maryland case
9 involving troopers, State troopers and --

10 THE WITNESS: Yes.

11 MR. CHERTOFF: How did you become aware of
12 that?

13 THE WITNESS: As I said, I may have been
14 aware of it generally as, if you will, a layperson
15 reading about it in the paper at the time that it had
16 happened because it was in the mid-nineties. But as
17 part of the work that I began to do on the State Police
18 review, I looked at the Wilkins case. I watched the
19 videotape of Mr. Wilkins before the Justice Department
20 in Washington. I looked at a whole number of documents
21 regarding that matter.

22 MR. CHERTOFF: When did the State Police
23 review, when did you get assigned to actually begin the
24 State Police review?

25 THE WITNESS: February 10th, 1999 is the

1 first that I found out about my assignment.

2 MR. CHERTOFF: Okay. Before February 10th,
3 did you get a memorandum concerning the Maryland case
4 with an enclosed article entitled Driving While Black?

5 THE WITNESS: I may have.

6 MR. CHERTOFF: Let me show you Z-7 for
7 identification.

8 SENATOR GORMLEY: You were assigned that
9 February the 10th. We'll get an historical context on
10 this. Was this before or after Peter Verniero was
11 nominated for the Supreme Court?

12 THE WITNESS: It was before.

13 Yes. This is -- this is from Thomas
14 O'Reilly, the Administrator in the Department. For
15 frame of reference I have color-coded files that I get
16 every night. I have a separate file for all the
17 articles that Mr. O'Reilly sends me. Mr. O'Reilly was
18 President of the National Criminal Justice Association
19 at the time. I knew that he had been active in the law
20 enforcement summit and I think he was sending this on
21 the issue of racial profiling in general.

22 MR. CHERTOFF: Why did he send it to you, if
23 you know?

24 THE WITNESS: Because I had been -- Hesse,
25 Zoubek and Williams, we had been involved in the racial

1 profiling issue. And as I said, Tom O'Reilly usually
2 sends me four, five, six, seven articles a week that he
3 sees that are of interest that he believes and he
4 shares with the people he believes should know about
5 it.

6 MR. CHERTOFF: But as of this point, January
7 4th, 1999, what was your involvement in the racial
8 profiling issue?

9 THE WITNESS: We had -- well, I was generally
10 involved in the investigation. We had also been
11 involved since the summer of 1998 all the way through
12 December of 1998 and Mr. O'Reilly was one of the leads
13 in the law enforcement summit and the racial profiling
14 issue in general was the focus of that summit. And we
15 had initiated a couple of initiatives with some of the
16 County Prosecutors' Offices to -- and Mr. O'Reilly was
17 in charge of that. So that would have been the
18 context.

19 SENATOR GORMLEY: On February the 10th you
20 were given the obligation to do this review --

21 THE WITNESS: Yes.

22 SENATOR GORMLEY: -- be in charge of the
23 review.

24 THE WITNESS: Yes.

25 SENATOR GORMLEY: After the nomination --

1 what was the time frame for the review? Were you told
2 four months, five months? What were you told? What
3 was your time frame initially given to you on February
4 the 10th?

5 THE WITNESS: On February the 10th I came --
6 I was called by the Attorney General after having the
7 meeting with respect to the audit with members of the
8 State Police in the morning and was advised that this
9 review was going to occur. And as the incoming First
10 Assistant, I would be handling it and that it would --
11 he wanted it done in a four-month period of time.

12 SENATOR GORMLEY: Four-month period of time.
13 Was there a -- and that was encompassed, the whole
14 report was to come in in four months, every aspect of
15 it?

16 THE WITNESS: All the promotions, hiring,
17 Internal Affairs and racial profiling -- well, let me
18 -- all the items that were contained on the February
19 10th announcement, which was promotions, hiring,
20 Internal Affairs and other practices of the State
21 Police, were all to be due within four months.

22 SENATOR GORMLEY: Four months, fine. Was
23 that schedule changed or accelerated for any part of
24 that report?

25 THE WITNESS: With respect to the issue of

1 racial profiling, yes.

2 SENATOR GORMLEY: And when were you told that
3 would be accelerated?

4 THE WITNESS: It would have been on or about
5 March 16th or March 17th.

6 SENATOR GORMLEY: Why?

7 THE WITNESS: At that time this tied into
8 some of the prior discussions we had as to the
9 acceleration of my concern regarding the Soto appeal.
10 And on March 16th -- March 15th I had received
11 additional documents which caused me concern. On the
12 16th there was an oral argument with the Appellate
13 Division and we were told that we'd have to have our
14 brief in in response to amicus by April 21st.

15 MR. WEBER: Was there any discussion that it
16 was tied in or accelerated because of a Supreme Court
17 nomination, to get it done before a Judiciary Committee
18 hearing on a Supreme Court nomination?

19 THE WITNESS: There was no specific
20 discussion as to that.

21 SENATOR LYNCH: You knew it before February
22 10th that Peter Verniero was going to be nominated to
23 the Supreme Court.

24 THE WITNESS: I did not. I might not have
25 accepted the First Assistant position if I had.

1 SENATOR LYNCH: You hadn't heard any stories
2 in the latter part of 1998 that Peter Verniero was
3 likely to go to the Supreme Court?

4 THE WITNESS: At some point in time, but not
5 February 10th to February 25th.

6 SENATOR LYNCH: Not before February 10th,
7 1999?

8 THE WITNESS: Not me.

9 SENATOR GORMLEY: Excuse me, if I may. So --

10 MR. CHERTOFF: Yeah, let me just -- I want to
11 focus -- you answered Senator Gormley's question a
12 minute ago about the decision to accelerate the racial
13 profiling aspect of the interim review. I think you
14 were asked whether there was conversation about that
15 being tied to a hearing and you said you don't remember
16 a specific conversation to that effect. What about a
17 general conversation to that effect?

18 THE WITNESS: Well, March of 1999 was a
19 period of time in which there were a lot of issues and
20 pressures swelling around the Department and one of
21 those was the Attorney General's nomination. But there
22 was no specific discussion when I spoke with the
23 Attorney General in which he said this has to be
24 accelerated because of my nomination.

25 MR. CHERTOFF: How much did he allude to it

1 or make an implication about it or generally discuss
2 his nomination at the time he talked to you about
3 accelerating that process?

4 THE WITNESS: Not at the time that the
5 decision was made to accelerate the -- in my
6 discussions with him, not at that time.

7 MR. CHERTOFF: Let me step back for a second
8 because I want to go back to February 10th.

9 February 10th is when you first hear about
10 this interim study that's going to be done, correct?

11 THE WITNESS: Yes and no. It wasn't supposed
12 to be an interim study at the time, it was supposed to
13 be the full study on February 10th. It would be due
14 sometime in June.

15 MR. CHERTOFF: That's the same day you have
16 the meeting in which you get the Sachetti report?

17 THE WITNESS: Yes.

18 MR. CHERTOFF: When did you have the meeting
19 where the Sachetti report was handed to you?

20 THE WITNESS: My calendar reflects it was in
21 the morning of February 10th. I had a meeting in which
22 Colonel Williams, Lieutenant Colonel Fedorko, Dunlop,
23 Sachetti and others made that presentation to me that
24 morning. And then later that day, I was informed about
25 the State Police review.

1 MR. CHERTOFF: All right. Let's talk about
2 the morning meeting on February 10th. On the morning
3 meeting on February 10th, was that a previously-
4 scheduled meeting?

5 THE WITNESS: Yes.

6 MR. CHERTOFF: And the purpose of the meeting
7 was to update you with respect to the Sachetti
8 analysis --

9 THE WITNESS: Correct. It was a--

10 MR. CHERTOFF: -- on the falsification.

11 THE WITNESS: It was a follow-up to my
12 December meeting on this which was please expedite this
13 and I'd like a report soon on this. And that was the
14 report and the delivery of Z-2 to me at that time.

15 MR. CHERTOFF: All right. Now, in the
16 preceding month from January 1999 up to February 10th,
17 had you talked to Peter Verniero about the fact that
18 this meeting was coming up and that you were going to
19 be getting an analysis of the falsification
20 investigation?

21 THE WITNESS: I let him know that it was
22 coming. I don't know if I specifically told him about
23 the meeting.

24 MR. CHERTOFF: And you don't remember having
25 any particular discussion about the meeting occurring

1 on February 10th, right?

2 THE WITNESS: No.

3 MR. CHERTOFF: So you get this report on
4 February 10th, correct?

5 THE WITNESS: I get the synopsis of Troop D
6 audit, Z-2, on February 10th.

7 MR. CHERTOFF: And then how is it that you --
8 are you called down to the Attorney General's Office to
9 be told about the review?

10 THE WITNESS: My calendar reflects that at
11 ten o'clock on February 10th I had a meeting regarding
12 audit of Turnpike with Dunlop, Williams, Fedorko,
13 Stone. And then the State Police would have brought
14 other people to it. And then --

15 MR. CHERTOFF: All right.

16 THE WITNESS: -- after that I received a call
17 from the Attorney General. I was still on the Fifth
18 Floor at the time. I was asked to come up and see him.

19 MR. CHERTOFF: All right. On the February
20 10th morning meeting you've got the Superintendent
21 there, correct?

22 THE WITNESS: Correct.

23 MR. CHERTOFF: You've got Colonel Dunlop
24 there, right?

25 THE WITNESS: Yes.

1 MR. CHERTOFF: Okay. Does anybody in that
2 meeting make any allusion or reference to the fact that
3 there's going to be any kind of examination or review
4 of the State Police?

5 THE WITNESS: No.

6 MR. CHERTOFF: And then you get a call from
7 the Attorney General's Office.

8 THE WITNESS: Correct.

9 MR. CHERTOFF: And you're asked to come up,
10 right?

11 THE WITNESS: Yes.

12 MR. CHERTOFF: Tell us what happens. You
13 come up and what happens?

14 THE WITNESS: I was --

15 MR. CHERTOFF: Who's there?

16 THE WITNESS: I believe the Attorney General
17 was there. David Hesse, the then First Assistant may
18 have been there as well. I was handed a statement of
19 an announcement of the initiation of the State Police
20 Review Team.

21 MR. CHERTOFF: All right. I'm going to mark
22 this Z-9.

23 MR. WEBER: Just let the record reflect that
24 we marked as Z-8 a calendar, Mr. Zoubek's calendar.

25 THE WITNESS: Okay, thank you.

1 MR. CHERTOFF: All right. I'm going to show
2 you Z-9.

3 MS. GLADING: Before we leave that morning,
4 in your meeting with the State Police that morning, was
5 there any discussion that you recall about the *Star*
6 *Ledger* article that had appeared that day about three
7 and four arrests on the Turnpike during the first two
8 months of '97 being minorities?

9 THE WITNESS: I recall that I opened up that
10 meeting with a very strong discussion with the State
11 Police that we had to, if that was there and they
12 waited for us to respond to it, would be for them to
13 continue to do this work and to get to the bottom of
14 the issue, as I was looking forward to hearing the
15 results of the February 10th -- of the Troop D audit.

16 MR. CHERTOFF: So you go upstairs and you
17 arrive in the Attorney General's Office and he hands
18 you Z-9 which is the press release?

19 THE WITNESS: Yes.

20 MR. CHERTOFF: And that's the first you heard
21 that you were going to be doing a State Police review?

22 THE WITNESS: Yes.

23 MR. CHERTOFF: He hadn't consulted you about
24 it in advance?

25 THE WITNESS: As it relates to the --

1 specifically as to the creation of the State Police
2 Review Team, I do not recall him having consulted with
3 me in advance.

4 MR. CHERTOFF: And were you surprised?

5 THE WITNESS: Yes.

6 MR. CHERTOFF: What did you say to him?

7 THE WITNESS: I reviewed it with him and I
8 asked him where we were going. And what we discussed
9 was that it was a culmination of his concerns regarding
10 the fact that he wasn't getting answers from the State
11 Police on racial -- he wasn't getting answers from the
12 State Police and we needed to have something done
13 independently.

14 MR. CHERTOFF: Well, let me ask you this.
15 When he said he wasn't getting answers from the State
16 Police, do you know what he was referring to?

17 THE WITNESS: I believe that what he was
18 referring to was some of his frustrations as it relates
19 on Internal Affairs issues and other issues in getting
20 -- getting responses and action back from Colonel
21 Williams.

22 MR. CHERTOFF: Well, as it relates to your
23 corner of the world with the State Police, did you ever
24 complain to him that you were having difficulty getting
25 responses from the State Police?

1 THE WITNESS: Yes.

2 MR. CHERTOFF: What did you complain about?

3 THE WITNESS: I complained that I believed
4 that Colonel Williams was not responding as aggressive
5 and proactively on this issue and I had very
6 significant concerns with respect to the way in which
7 Internal Affairs was not referring matters over to the
8 Division of Criminal Justice. So there was a whole
9 series of discussions I had had with him over the
10 couple of months prior to that as it relates to some
11 issues. And there's reflections on my calendar of some
12 meetings with Hesse, Williams and others in January as
13 it relates to Internal Affairs.

14 MR. CHERTOFF: Let me break that into two
15 parts. Did you tell Mr. Verniero you were having a
16 problem with the State Police relating to the conduct
17 of the Troop D audit?

18 THE WITNESS: I told him that it wasn't
19 moving as quickly as we would have liked.

20 MR. CHERTOFF: And did you tell him that
21 after the mid-December meeting?

22 THE WITNESS: I had told him during the fall
23 and that I reported to him about the December meeting,
24 that they were moving it along.

25 MR. HOLDEN: And that was also in June '98 in

1 the conversation about the delay in acquiring data
2 about these issues?

3 THE WITNESS: No. The conversation I had
4 with respect to Troop D audit was that we weren't
5 getting answers in the fall of 1998 as to its
6 completion.

7 MR. HOLDEN: Thank you.

8 MR. CHERTOFF: All right. I want to make
9 sure I'm clear. In December 1998 you have a meeting
10 where they actually are moving along on this
11 investigation, correct?

12 THE WITNESS: Yes.

13 MR. CHERTOFF: So you reported that to the
14 Attorney General, right?

15 THE WITNESS: Yes.

16 MR. CHERTOFF: And you had set February 10th
17 as the follow-up date, right?

18 THE WITNESS: Yes.

19 MR. CHERTOFF: So is it fair to say --

20 THE WITNESS: What I did -- I didn't set
21 February 10th as the follow-up date, I think they
22 called me and said that they were finished and I set up
23 a meeting.

24 MR. CHERTOFF: And you were okay with that,
25 right? You were okay with February 10th for them to

1 come back and give you the report, right?

2 THE WITNESS: Correct.

3 MR. CHERTOFF: So on the very day that you
4 came in to Mr. Verniero to get this assignment about
5 the State Police Review Team, the State Police had
6 actually given you the report with respect to the
7 falsification matters, correct?

8 THE WITNESS: Yes.

9 MR. CHERTOFF: So you didn't have a complaint
10 about that.

11 THE WITNESS: I did not have a complaint
12 about that, but that wasn't the -- there was a broader
13 focus of the State Police Review Team assignment.

14 MR. CHERTOFF: What was the -- other than the
15 falsification issue, then what was the issue that you
16 had discussed with Peter Verniero before February 10th
17 where you had informed him there was a problem with the
18 State Police responding to things? You said it was
19 Internal Affairs?

20 THE WITNESS: One was Internal Affairs. And
21 second and generally was whether or not Carl Williams
22 was being as aggressive as he could be on these issues.

23 MR. CHERTOFF: On which issues?

24 THE WITNESS: On racial profiling, response
25 to Internal Affairs. A number of issues.

1 MR. CHERTOFF: Well, I want to take each one
2 in turn because I want to -- I want to have you
3 identify specifically what you had spoken to Attorney
4 General Verniero about by way of complaining about
5 Colonel Williams and the responses of the State Police.

6 Okay. First there's your investigation of
7 Troop D, right?

8 THE WITNESS: Right.

9 MR. CHERTOFF: And you'll agree with me that
10 as of February 10th they had given you the results of
11 the investigation, correct?

12 THE WITNESS: I had -- specifically as to
13 Internal Affairs, there are documents that were
14 produced as it relates to memos from a Special
15 Assistant that I had, Paul Heinzel to me, on examining
16 Internal Affairs and Internal Affairs' referrals from
17 State Police.

18 MR. CHERTOFF: Okay. Let me stop you though.

19 THE WITNESS: Right.

20 MR. CHERTOFF: I want to take it step by
21 step. Falsification and the Troop D audit. You will
22 agree with me that as of February 10th you had that
23 report, correct?

24 THE WITNESS: Correct.

25 MR. CHERTOFF: Okay. And you'll agree with

1 me that as of December 1998 you had advised Attorney
2 General Verniero that they were moving it along and
3 they were going to conclude it, right?

4 THE WITNESS: Correct.

5 MR. CHERTOFF: Okay. Now, we get to Internal
6 Affairs. You say there was a problem. You had spoken
7 to the Attorney General about concerning State Police
8 handling of Internal Affairs.

9 THE WITNESS: That there had to be a
10 substantial reform in the way in which State Police
11 Internal Affairs was operating and the lack of referral
12 of matters to the Division of Criminal Justice that
13 should have been coming over to the Division of
14 Criminal Justice.

15 MR. CHERTOFF: Now, in fact, in January of
16 1999 you had actually asked somebody to put together a
17 policy with some proposals to reconcile some of the
18 inconsistencies in the handling of the State Police
19 Internal Affairs process, correct?

20 THE WITNESS: Correct. Correct.

21 MR. CHERTOFF: And I'm going to mark as Z-10
22 -- I guess mark that as Z-10. It's a memo dated
23 January 15th, 1999.

24 THE WITNESS: I presume that's from Paul
25 Heinzel to me?

1 MR. CHERTOFF: Correct.

2 THE WITNESS: Yes, I did see that. I had
3 asked Heinzl to prepare it for me.

4 MR. CHERTOFF: All right. Now, this
5 memorandum indicates that there's a proposal to
6 introduce greater clarity into the standards about when
7 things have to be referred, correct?

8 THE WITNESS: Correct.

9 MR. CHERTOFF: Now this you received on
10 January 15th?

11 THE WITNESS: Correct.

12 MR. CHERTOFF: What did you do to implement
13 it?

14 THE WITNESS: We began -- I began the
15 meetings I had with Colonel Williams and the first
16 approach was to sit down and discuss with Colonel
17 Williams the need to change this because it came out of
18 a particular, I thought egregious, incident in November
19 in which I learned something that hadn't been referred
20 over that should have been referred over. And Colonel
21 Williams' response was that he didn't see anything
22 wrong with the Internal Affairs process and he didn't
23 see any reason to change anything.

24 MR. CHERTOFF: Now, when was that meeting
25 with Colonel Williams?

1 THE WITNESS: There are -- on my calendar
2 there are some meetings reflected with Colonel Williams
3 on the -- that would have been sometime after that
4 January 15th -- I see that on January 19th on my
5 calendar, which is Z-8, I had a pre-meeting in my
6 office regarding Internal Affairs. I met with Captain
7 Van Tassel at two o'clock that day to find out more
8 about Internal Affairs and that subsequently there was
9 a meeting -- there were a couple of meetings with
10 Colonel Williams that dealt with that review and making
11 a presentation for a reform of what was known as SOP
12 B-10 regarding referral of matters over to the Division
13 of Criminal Justice from State Police.

14 MR. CHERTOFF: So is it fair to say that in
15 the period of two or three weeks between January 15th
16 and February 10th you were actually engaged in
17 discussion with Colonel Williams about how these
18 reforms ought to be implemented, right?

19 THE WITNESS: Yes. But the suggestion was
20 rejected.

21 MR. CHERTOFF: Well, when was it rejected?

22 THE WITNESS: In the meeting that I had with
23 Colonel Williams. I don't recall exactly when it would
24 have been. Sometime in January.

25 MR. CHERTOFF: And did you go up to Attorney

1 General Verniero and talk about that?

2 THE WITNESS: I talked to him about my
3 frustration of the fact that I thought we needed to
4 have -- because I was finding out too frequently that
5 there were matters over at the State Police in Internal
6 Affairs as to falsification of records, by way of
7 example, not anything to do with racial profiling, and
8 other matters that had not been referred over to the
9 State Police -- from the State Police to the Division
10 of Criminal Justice and I thought that needed to be
11 corrected.

12 MR. CHERTOFF: So did Attorney General
13 Verniero either in your presence or out of your
14 presence communicate to the Superintendent that he
15 wanted the Superintendent to accept your proposal?

16 THE WITNESS: I don't believe that had been
17 resolved by February 10th.

18 MR. CHERTOFF: In fact, is it fair to say
19 there were still issues being discussed between you and
20 the State Police as of February 9th?

21 THE WITNESS: On that subject matter, yes.

22 MR. CHERTOFF: All right. I'm going to show
23 you just for the record Z-11. Z-11 is a memo to you
24 from David Hespe enclosing a memo to Lieutenant Colonel
25 Fedorko from Captain Van Tassel, who is the head of

1 Internal Affairs, right?

2 THE WITNESS: Right. That deals with a
3 different subject matter though.

4 MR. CHERTOFF: What does it deal with?

5 THE WITNESS: It deals with the fact that in
6 January of -- I think this was -- the meeting was
7 February 9th. We were starting to receive a number of
8 lawsuits from -- we had a couple of racial profiling
9 lawsuits that were filed in late January of 1999.
10 Indeed one was filed I think in early February of 1999.
11 And one of the concerns was that we weren't learning
12 about these potential problems within the New Jersey
13 State Police until a lawsuit was filed. And so I
14 believe that there was a meeting and a request to
15 identify what, you know, what potential other issues
16 and major cases were there out there.

17 MR. CHERTOFF: And you got that memo on
18 February 9th?

19 THE WITNESS: Yes.

20 MR. CHERTOFF: All right. Now, on February
21 10th when you come in to Mr. Verniero's office, as of
22 that point had you suggested that because of the
23 dispute with the State Police about the Internal
24 Affairs procedures that there should be a general State
25 review -- State Police review conducted by the Division

1 of Criminal Justice?

2 THE WITNESS: I do not believe I did.

3 MR. CHERTOFF: So you're in the meeting with
4 Mr. Verniero on the 10th. He shows you the memo. You
5 made some suggestions to the draft, the draft press
6 release?

7 THE WITNESS: I don't think so.

8 MR. CHERTOFF: Okay. So basically he
9 presented you with the press release and he said this
10 is going to happen, right?

11 THE WITNESS: Yes.

12 MR. CHERTOFF: And did you discuss with him
13 how you would go about conducting the investigation and
14 what the scope of it would be?

15 THE WITNESS: Not at that time.

16 MR. CHERTOFF: Did he discuss with you the
17 practicality of doing it?

18 THE WITNESS: Not at that time.

19 MR. CHERTOFF: Did he discuss with you
20 whether it would be perceived as insulting to the
21 Superintendent of the State Police to impose this State
22 Police review upon him?

23 THE WITNESS: That subject, not the insulting
24 part, but the subject of the State Police and Carl
25 Williams came up and I believe that what happened,

1 because I was in a meeting that morning with Carl
2 Williams and if I -- I did not know about it so there
3 was no discussion of it at that time. And the Attorney
4 General called Carl Williams and I think faxed that
5 over to him to make sure that Carl was aware of it.
6 See what his reaction was. See if there had to be any
7 adjustment to that. But at that point in time it
8 appeared that -- not appeared, the Attorney General had
9 made up his mind that this was going to happen.

10 MR. CHERTOFF: What was Colonel Williams'
11 reaction?

12 THE WITNESS: I didn't -- I was not present
13 when he was on the phone with him, but that I -- it was
14 communicated to me that the Colonel accepted the
15 creation of the project.

16 MR. CHERTOFF: Who told you that?

17 THE WITNESS: The Attorney General.

18 MR. CHERTOFF: Did he tell you whether
19 Colonel Williams was happy or unhappy about it?

20 THE WITNESS: No, he did not.

21 MR. CHERTOFF: Did Colonel Williams ever tell
22 you his reaction to it?

23 THE WITNESS: I called Carl at some point
24 thereafter as an expression of cooperation, if you
25 will, that I wanted to sit down with him and discuss

1 how this would be done in the most constructive fashion
2 that it could be done. So within a short period of
3 time I did have a discussion with him.

4 MR. CHERTOFF: And what did he tell you at
5 that point had been his reaction to being presented
6 with this on February 10th?

7 THE WITNESS: I don't really recall.

8 MR. CHERTOFF: Did he tell you he was
9 surprised, shocked or unhappy about it?

10 THE WITNESS: I was -- I had not known about
11 it before then and he had not known about it before
12 then, so it wouldn't -- I don't exclude that he could
13 have said that to me.

14 MR. CHERTOFF: Do you know with whom Attorney
15 General Verniero consulted about doing this before he
16 presented you with this press release?

17 THE WITNESS: Not specifically but perhaps
18 First Assistant Hespe.

19 MR. CHERTOFF: What's your basis for saying
20 that?

21 THE WITNESS: Only that he was the First
22 Assistant at the time and he would be the logical
23 person that may have had a discussion with him.

24 MR. CHERTOFF: All right. Now it says here,
25 "I expect the Review Team to complete its initial work

1 in four months." Was that a deadline that he talked to
2 you about before he put it in the press release?

3 THE WITNESS: No.

4 MR. CHERTOFF: Did you agree to it?

5 THE WITNESS: I've agreed to lots of
6 difficult assignments and I agreed to it.

7 MR. CHERTOFF: Do you know why he picked four
8 months?

9 THE WITNESS: I think he said he wanted to
10 get it done before the summer.

11 MR. CHERTOFF: And did he tell you why he
12 wanted it done before the summer?

13 THE WITNESS: No.

14 MR. CHERTOFF: Did you know at this point in
15 time -- let me ask you this. As of February 10th, did
16 you hear that Justice Pollack was considering leaving
17 the Supreme Court?

18 THE WITNESS: No, and I really -- other than
19 whatever would have been revealed publicly at some
20 point in time with respect to that, I have no knowledge
21 with respect to that.

22 SENATOR LYNCH: You had not heard that he
23 wasn't hiring a law clerk for the following year?

24 THE WITNESS: No, I really wasn't in that
25 loop.

1 SENATOR LYNCH: That story never reached you?

2 THE WITNESS: I was not in the loop. You
3 know, I will --

4 SENATOR LYNCH: That story never reached you?
5 That Pollack had not hired a law clerk for the
6 following year?

7 THE WITNESS: No, it had not. And when I
8 accepted the job as First Assistant Attorney General, I
9 was not aware that Justice Pollack was retiring.

10 MR. CHERTOFF: Now, actually when did you
11 become First Assistant?

12 THE WITNESS: I didn't become First Assistant
13 Attorney General until March 22nd, 1999.

14 MR. CHERTOFF: Did you know there was an
15 article in the *Ledger* on February 22nd, a month before,
16 stating that Justice Pollack was considering early
17 retirement? I think it was in the *New Jersey Lawyer*.

18 THE WITNESS: Well, let me clarify that. I
19 meant at -- I effectively became a First Assistant
20 Attorney General on -- because the incoming First
21 Assistant Attorney General, what I meant to say is,
22 that at the time of accepting the position, not being
23 sworn in the position, when I accepted the position, I
24 was not aware that Justice Pollack was retiring. And I
25 had accepted -- I had accepted the position

1 prospectively before February -- a couple of days
2 before -- sometime before February 10th.

3 MR. CHERTOFF: Before February 10th.

4 THE WITNESS: Yes. So I was listed as the
5 incoming First Assistant Attorney General, I believe.

6 MR. CHERTOFF: As of February 10th?

7 THE WITNESS: Correct.

8 MR. CHERTOFF: All right. So when did you
9 learn then about Justice Pollack's, in any way, shape
10 or form, when did you learn Justice Pollack was
11 considering retiring?

12 THE WITNESS: Specifically as to Justice
13 Pollack, I don't think it was until, you know, either
14 that day or shortly before. I did not know about the
15 specific announcement. I do -- I did not know
16 specifically about Justice Pollack.

17 MR. CHERTOFF: How about -- when did you have
18 any concept in the most general way that there was a
19 possibility of a vacancy arising on the State Supreme
20 Court in 1999?

21 THE WITNESS: I knew generally that there
22 would come a time, I didn't know the specific dates, I
23 wasn't -- if you will, I wasn't a court vacancy
24 watcher, that there was a prospect, that there would be
25 some vacancies, and that at some point in time the

1 Attorney General may be interested in one of those.

2 MR. CHERTOFF: How did you come to that
3 understanding that the Attorney General might be
4 interested in those? Did he talk to you about it?

5 THE WITNESS: There were -- there were
6 discussions that at some point in time that's something
7 he'd like to do.

8 MR. CHERTOFF: When?

9 THE WITNESS: I think sometime in January,
10 February.

11 MR. CHERTOFF: Of '99?

12 THE WITNESS: Right.

13 MR. CHERTOFF: Do you remember how those
14 discussions came up?

15 THE WITNESS: I think it partly came up when
16 I started having discussions about being First
17 Assistant Attorney General. I thought a normal
18 question to be asked was is, you know, how long is this
19 enterprise going to be? And he says, well, you know,
20 there may come a time that he might be interested in
21 going on the bench someday. But it was in very general
22 terms.

23 MR. CHERTOFF: So you were having discussions
24 about becoming First Assistant in late January and very
25 early February of '99, correct?

1 THE WITNESS: Well, I -- yeah. I think that
2 -- I don't recall specifically when it was announced
3 that David Hespe was leaving and then I had some
4 discussions about First Assistant but they weren't more
5 serious until sometime in 1999.

6 MR. CHERTOFF: But clearly you had them
7 before February 10th because the memo --

8 THE WITNESS: Yes.

9 MR. CHERTOFF: -- indicates you're incoming
10 First Assistant.

11 So as of that point in time prior to February
12 10th, you had had some discussion with Peter Verniero
13 concerning whether he had ambitions to move on to the
14 court.

15 THE WITNESS: Yes. But not anything specific
16 with Justice Pollack.

17 MR. CHERTOFF: And you don't remember
18 specifically when -- let me ask you this question. At
19 any point in time from February 10th, 1999 to the
20 present day, have you ever heard from anybody when it
21 was that Peter Verniero first became aware that Justice
22 Pollack was thinking of retiring?

23 THE WITNESS: I have not.

24 MR. CHERTOFF: All right. So you get this
25 assignment. What do you do to put it into effect?

1 This assignment to conduct this State Police review.

2 MR. MILLER: Mike, can I make a suggestion?
3 This may be -- can we take a five-minute break now?

4 MR. CHERTOFF: Yeah.

5 MR. MILLER: We've been going at it for a
6 while.

7 MR. CHERTOFF: Actually, do you want to break
8 for lunch? It's 12:15.

9 MR. MILLER: Well, I don't know how much you
10 have. I would just as soon press forward and if we're
11 going to have to take a break for lunch, we can take it
12 a little bit later rather than stop now. We've only
13 been going since about 10:15. It's now 12:15.

14 MR. CHERTOFF: It's up to -- I mean...

15 All right. Let's take a five-minute break
16 then and we'll keep going.

17 (Off the record)

18 MR. CHERTOFF: I want to be completely clear
19 on this. Before February 10th, 1999, did you have any
20 suspicion or thought whatsoever that there was going to
21 be a vacancy on the Supreme Court by the summer of 1999
22 that might be filled by Peter Verniero?

23 THE WITNESS: Not to my knowledge. No one
24 specifically told me that at all.

25 MR. CHERTOFF: I don't want to hear -- I'm

1 not asking you specific, being specifically told.
2 Here's my question, it's very straightforward. As of
3 February 10th, 1999, did you have any thought or
4 suspicion in your mind that there might be a vacancy on
5 the State Supreme Court by the summer of 1999 that
6 might be filled by Peter Verniero?

7 THE WITNESS: I don't believe I did nor was I
8 focused on that at the time.

9 MR. CHERTOFF: No one had had any
10 conversation with you whatsoever speculating about the
11 possibility that as of February 10th, 1999 that within
12 a few months Peter Verniero might be leaving his
13 position to go to the Supreme Court?

14 THE WITNESS: This is anyone, not just the
15 Attorney General?

16 MR. CHERTOFF: Anybody.

17 THE WITNESS: As I said, I had a belief that
18 at some point in time there was a position that the
19 Attorney General may be interested in. But I again was
20 not familiar with the vacancies.

21 MR. CHERTOFF: Here's my -- I'll try it once
22 more and I want to be very careful in the way I put the
23 question to you.

24 As of February 10th, 1999, had you had any
25 discussion with any person speculating about the

1 possibility that Peter Verniero, within the next few
2 months, might be leaving his position to take a -- to
3 fill a vacancy on the State Supreme Court?

4 THE WITNESS: I know that there were some who
5 had believed that General Verniero was interested in
6 going on the bench. I can't say that as to the
7 specific period of time that it would be.

8 MR. CHERTOFF: So are you telling us you had
9 no conversation as of February 10th, 1999 that Peter
10 Verniero might within the next few months be leaving to
11 occupy a position on the Supreme Court?

12 THE WITNESS: I believed that he was going to
13 potentially be interested in doing that at some point.
14 But again, on February 10th, in terms of my getting the
15 announcement of State Police review, I can't say that I
16 knew at that time that he was leaving within a matter
17 of months.

18 MR. CHERTOFF: I'm not asking if you knew,
19 I'm asking you if as of that time you had conversations
20 with anybody about the possibility that Peter Verniero
21 would be leaving his position to take a position on the
22 Supreme Court by the summer of 1999?

23 THE WITNESS: Sitting here today, I don't
24 recall, but I just want to emphasize that, you know, in
25 Trenton there are rumors that swell around and people

1 like to career speculate and people may have speculated
2 about that, but I was never involved in those specific
3 discussions.

4 MR. CHERTOFF: And as of February 10th, 1999
5 did you ever hear from anybody that there was a
6 possibility that one of the Justices was about to --
7 withdraw the question.

8 As of February 10th, 1999, had you heard from
9 anybody that one of the Justices of the State Supreme
10 Court was considering the possibility of retiring by
11 the summer of 1999?

12 THE WITNESS: I may have. There were, you
13 know, some who were court watchers who were speculating
14 who was going to be the next to leave and there may
15 have been some discussion about the summer, but that's
16 the best -- that's the best I can recall.

17 MR. CHERTOFF: When you had your conversation
18 with Peter Verniero before you took the job as First
19 Assistant, you indicated you asked him about what his
20 longevity was going to be, right?

21 THE WITNESS: Correct.

22 MR. CHERTOFF: And did he indicate to you in
23 any way, shape or form in that discussion that he
24 thought within the next six months he might be leaving
25 to go on to the court?

1 (Pause)

2 THE WITNESS: I'm trying to recall and I
3 believe that there were discussions that he was
4 interested in being on the bench at some point in time
5 and that it depended upon what happened.

6 MR. CHERTOFF: What was the discussion?

7 THE WITNESS: That he was interested in being
8 on the court at some point in time and it depended upon
9 what the nature of the vacancies were on the court. So
10 that when I accepted the job as First Assistant I knew
11 it would be for a matter of time, but I didn't know
12 anything about Pollack at that time.

13 MR. CHERTOFF: Did he tell you anything about
14 the fact that he thought he might be leaving within the
15 next several months?

16 THE WITNESS: It was very much left in terms
17 of it depends on vacancies.

18 MR. CHERTOFF: Well, did he tell you he
19 thought there might be a vacancy in the next several
20 months?

21 THE WITNESS: I don't recall having that
22 conversation.

23 MR. CHERTOFF: Did he tell you who he
24 anticipated would be replacing him?

25 THE WITNESS: At what point in time?

1 MR. CHERTOFF: When you discussed the
2 possibility of your becoming First Assistant?

3 THE WITNESS: I had discussions with him
4 later after he announced he was leaving as to who might
5 be next.

6 MR. CHERTOFF: Here's my question. When you
7 were discussing the possibility of becoming First
8 Assistant, did you discuss with him who might be his
9 successor if he left to go to the bench?

10 THE WITNESS: No.

11 MR. CHERTOFF: Now, you got this assignment
12 and what did you do to set about -- well, what were the
13 elements of the assignment for the State Police review?

14 THE WITNESS: I think they're generally set
15 forth on that document. It talks about hiring,
16 promotions, Internal Affairs and receipts of
17 complaints, I think. If I can -- what number is that?

18 MR. CHERTOFF: Here, take a look. Refresh
19 your memory.

20 THE WITNESS: What number is that, Mr.
21 Chertoff?

22 MR. CHERTOFF: I think it was Z-9.

23 THE WITNESS: Have I been shown that? I
24 don't think I've been shown that one yet. Have I?

25 MR. MILLER: No, I don't think you gave it to

1 him.

2 MR. CHERTOFF: Oh, I'm sorry.

3 THE WITNESS: You marked it but you didn't
4 show it to me.

5 MR. CHERTOFF: I'll show you, here it is, Z-
6 9. Here's Z-9.

7 THE WITNESS: That's been marked but I
8 haven't seen it. That's the announcement of the State
9 Police Review Team.

10 Thank you. You gave it to me already, sorry.
11 Okay.

12 MR. CHERTOFF: All right. Now, what were the
13 areas of focus that you were told about when you got
14 this assignment on February 10th?

15 THE WITNESS: On February 10th it related to
16 handling public and internal complaints from troopers
17 training. For supervisors. And internal discipline.
18 And there was already practices -- announcement that
19 there was review regarding promotional practices and
20 also regarding recruitment.

21 MR. CHERTOFF: Is there any mention of racial
22 profiling in this?

23 THE WITNESS: No.

24 MR. CHERTOFF: When you had your discussion
25 on February 10th with Mr. Verniero, was there a

1 discussion of racial profiling?

2 THE WITNESS: There was not a discussion that
3 investigating racial profiling per se was part of the
4 assignment.

5 MR. CHERTOFF: When did you first come to
6 learn that investigating racial profiling would be part
7 of the assignment?

8 THE WITNESS: I think within a couple of days
9 -- a short period of time after the announcement of the
10 Review Team. I think there was criticism that it
11 wasn't focusing on that issue.

12 MR. CHERTOFF: Where was the criticism from?

13 THE WITNESS: I think it was from a number of
14 sources, from newspapers, from perhaps the Black
15 Ministers Council. Perhaps the focus was also during a
16 period of time in which there was a *Star Ledger* article
17 that focused on arrests on the highway which reignited
18 a public focus in New Jersey on that issue.

19 MR. CHERTOFF: Now, here's my question. When
20 did you first learn that your assignment would be --
21 and how did you first learn your assignment would
22 encompass racial profiling?

23 THE WITNESS: I think it was I was present
24 when the Attorney General had a conversation with a
25 reporter within the next 24 hours in which there was a

1 promise that it would also focus on racial profiling.

2 MR. CHERTOFF: And that's the first you heard
3 about it?

4 THE WITNESS: Yes.

5 MR. CHERTOFF: So how did you come to be
6 present for that conversation?

7 THE WITNESS: Because I think that within the
8 next 24 hours there were a lot of people who wanted to
9 talk to me or talk to the Attorney General about what
10 the parameters of this review would be and the Attorney
11 General was answering a number of press inquiries with
12 respect to that.

13 MR. CHERTOFF: So again, the way you learned
14 your assignment would now encompass racial profiling
15 was by hearing Mr. Verniero announce it to a reporter?

16 THE WITNESS: Correct.

17 MR. CHERTOFF: He hadn't discussed it with
18 you in advance?

19 THE WITNESS: Not that the State Police
20 review would focus on an investigation of racial
21 profiling at that time.

22 MR. CHERTOFF: And were you surprised to hear
23 that when he announced it to a reporter?

24 THE WITNESS: Yes and no.

25 MR. CHERTOFF: Why yes and no?

1 THE WITNESS: Because I think it was a
2 logical criticism at that time that we weren't focusing
3 on the specifics of racial profiling. And so I wasn't
4 surprised that that was a focus of some of the
5 criticisms at that time.

6 MR. CHERTOFF: Before the reporter raised it
7 in the conversation with Mr. Verniero, had you said to
8 Peter Verniero, look, I think we ought to make sure we
9 encompass racial profiling in this State Police review?

10 THE WITNESS: I don't think during that 24-
11 hour period I had had an opportunity to set forth or
12 analyze exactly all that I was going to be doing in the
13 State Police Review Team.

14 MR. CHERTOFF: Am I correct in drawing the
15 conclusion from your testimony that as it relates to
16 both the initial announcement of the review and then
17 the expansion of the review to cover racial profiling,
18 that you actually didn't have any conversation with
19 Peter Verniero about what the substance of what you
20 were doing was going to be, but you simply were
21 informed of things as they were put out to the press?

22 THE WITNESS: I accepted assignments from the
23 Attorney General and I got them in different manners.

24 MR. CHERTOFF: Is it fair to say that the way
25 you got these assignments was in the context of either

1 press releases or statements to the press?

2 THE WITNESS: In conjunction with.

3 MR. CHERTOFF: Now, was there a discussion at
4 some -- well, let me ask you this. I'm going to show
5 you Z-12.

6 After you had your conversation, after this
7 announcement was made to the reporter, when, if ever,
8 did you sit down with Peter Verniero to talk to him for
9 the first time about what he wanted you to do with
10 respect to reviewing racial profiling?

11 THE WITNESS: At or around that time within
12 the next 24 hours the instruction on racial profiling
13 was, "I want you to get to the bottom of it and to see
14 the degree of the problem and come up with reforms that
15 will address the issue."

16 MR. CHERTOFF: Did he tell you in this
17 conversation that he had had any previous involvement
18 in looking at the question of whether there was really
19 racial profiling going on in general, not just the
20 falsification issue?

21 THE WITNESS: I don't understand your
22 question.

23 MR. CHERTOFF: Well, when he says to you, "I
24 want you to get to the bottom of this," what did he say
25 to you about racial profiling? What did he tell you

1 about what had been looked at before? What he had been
2 involved in?

3 THE WITNESS: Well, I think General Verniero
4 was very concerned after the shooting as it relates to
5 my contact with him, as it relates to the impact about
6 the shooting, the impact of that case, and on getting
7 to the bottom of racial profiling and dealing with the
8 issue and had been pushing Colonel Williams in that
9 regard and that we're getting some responses and that
10 was -- so it's not -- I don't want to give an
11 impression that it was all of a sudden on February 10th
12 that that's the first time that General Verniero was
13 concerned about the issue of racial profiling because
14 that's not fair. I believe that he, you know, he did
15 emphasize that issue throughout 1998. So I just wanted
16 to make sure that it would be put in context.

17 MR. CHERTOFF: Well, when? What did he say
18 about it?

19 THE WITNESS: Well, part of it was that we
20 had to get to the bottom of the issue with respect to
21 falsification, and that was one of the methods of
22 trying to find out whether there was racial profiling.
23 Discussions with respect to the timing of the Hogan and
24 Kenna case and the need to move that case along more
25 quickly than it was.

1 MR. CHERTOFF: You mean --

2 SENATOR LYNCH: How and when did he emphasize
3 it in 1998?

4 THE WITNESS: I think it was after the
5 shooting and in terms of the requests for updates, he
6 did -- I want to make it clear that he did say that
7 there would be, you know, as it relates particularly as
8 it relates to the Hogan and Kenna investigation and
9 also as to the Troop D audit, that if there ever came a
10 point in time where there was any resource problems
11 with respect to any of those matters, that we should be
12 putting the entire Department's resources on those
13 cases.

14 SENATOR LYNCH: The primary focus was on
15 Hogan and Kenna.

16 THE WITNESS: Hogan and Kenna and also on
17 Troop D. I advised the State Police, based upon
18 representations from the Attorney General, that it was
19 not only supposed to be State Police resources, but
20 whatever the Division of Criminal Justice could do to
21 assist that.

22 SENATOR LYNCH: When you say Troop D, the
23 Troop D investigation as it relates to Hogan and Kenna.

24 THE WITNESS: No -- well, no, it wasn't --
25 the Troop D investigation as it relates to going beyond

1 Hogan and Kenna.

2 SENATOR LYNCH: So he put a great deal of
3 emphasis on that in 1998?

4 THE WITNESS: Yes.

5 SENATOR LYNCH: Starting when?

6 THE WITNESS: Starting after the -- starting
7 after the shooting and then after being advised of the
8 falsification issue in June of 1998. And his response
9 was in terms of instructing me to mobilize
10 investigative resources within the Division of Criminal
11 Justice and State Police, to ensure that those
12 investigations were being followed.

13 SENATOR LYNCH: And you talked to him a
14 number of times in 1998 specifically about the
15 activities that he wanted conducted in response to the
16 thought that there might be racial profiling?

17 THE WITNESS: Well, I think -- I did have
18 frequent contact with the Attorney General. While the
19 primary issues were racial profiling, I did have a
20 number of conversations with him during 1998 on that
21 subject.

22 MS. GLADING: I'd like to clarify something.
23 The Troop D audit and Hogan and Kenna investigation,
24 who was conducting which?

25 THE WITNESS: The Hogan and Kenna

1 investigation was essentially an investigative task
2 force and that included members of the New Jersey State
3 Police Major Crimes Unit. It included representatives
4 of the Division of Criminal Justice and it also
5 included some investigators from the Burlington County
6 Prosecutor's Office, which is the office where Mr.
7 Gerrow was from. And there was a group, so State
8 Police's involvement in that was very much -- that
9 Major Crimes Unit, with someone being assigned to the
10 falsification case. And then as it relates to the
11 Troop -- what we have referred to as the Troop D audit,
12 which I got the synopsis of in February of 1999, that
13 was being handled out of Internal Affairs by State
14 Police with the instruction that if there came a time
15 that additional resources were necessary, that
16 investigators from Division of Criminal Justice would
17 get assigned to assist with that. So it was separate
18 teams, if you will.

19 MS. GLADING: Was IAB working with and
20 reporting its findings to Criminal Justice on the
21 progress of the Troop D audit?

22 THE WITNESS: Yes. And I believe that I --
23 that's part of what I spoke about already in terms of
24 the progress reports that we received on the Troop D
25 audit.

1 MS. GLADING: And why is that? Why -- so
2 these were not really separate -- these were not really
3 separate investigations --

4 THE WITNESS: Oh, yes -- oh, yes, they were.
5 And let me make -- it would be helpful to understand is
6 because there came a point in time in which the Hogan
7 and Kenna matter was part of a criminal investigation
8 and there was a task force and a group handling that
9 portion. As it relates to the Troop D audit, what
10 happens is Internal Affairs conducts that audit and
11 when they get to a time in which they want to present
12 it for possible criminal referral, they do. So there
13 was different natures of relationship between the
14 Division of Criminal Justice on each of those. So it
15 wasn't the same teams. It wasn't the same group of
16 people. You may have some cross-over of individuals in
17 the Division of Criminal Justice and State Police
18 because of the way the hierarchy goes. But they were
19 separate.

20 MS. GLADING: I understand the distinction
21 you're making, but was Lieutenant Sachetti and his team
22 and Colonel Dunlop, were they keeping Mr. Gerrow
23 apprized of their findings in the course of the Troop D
24 audit?

25 THE WITNESS: They were -- I don't know if it

1 was Jim Gerrow. I presume -- I think they were more
2 frequently with Chuck Grinnell and Debra Stone.

3 MS. GLADING: And why would they have been
4 doing that if Troop D was to look at general
5 falsification issues and Hogan and Kenna was to look at
6 those two troopers?

7 THE WITNESS: Because Jim Gerrow was focusing
8 more on Hogan and Kenna and Grinnell and Stone were
9 advising and would often advise with respect to
10 Internal Affairs referrals from the New Jersey State
11 police.

12 MS. GLADING: Was Jim Gerrow apprized of the
13 ongoing status of the Troop D audit?

14 THE WITNESS: I presume that Chuck Grinnell
15 at times would, but I -- let me emphasize, I don't
16 recall the extent to which that Gerrow was at the
17 meeting in which I received presentations with respect
18 to the Troop D audit. I think by way of example that
19 the February 10th meeting included Stone and Grinnell,
20 but did not include Jim Gerrow.

21 MS. GLADING: Can we stay with the Troop D
22 audit for a little bit here or --

23 MR. CHERTOFF: Actually I'd like to just for
24 a second --

25 MS. GLADING: Sure.

1 MR. CHERTOFF: -- I want to make sure I --
2 maybe we'll come back to it, but I want to, there's a
3 little piece I want to get into here.

4 Other than the Troop D audit in 1998, did
5 Peter Verniero ever to your knowledge direct anybody to
6 look more generally at the issue of racial profiling,
7 apart from the issue of falsification of records in
8 1998?

9 THE WITNESS: Other than the law enforcement
10 summit designed to deal with it on a community law
11 enforcement relations aspect and try to deal with that
12 issue more broadly in terms of an investigation --

13 MR. CHERTOFF: Yeah.

14 THE WITNESS: -- a new investigation of
15 aggregate numbers --

16 MR. CHERTOFF: Right.

17 THE WITNESS: -- or that? No.

18 MR. CHERTOFF: So the first time that there
19 was to be a general review of the numbers of racial
20 profiling was after February 10th when you heard that
21 your mandate was going to be now expanded to include
22 racial profiling, correct?

23 THE WITNESS: Correct.

24 MR. CHERTOFF: And would it help you to pin
25 down in time when this happened to look at Z-12, which

1 is a February 16h press release, regarding the State
2 Police review?

3 THE WITNESS: It does, but it doesn't change
4 my prior answer. This deals with a separate event. I
5 believe that the expansion of the review was within a
6 24-hour period based upon a telephone call with the
7 Attorney General and Cathy Baracarter of the *Star*
8 *Ledger*. And I believe that's when that occurred.

9 MR. CHERTOFF: And let me ask you with
10 respect to this document in front of you, Z-12.

11 THE WITNESS: Yes.

12 MR. CHERTOFF: That refers to a meeting with
13 the Black Ministers Council. Had you been present at
14 that meeting?

15 THE WITNESS: Yes, I was present at that
16 meeting.

17 MR. CHERTOFF: And in the meeting were there
18 again complaints raised or issues raised about the
19 importance of reviewing racial profiling?

20 THE WITNESS: At that meeting one of the
21 major focuses was that the State Police Review Team
22 didn't have the integrity to do the investigation and
23 it should be referred to the Justice Department and we
24 should not do it.

25 MR. CHERTOFF: Now, at that point in time did

1 you know there was a Justice Department investigation
2 of racial profiling?

3 THE WITNESS: Yes.

4 MR. CHERTOFF: When did you first learn about
5 that?

6 THE WITNESS: Again, I think I spoke
7 previously that sometime after the shooting. Whether
8 or not I may have had some knowledge that it was out
9 there and existed. I certainly saw the documents.
10 There was some discussion because of Jack Fahy after
11 the shooting that either from OAG or from somebody from
12 State Police, there was a reference to -- or from Carl
13 Williams to the Justice Department investigation. But
14 until February of 1999, I did not see any documents or
15 have any information or was I involved in anything with
16 respect to the Justice Department investigation.

17 MR. CHERTOFF: When did you first get
18 involved with the Justice Department investigation?

19 THE WITNESS: I believe that being aware of
20 it at the time that the State Police Review Team was
21 announced, I believe that looking at all of the issues,
22 and now being the incoming First Assistant, the First
23 Assistant often takes roles as it relates to State
24 Police, that that was, I thought, an absolute clear
25 corollary assignment, was for me to get actively

1 involved and take control of our dealings with the
2 Justice Department.

3 SENATOR GORMLEY: What was that date that you
4 thought that you should become involved with the
5 Justice Department review?

6 THE WITNESS: Well, it was certainly within,
7 you know, the first ten days of my handling the State
8 Police review. I --

9 SENATOR GORMLEY: That was --

10 THE WITNESS: I'm sorry.

11 SENATOR GORMLEY: -- February of '99 or so.

12 THE WITNESS: Correct.

13 SENATOR GORMLEY: Okay. Why didn't you think
14 the same thing when you were assigned to review the
15 Hogan and Kenna matter?

16 THE WITNESS: Because I viewed myself as
17 someone who was a professional prosecutor whose role it
18 was to do a criminal --

19 SENATOR GORMLEY: You were looking at a case.

20 THE WITNESS: I was look at a case and an
21 investigation. And that once those were completed,
22 that those may have ancillary effects. But until I
23 completed them, they wouldn't have -- that I didn't
24 have involvement.

25 SENATOR GORMLEY: When you started Hogan and

1 Kenna, you were ware of the Justice Department review
2 though?

3 THE WITNESS: I said I may have been aware of
4 it. I was not briefed. I don't recall anything about
5 the specifics of it other than the Justice Department
6 had been looking into issues regarding the State
7 Police. I was not familiar with anything with respect
8 to the production.

9 SENATOR GORMLEY: Hogan and Kenna, that
10 started in April of '98.

11 THE WITNESS: Correct.

12 SENATOR GORMLEY: Did you ask for any of the
13 information that was being garnered as a result of the
14 Department of Justice review? Did you say some of this
15 might reflect on it? It seems like an overlap.

16 THE WITNESS: Well, no. Again, as it relates
17 to the focus at the time, we had asked for anything
18 relating to Hogan and we received that and certain
19 documents at the time, but we certainly did not receive
20 over from State Police if a request was made in May of
21 1998 for all audits and arrests, we only received 12
22 pages in May of 1998, June of 1998 --

23 SENATOR GORMLEY: So what --

24 THE WITNESS: -- and not the volume of
25 documents that I received subsequently.

1 SENATOR GORMLEY: So what they sent to you in
2 May of '98 as a result of your request to the State
3 Police, excluded documents that weren't related to
4 Hogan and Kenna?

5 THE WITNESS: It excluded all of the
6 information with respect to the 30-day sampling that
7 occurred in the Justice Department review, yes.

8 MR. CHERTOFF: Well --

9 MS. GLADING: Excuse me. Well, if I can just
10 -- since the witness raised it. Did Mr. Rover bring
11 that information to you at some point at the end of
12 February?

13 MR. CHERTOFF: I'm about to get into this
14 actually --

15 MS. GLADING: Okay. Okay, go ahead.

16 MR. CHERTOFF: -- with a document.

17 So let me just tee it up. I have in front of
18 you Z-13 which is a letter to the Acting Assistant
19 Attorney General of the Civil Rights Division from
20 Peter Verniero on February 17th, 1999.

21 THE WITNESS: I see that.

22 MR. CHERTOFF: And did you see this before it
23 was sent? You drafted this before it was sent?

24 THE WITNESS: If I may -- I'm trying to
25 refresh one thing with my calendar right here. My

1 calendar, which is Z-8, reflects that on February 17th,
2 1999 at 11:15 it has a meeting profiling with AG and
3 George Rover. And I believe that two things occurred
4 at that time. One was a conversation with -- I don't
5 think it was Bill Lanlee, but someone at the Justice
6 Department, Civil Rights Division as it relates to the
7 investigation. And then some discussion of the
8 creation of this letter to advise the Justice
9 Department.

10 MR. CHERTOFF: Who called the meeting?

11 THE WITNESS: The Attorney General.

12 MR. CHERTOFF: And you were there and Mr.
13 Rover and the Attorney General, right?

14 THE WITNESS: Correct.

15 MR. CHERTOFF: Had you previously talked to
16 Mr. Rover about this Department or Justice
17 investigation?

18 THE WITNESS: No.

19 MR. CHERTOFF: And what was -- tell us about
20 the discussion at the meeting and the conversation with
21 the Department of Justice in Washington.

22 THE WITNESS: I recall that there was a
23 conversation with the Justice Department as it relates
24 to identifying what we were doing and a commitment of
25 our cooperation.

1 MR. CHERTOFF: Did they call you or did you
2 call them?

3 THE WITNESS: What I'm trying to recall is
4 around this time is there were calls coming out around
5 the 14th or 15th of February for the Justice Department
6 to come in and do an investigation. And I believe at
7 or around that time is when the Justice Department made
8 public that they had an investigation and this may have
9 been intertwined with that.

10 MR. CHERTOFF: Now, in the letter here it
11 says, "As you know, our two officers have been engaged
12 in ongoing discussions as part of your national role in
13 reviewing similar issues regarding law enforcement
14 agencies in other states. We have kept you apprized of
15 the status of litigation and have provided you with
16 information regarding the practices and policies of the
17 New Jersey State Police."

18 Was there a discussion in the meeting about
19 that passage or the substance?

20 THE WITNESS: I believe -- I believe that
21 when I came into the meeting I don't think it was a
22 drafting of the letter meeting, I think there was a
23 draft of the letter.

24 MR. CHERTOFF: Was there a discussion about
25 that passage and what had been done?

1 THE WITNESS: I think it was -- I think it
2 was simply the Attorney General showed it to Rover and
3 asked Rover whether or not he thought the letter was
4 accurate or appropriate, or something to that effect.

5 MR. CHERTOFF: And did Rover say it was
6 accurate?

7 THE WITNESS: He said that it was an
8 appropriate letter.

9 MR. CHERTOFF: Did he say it was accurate?

10 THE WITNESS: He did not add any changes to
11 the letter. I don't remember him using the phrase as
12 to whether it was accurate. It could have been he
13 reviewed it and said -- and handed it back without
14 saying the phrase that it's accurate.

15 MR. CHERTOFF: Was there any discussion at
16 this meeting on February 17th about whether information
17 was being held back from the Department?

18 THE WITNESS: No.

19 MR. CHERTOFF: Is this the first time, this
20 meeting on February 17th, that you personally got
21 involved in the issue of dealing with the Department of
22 Justice on this matter of profiling?

23 THE WITNESS: Yes.

24 MR. CHERTOFF: Did you come to learn shortly
25 after this meeting of February 17th that information

1 had been held back from the Department of Justice?

2 THE WITNESS: I came to learn a couple of
3 things of which that was one of the things that I
4 learned.

5 MR. CHERTOFF: What were the couple of things
6 you came to learn?

7 THE WITNESS: Shortly after this I turned to
8 George Rover and said -- because I remember that we
9 sent lots of documents down there, and I said, George,
10 what do the numbers show? And he says, "I don't know."
11 And I --

12 MR. CHERTOFF: When you say the numbers, what
13 did you mean by the numbers?

14 THE WITNESS: What do the documents that we
15 sent to Washington show? Do you have a statistical
16 summary for me? What do they show? And he told me
17 that his role was as a conduit for the documents, not
18 to analyze them. And I insisted that I wanted an
19 accounting of all the documents and I wanted
20 statistical analysis provided to me as soon as
21 possible.

22 MR. CHERTOFF: What was the second thing?
23 You said there were a couple things you learned.

24 THE WITNESS: Well, then as I received a -- I
25 received a box of documents that I had asked -- because

1 I had made the decision at that point in time that part
2 of what we were doing with the State Police review was
3 it was my determination that I wanted to start
4 absolutely anew on this and not to really rely on -- I
5 wanted to start anew and I made new assignments to
6 people within the Division of Criminal Justice that I
7 had worked with. So I had made a determination that --
8 you'll see in the assignments that I give out on the
9 State Police Review Team project I assigned myself
10 racial profiling as a lead and I also assigned myself
11 as a lead to work with the Justice Department. And I
12 made a determination at that time that I wanted to have
13 -- I needed to get control over the issue of what the
14 status of the production was.

15 MR. CHERTOFF: Your meeting on February 17th,
16 as of that point you understood that Rover had been the
17 principal liaison with the Department of Justice?

18 THE WITNESS: I learned that at the time. I
19 don't know if I knew that before then.

20 MR. CHERTOFF: Did you know that Rover was
21 reporting directly to the Attorney General?

22 THE WITNESS: I think that there hadn't been
23 much activity on the Justice Department review for
24 quite some time and he may have had contact with First
25 Assistant Hespe at some point on some issues with

1 respect to that during his tenure. So I don't
2 necessarily know whether it was absolutely direct.
3 There were times it was through Alex Waugh I
4 subsequently learned, or the First Assistant Hesse.
5 But it was a different -- it was a --

6 MR. CHERTOFF: Different chain-of-command.

7 THE WITNESS: It was a different chain.

8 MR. CHERTOFF: It was out of your chain-of-
9 command?

10 THE WITNESS: Absolutely.

11 MR. CHERTOFF: On February 17th at the
12 meeting with the AG, was there any discussion at that
13 meeting about what are the numbers? What do the
14 numbers show that we've been telling the Department of
15 Justice --

16 THE WITNESS: I had that discussion -- I had
17 the discussion with -- I completed that meeting. We
18 had the discussion. This letter went out and I had a
19 discussion with Rover that said, you know, what do the
20 numbers show? And what are our numbers? What
21 statistical analysis can I get? And his response was
22 that he had forwarded the documents but he didn't have
23 a breakdown for me.

24 MR. CHERTOFF: But there was no discussion of
25 that at the meeting with the Attorney General on

1 February 17th?

2 THE WITNESS: No. I think the meeting was a
3 very short meeting. I think it was with respect to the
4 letter and then I followed up with Rover.

5 SENATOR GORMLEY: If I may.

6 THE WITNESS: Yes.

7 SENATOR GORMLEY: He said just forwarded
8 down. That's all he did.

9 THE WITNESS: He told me that his job was to
10 collect and forward the documents.

11 SENATOR GORMLEY: Not to read. I'm not
12 trying to be -- and I am not trying to be facetious
13 here. Secretaries could have done what he was saying
14 he was doing.

15 THE WITNESS: No, at that time he informed me
16 that his role was to collect documents as it relates to
17 the production of records to the Justice Department.

18 SENATOR GORMLEY: So he would collect them.
19 Would he send them to a superior to look at first or
20 would he just send them without being reviewed?

21 THE WITNESS: I don't know the answer to that
22 question.

23 MR. CHERTOFF: Did he give you a memo within
24 a matter of days accompanying a box of documents that
25 indicated what he produced and what he had not produced

1 to the Department of Justice?

2 THE WITNESS: There was a delivery of a box
3 of documents and this letter.

4 MR. CHERTOFF: This letter being what we've
5 marked as Z-14.

6 THE WITNESS: I'm sorry. Z-14, which is
7 February 26th.

8 MR. CHERTOFF: A memo to you, correct? A
9 memo to you?

10 THE WITNESS: Yes.

11 MR. CHERTOFF: And the memo -- you looked at
12 the memo, I take it?

13 THE WITNESS: I did look -- I did look -- let
14 me point one thing out. I did look at the memo and
15 then -- yes, I did look at the memo.

16 MR. CHERTOFF: And on the third page it
17 indicates these are numerous documents I have not
18 produced to DOJ and they include the following. And
19 they list a 1996 stop audit of Moorestown station.
20 Lieutenant Gilbert. A statistical breakdown of motor
21 vehicle stops for the sample dates. Audit IAB,
22 Perryville, Washington station. Hunterdon County
23 statistics. Gloucester County data base arrest data.
24 You saw all that stuff had not been produced.

25 THE WITNESS: Correct.

1 MR. CHERTOFF: Did you have a conversation
2 with someone about that?

3 THE WITNESS: I had a conversation with Rover
4 about that.

5 MR. CHERTOFF: What was the conversation and
6 when?

7 THE WITNESS: I said -- I said were these
8 called for essentially in the document production? And
9 then he went through a description, which I after the
10 fact generally agree with, that it was often hard to
11 identify exactly what Justice was looking at because
12 they had that one -- he reviewed the form request that
13 they had and said that there were oral requests. But
14 that some of these documents were documents that may
15 have fallen within the request.

16 MR. CHERTOFF: Did he tell you whether
17 someone told him that he could withhold those
18 documents?

19 THE WITNESS: He advised me at that time that
20 they had -- there had -- some of the documents -- there
21 had been a decision not to forward some of the
22 documents.

23 MR. CHERTOFF: And who did he tell you made
24 the decision?

25 THE WITNESS: I didn't have that discussion

1 with him at that time. He told me what his --
2 essentially what his chain was. And then my
3 determination at that point in time was I needed to get
4 an absolute feel for and bring somebody else in to look
5 at the requests and find out exactly what the status of
6 this production was.

7 MR. CHERTOFF: Did you have a conversation
8 with Mr. Rover at anytime where he told you who made
9 the decision for him not to turn over some of these
10 documents?

11 THE WITNESS: He had told me that he had --
12 was supervised by Executive Attorney General then Alex
13 Waugh at the time. But frankly, at that point in time
14 I wanted to get a feel for what the request was and
15 make an evaluation.

16 MR. CHERTOFF: Listen to my question.

17 THE WITNESS: Right.

18 MR. CHERTOFF: At any point in time, from
19 February 1999 to the present moment, did Mr. Rover tell
20 you who made the decision to withhold the documents or
21 some of the documents that are contained in this memo?

22 THE WITNESS: He advised me that what he did
23 he did in consultation with Attorney General Waugh and
24 sometimes Attorney General Verniero.

25 MR. CHERTOFF: Okay. What did he tell you

1 about his consultations with Attorney General Waugh?
2 Well, let me withdraw the question.

3 When did he --

4 THE WITNESS: Well, at that point in time --

5 MR. CHERTOFF: When did he -- let me stop
6 you.

7 THE WITNESS: All right.

8 MR. CHERTOFF: When did he tell you that the
9 decision-making with respect to withholding documents
10 had been done in consultation with Executive Assistant
11 Attorney General Waugh and sometimes with Attorney
12 General Verniero?

13 THE WITNESS: Well, let me make sure of one
14 thing, if I can. One thing that's clear. That was in
15 conjunction with his conversation with me in which he
16 said there was a lack of clarity and he put it in the
17 context of on some of the documents it wasn't
18 absolutely clear as to whether they should go or not.
19 He did not say that he specifically said there was
20 something that had to go and wasn't -- that didn't go
21 that he absolutely knew had to go.

22 MR. CHERTOFF: All right. With that
23 qualification about the ambiguity, when did he tell you
24 that the decision had been made in consultation with
25 Alex Waugh and sometimes Peter Verniero?

1 THE WITNESS: Well, I think it was in
2 connection with, you know, I forwarded the documents
3 and I was, you know, I was in touch with Alex Waugh on
4 everything I did.

5 MR. CHERTOFF: Okay.

6 THE WITNESS: And I did not -- I did not at
7 that time then go break down this document exactly.
8 And there's an intervening event that distracted my
9 attention for a couple of days.

10 MR. CHERTOFF: We'll get to that in a second.

11 At some point did you have more discussion
12 with Mr. Rover where he told you basically look, this
13 decision was made in consultation with Mr. Waugh and
14 Mr. Verniero?

15 THE WITNESS: Well, he had told -- I mean he
16 had already -- he had already told me that he had done
17 things -- he gave me the notion that he didn't send
18 anything without talking to Alex Waugh.

19 MR. CHERTOFF: And what did he say about
20 Peter Verniero and his involvement in this?

21 THE WITNESS: He said that he had worked with
22 Alex Waugh and the General, but I didn't have any
23 specific conversation with him as it relates to
24 specific documents.

25 MR. CHERTOFF: What about his relation to the

1 general concept of withholding documents? Did you have
2 further conversation with him about that?

3 THE WITNESS: I told him that I was going to
4 review this to be absolutely clear as to what we were
5 supposed to be sending and what we weren't going to be
6 sending and I was assigning somebody new to be handling
7 this issue who would be in contact with him to ask him
8 and find out and compare so that we could make an
9 assessment of -- because I don't know of at this point
10 -- I may have already scheduled or had discussions with
11 -- because I think I had a follow-up call after that
12 February 17th letter to the Justice Department where I
13 called and introduced myself and said I'd like to come
14 down to talk to you about what's going on. And then I
15 thought it was incumbent as soon as I saw this and
16 heard this to make an assessment of what the status of
17 that production was and I assigned Michael LoGalbo from
18 the Division of Criminal Justice to that project.

19 MR. CHERTOFF: I want to ask you again before
20 we move on slightly. I want to ask you just to give us
21 the totality of what you heard from Mr. Rover from
22 February 1999 to the present day concerning the
23 decision-making process about withholding documents and
24 who was involved.

25 THE WITNESS: As I said, the limit of what he

1 told me was essentially I was only the document
2 producer. I didn't look at it for a statistical
3 analysis. And I consulted on whatever I did with
4 Attorney General -- with Executive Attorney General
5 Waugh.

6 MR. CHERTOFF: And with the General?

7 THE WITNESS: He said his contact point was
8 Alex Waugh.

9 MR. CHERTOFF: But he told you that the
10 decision was made by Mr. Waugh and the General?

11 THE WITNESS: Again, what he did was he
12 described the process that he had engaged in, that I
13 then determined I was changing --

14 MR. CHERTOFF: Here's my question. I don't
15 want to know what you decided to do. I want to know
16 what did he say about the role of the General in
17 connection with the issue of transmitting or
18 withholding documents?

19 THE WITNESS: What he said to me was that he
20 didn't act on his own, that he did it in consultation
21 with Alex Waugh. And he didn't say anything
22 specifically in terms of approval or not by the
23 Attorney General.

24 MR. CHERTOFF: I thought you told us a moment
25 ago that what he said to you was that he did it in

1 consultation with Alex Waugh and the General? Are you
2 changing that or --

3 THE WITNESS: No, no. I said everything he
4 said he did I did with Alex Waugh and the General. As
5 it relates to documents, he said he would review those
6 documents with Alex -- with Alex Waugh.

7 MR. CHERTOFF: So he said everything he did
8 -- I want to make sure I'm clear. He said everything I
9 did I did in consultation with Alex Waugh and the
10 General, right?

11 THE WITNESS: That's -- that's what he --
12 that's what he told me in general as to what he did.
13 As it relates to specific documents, he said he would
14 have contact with Alex Waugh. There was never any
15 discussion of specific withholding decision on a
16 particular document.

17 SENATOR GORMLEY: If I may. He made the
18 quote he just forwarded it. And that's what he said to
19 you and you're stating that accurately. But he then,
20 which seemed to be somewhat inconsistent, then at least
21 inferred that he also reviewed the documents. He just
22 didn't forward them, he must have read them. I mean by
23 the fact that he reviewed -- I mean they don't make
24 sense the --

25 THE WITNESS: Well, his --

1 SENATOR GORMLEY: -- two sentences together,
2 but it seems as though he did say both things. And I'm
3 not -- you're just accurately repeating what he said.
4 They seem to be inconsistent. I'm just curious about
5 that. Did that strike you as being -- he said he just
6 forwarded it and then he'd review it. I mean they
7 strike me as being -- it's obviously inconsistent.

8 THE WITNESS: Well, I think -- that was in
9 response to my question of what did the documents show
10 and that's when he answered that I just forwarded them.

11 SENATOR GORMLEY: Thank you.

12 MR. CHERTOFF: Did you have a -- after this
13 conversation with Rover, did you have a conversation
14 with Attorney General Verniero about his role in this
15 decision about handling documents and his involvement
16 with Rover?

17 THE WITNESS: I told him that I was concerned
18 with respect to whether all documents had gone down.

19 MR. CHERTOFF: You told Peter Verniero this?

20 THE WITNESS: Yes.

21 MR. CHERTOFF: When was that conversation?

22 THE WITNESS: It would have been sometime
23 after these documents were received.

24 MR. CHERTOFF: Where was the conversation?

25 THE WITNESS: They're always up in his

1 office.

2 MR. CHERTOFF: And I want to hear it as
3 specifically as possible what the conversation was
4 concerning this issue with the documents with Mr.
5 Verniero.

6 THE WITNESS: He asked me to do an assessment
7 of it and make sure that whatever needed to go down,
8 goes down.

9 MR. CHERTOFF: Let me stop you. You went in.

10 THE WITNESS: Right.

11 MR. CHERTOFF: What did you say to him?

12 THE WITNESS: I said I have concerns. One,
13 I'm concerned about I'm not going to have George Rover
14 involved in this. I'm concerned about the level of the
15 production. And I need to make an assessment of what
16 has and hasn't gone down to the Justice Department.

17 MR. CHERTOFF: And what did he say?

18 THE WITNESS: He said find out whatever needs
19 to be done and make sure the documents go.

20 MR. CHERTOFF: Did you ask him whether he was
21 involved in the decision-making process about producing
22 documents?

23 THE WITNESS: I did not.

24 MR. CHERTOFF: Why not?

25 THE WITNESS: Because at that point in time I

1 was identifying the problem to him. I did not ask him
2 whether or not he had been involved in any of the
3 decisions. Because keep in mind at this point I had
4 received an introduction from Mr. Rover as to his
5 involvement, which wasn't necessarily the most precise
6 description of his involvement in the matter, and I
7 thought before -- no, this was a serious issue which
8 before I made any judgments with respect to that, I
9 needed to have an evaluation done of exactly what the
10 status of documents were. And so I reported that but I
11 hadn't reached, you know, a conclusion at that point as
12 to the status of the production.

13 MR. CHERTOFF: Did you ever have a
14 conversation with Peter Verniero about his involvement
15 with respect to the decision to transmit or withhold
16 documents?

17 THE WITNESS: No.

18 MR. CHERTOFF: Why not?

19 THE WITNESS: Because at that point I went
20 up. I saw there were problems in the production. I
21 found on both sides -- I found from the Justice
22 Department perspective and I told this to the Justice
23 Department, that I had a great deal of difficulty
24 recreating what the Justice Department had asked for.
25 That there were only two letters that were requested

1 and that there was a blank form and then a very low-
2 level, very low-level Justice Department employee who
3 was every once in a while making a phone call and
4 asking for records. I had a --

5 SENATOR GORMLEY: While talking to George
6 Rover.

7 THE WITNESS: Talking -- asking Mr. Rover for
8 records. I had a great deal of difficulty recreating
9 what those requests were from the Justice Department.
10 And so that factored into that my analysis as to
11 whether or not, you know, it was a formalized request
12 with a response. It was very hard for me to recreate
13 that. So frankly, I moved into at that point trying to
14 solve any potential problem.

15 MR. CHERTOFF: Let me ask you this. To be
16 blunt, what kind of relationship did you have with
17 Peter Verniero at this time? Was it one in which you
18 felt comfortable dealing with him or was it a more
19 formal and distant relationship?

20 THE WITNESS: I felt comfortable dealing with
21 him but I was there as someone who had an assignment
22 and my assignment at that point was to grab a hold of
23 this and to get it moving, I thought, where it needed
24 to be moved and I came up and advised him as to what I
25 was going to do. I hadn't completed any analysis. My

1 staff hadn't completed an analysis of the production.
2 I knew I had concerns about how organized it might have
3 been and how the Justice Department had done it. And
4 that's what I did.

5 MR. CHERTOFF: But at any point did you ask
6 him at some point what was your thinking about this?
7 What were you thinking about, you know, how this ought
8 to be handled?

9 THE WITNESS: I did not because he -- his
10 instruction to me was to make sure that there was a
11 complete -- a complete production and based upon my
12 relationship with him I thought that that's what he
13 would have wanted.

14 MR. CHERTOFF: Now, then there comes a point
15 in time --

16 MS. GLADING: Before we leave this topic. I
17 just have -- we've seen documents and heard testimony
18 about on at least two occasions, once Mr. Waugh asking
19 -- persuading Justice to defer sending a letter and
20 once by Mr. Rover in a memo to Mr. Waugh saying that he
21 had persuaded Justice not to put a request in writing.
22 Was there ever any indication to you that there was an
23 affirmative and aggressive effort by individuals to
24 keep the paper coming from the Department of Justice to
25 a minimum? To keep requests out of writing? Did you

1 ever ask Mr. Rover is this all the paper we've got, we
2 don't have anything else from Justice?

3 THE WITNESS: Frankly having been with the
4 Justice Department for ten years, I was very surprised
5 when I saw the lack of documentation with respect to
6 the Justice Department's requests on this.

7 MS. GLADING: Did you express that surprise
8 to Mr. Rover?

9 THE WITNESS: Yes.

10 MS. GLADING: Did he indicate that he had on
11 at least one occasion and Mr. Waugh had on one occasion
12 asked Justice not to put things in writing to them?
13 Successfully ask them to?

14 THE WITNESS: There wasn't a discussion of
15 that. There was just a description or the process.

16 MS. GLADING: Okay.

17 MR. CHERTOFF: All right. Now, you said
18 there's an intervening event. Is that when Colonel
19 Williams gets fired?

20 THE WITNESS: Yes. As a matter of fact, the
21 afternoon of the 26th I had a meeting with Colonel
22 Williams and the other two Lieutenant Colonels and then
23 on Sunday the Colonel is terminated. And so --

24 MR. CHERTOFF: What was your involvement in
25 that decision?

1 THE WITNESS: I was advised of it. I had no
2 involvement of it.

3 MR. CHERTOFF: You had no knowledge about how
4 it happened?

5 THE WITNESS: I was -- I -- the *Star Ledger*,
6 except maybe in Atlantic City, you can't get the *Star*
7 *Ledger* in South Jersey, so I picked it up on line that
8 morning and I read the story and then later on in the
9 day I received a call from the Attorney General who
10 advised me that Colonel Williams had been -- had
11 resigned and that -- asked to tender his resignation.
12 And that was important for me to know because I was
13 then -- I then had to -- then Lieutenant Colonel
14 Fedorko from that moment on was the person I had to
15 deal with.

16 MR. CHERTOFF: Do you know if the Attorney
17 General's Office had set up the interview that Colonel
18 Williams had with the *Star Ledger*?

19 THE WITNESS: I know that it was a request --
20 the Attorney General's Office -- it was a request that
21 came in to the State Police which was handled out of
22 their press office.

23 MR. CHERTOFF: Did the Attorney General's
24 Office have any involvement with the decision to have
25 him -- to let him give the interview? If you know.

1 THE WITNESS: He informed us -- he would have
2 informed with respect to the interview.

3 MR. CHERTOFF: In advance.

4 THE WITNESS: Yes.

5 MR. CHERTOFF: Now, do you know as of that
6 point in time, had you heard that there was any desire
7 or intent to remove Colonel Williams from his position
8 before February 28th?

9 THE WITNESS: I had expressed to the Attorney
10 General my concerns about Colonel Williams' lack of
11 aggressive leadership on some issues and I knew there
12 was frustration with some of his performance at that
13 point in time.

14 MR. CHERTOFF: Had you heard that they were
15 looking to remove him?

16 THE WITNESS: I knew that -- wouldn't say
17 looked to remove him, but to look at his performance.

18 MR. CHERTOFF: And who had you heard that
19 from?

20 THE WITNESS: I raised the issue with the
21 Attorney General based upon a number of things that
22 happened in December, January and February.

23 MR. CHERTOFF: And what did the Attorney
24 General say back to you?

25 THE WITNESS: That he shared my concerns as

1 it relates to -- that Colonel Williams was not stepping
2 forward to help lead the State Police in this difficult
3 period of time.

4 MR. CHERTOFF: Now, on March 11 you had a
5 meeting with Colonels Dunlop and Fedorko and some other
6 people and made a request for documents about racial
7 profiling?

8 THE WITNESS: Yes. And that was the second
9 meeting where I had discussed that issue.

10 MR. CHERTOFF: When was the first meeting?

11 THE WITNESS: The first meeting was on
12 February 26th I met with Colonel Williams, Colonel
13 Fedorko and Colonel Dunlop out at State Police
14 headquarters later in the afternoon to sit down at that
15 point in time and review with them, just myself and the
16 three of them, of where, you know, setting up the State
17 Police Review Team, the processes. I believe I
18 followed that up with a memo to it would have then been
19 Fedorko because that was -- it was in between the
20 interview and his resignation. I sent a follow-up
21 letter to Fedorko saying one of the things I wanted was
22 a contact with respect to records and I'd be getting
23 back with him as to what records we were looking for.
24 And I met with Fedorko and Dunlop on the 11th and
25 talked to them about the need to have a production of

1 records.

2 MR. CHERTOFF: And this is a production from
3 whom?

4 THE WITNESS: Production from State Police.

5 MR. CHERTOFF: And this is in addition to
6 records that had previously been produced to Rover?

7 THE WITNESS: I was -- at that point in time
8 I had responsibility for this assignment. I had
9 experience, not necessarily -- I had experience there
10 had been issues in terms of getting all documents over
11 from State Police when necessary. And I made a request
12 at that time to both Fedorko and Dunlop that I wanted
13 everything that existed on the subject matter over
14 there. I outlined to them what my understanding was of
15 a complete document production and that I meant -- I
16 was very serious about ensuring that we got all
17 documents, including informal and other memos that
18 might exist over there.

19 MR. CHERTOFF: Now, then you got a delivery
20 on March 15th?

21 THE WITNESS: Then I had -- on March 15th
22 there was Tom Gilbert and Colonel Dunlop were there
23 with others from the Division of Criminal Justice and I
24 received the blue binder.

25 MR. CHERTOFF: And the blue binder is what I

1 will put before you has been marked as G-33 for
2 identification.

3 THE WITNESS: Right.

4 MR. CHERTOFF: Now, how did they come to be
5 there on March 15th?

6 THE WITNESS: It was my impression and my
7 recollection was that it was a follow-up in part to
8 some of my discussions with Fedorko and Dunlop on the
9 11th in which I was insisting that documents come over.
10 And I believe that Dunlop at some point found out
11 about, knew about involvement of Tom Gilbert and having
12 done some things for Colonel Williams on the subject
13 matter. And on the 15th I received a production of
14 documents. I don't know whether I was expecting to
15 receive that. I don't recall if the meeting was set up
16 to just discuss documents. But I did receive that at
17 that time.

18 MR. CHERTOFF: What were you told about this
19 book, G-33?

20 THE WITNESS: I was told that it was some of
21 the documents that were in response to my request to
22 ensure that whatever hadn't come over before, would
23 come over.

24 MR. CHERTOFF: Now, you see Z-15 in front of
25 you? It's a memo to the file from you dated March

1 16th.

2 THE WITNESS: Yes.

3 MR. CHERTOFF: It says, "On March 15th I
4 received for the first time a packet of documents from
5 the State Police regarding analyses and compilations of
6 statistics regarding racial profiling."

7 THE WITNESS: Yes.

8 MR. CHERTOFF: Why did you write this memo to
9 the file?

10 THE WITNESS: That came up subsequently after
11 a discussion I had with the Attorney General on the
12 16th.

13 MR. CHERTOFF: Okay. Tell us about the
14 discussion on the 16th.

15 THE WITNESS: Well, I had -- I had a
16 discussion -- I went up to see the Attorney General
17 because I was very angry when I received the blue
18 binder of documents because there were documents,
19 certain documents in there that came -- that I drew my
20 attention to that I had never seen before that I was
21 very concerned about.

22 MR. CHERTOFF: Which documents?

23 THE WITNESS: Well, in particular were the
24 monthly compilations of stop and consents. And the
25 reason I was particularly concerned about those was

1 because back in -- back when the announcement of the
2 State Police Review Team came out, we were at that
3 point told that there was no way to get a hold of the
4 issue of the percentage of stops out on the Turnpike.
5 And indeed, that was so represented in letters dated
6 February 8th to a number of newspapers that said
7 there's no way we can give you any idea of what the
8 stop percentages are out on the Turnpike, nor do we
9 keep any breakdowns of consents. And that's a letter
10 that was sent by John Hagerty to a couple of
11 newspapers. Based upon that, when there was the
12 meeting with the Black Ministers Council, I sat across
13 the table for the Black Ministers Council and said one
14 of the problems we have is we don't have any stop
15 numbers available for '97 and '98 that are broken down
16 by a percentage on a consistent basis. And that was
17 one of the most important things we wanted to focus on.
18 Indeed, I'm quoted in a couple of papers saying we've
19 got to get law enforcement into the 20th century before
20 we get into the 21st. And so I had been out there
21 saying that one of the reasons I can't give you answers
22 across the table, Black Ministers Council and the
23 public as to some of the things that are going on, is
24 because we don't have those numbers.

25 MR. CHERTOFF: Well, when you say numbers, in

1 this meeting with the Black Ministers Council, was it
2 -- did you just say you didn't have the numbers from
3 '97 and '98, or did you say you didn't have the
4 numbers?

5 THE WITNESS: I was focused on -- they were
6 asking in all the requests that had come in from the
7 papers were essentially for the '97 and '98 period and
8 that was the period of time that I was principally
9 focused on.

10 MR. CHERTOFF: What about '96? When you sat
11 in the Black Ministers Council meeting, did you know
12 that there were documents that showed the numbers for
13 '96?

14 THE WITNESS: Well, that -- I had received
15 those in the past. That wasn't the period of time that
16 I was focusing on because they wanted to know what was
17 going on out on the highways. What are the numbers
18 like out on the highways. And that's what I was
19 responding to.

20 MR. CHERTOFF: But you said in this meeting
21 that there was a discussion about the fact that we
22 can't get the numbers. We can't do a breakdown. But
23 didn't you know when you were in the meeting with the
24 Black Ministers that it was possible to get the numbers
25 because you had numbers for '96?

1 THE WITNESS: No, I said I didn't have them
2 immediately available and one of the things we were
3 going to be doing in the State Police Review Team was
4 trying to get to the bottom, trying to see what the
5 numbers are. Trying to see if we can get access to the
6 numbers, and that's one of the things we can be
7 focusing on.

8 MR. CHERTOFF: Let me stop you for a second.
9 Was Mr. Verniero in the meeting with the Black
10 Ministers?

11 THE WITNESS: Mr. Verniero was in as an
12 introduction to that meeting and then I met personally
13 with the -- I met and the Review Team met with the
14 Black Ministers Council. He was in -- he was in that
15 meeting and -- he was in for -- there was part of the
16 meeting I think where he was not there.

17 MR. CHERTOFF: Was he there when you had
18 discussion about whether it was possible to get the
19 numbers of the breakdowns of motorists being stopped?

20 THE WITNESS: Yes.

21 MR. CHERTOFF: And your position was, we're
22 going to see if we can get those numbers, right?

23 THE WITNESS: Yeah. And one of the things we
24 had to do was work on, and we knew that CAD was coming
25 on line. That was one of the things we had to work on.

1 But I didn't know at that time that there was such a
2 readily-accessible collection over at State Police in
3 the '97 and '98 data.

4 MR. CHERTOFF: But did you know that the
5 State Police had the capability of generating numbers
6 of stops because they had done it for 1996?

7 THE WITNESS: I mean capability, they could
8 do it manually. I was talking about accessibility at
9 that time.

10 MR. CHERTOFF: At times in the meeting with
11 the Ministers you said the problems were not
12 computerized enough or did you say we're not sure we
13 can get the figures?

14 THE WITNESS: No, I didn't say -- I said one
15 of the criticisms was why don't they -- I said -- you
16 know, this is almost the end of the century, why can't
17 you just press a button and crank these numbers out?
18 And I said they're not available to us in that fashion,
19 you'll have to go back typically manually and get
20 those.

21 MR. CHERTOFF: You told him you could get it
22 manually, is that what you said to the Ministers?

23 THE WITNESS: Yeah. I think I used something
24 that's almost like on an index card system where it's
25 manual. You have to go back and get it all manually

1 and that's why we need to get computer-aided dispatch
2 up.

3 SENATOR GORMLEY: Did you know at that time,
4 at that time when you met with the Black Ministers, if
5 there had ever been to your knowledge a review of
6 consent searches at all? Did you know that document,
7 any consent-to-search document existed at that point
8 when you met with the Black Ministers?

9 THE WITNESS: If any consent search document
10 existed?

11 SENATOR GORMLEY: A survey, a review,
12 analysis. You know what I mean.

13 THE WITNESS: No, no, I understand. At that
14 time I had not seen a breakdown of the recent numbers.
15 The only thing that I had seen was -- my recollection
16 having been refreshed, was the reference on the
17 Moorestown concerns on the Z-3 document back in May of
18 1998. But that's all that I believe that I had -- I
19 believe that I had seen at that time.

20 SENATOR GORMLEY: At that time you had not
21 seen a report by Sergeant Gilbert at that time?

22 THE WITNESS: I had not seen any -- I had not
23 seen any of that material from Sergeant Gilbert at that
24 point in time.

25 MR. CHERTOFF: Now, let me ask you this

1 question. So you go up to Peter Verniero's office and
2 you said you were annoyed about this book. You go in.
3 who else was present at the meeting?

4 THE WITNESS: I don't believe -- I was -- I
5 was annoyed about those numbers. Mr. Hesper, I don't
6 know if he was there at the time, he became involved.
7 He was either pulled in from his office, it's
8 immediately adjacent. He was either pulled in or came
9 into the meeting.

10 MR. CHERTOFF: And what was the discussion?

11 THE WITNESS: And his discussion was,
12 particularly when I showed the '97 and '98 compilation
13 broken down by race and consents, that this was exactly
14 the kind of thing that he had been asking for in
15 conjunction with some of the press requests and he was
16 told it was not available.

17 SENATOR GORMLEY: Who said that?

18 THE WITNESS: David Hesper said that.

19 MS. GLADING: Did he indicate who he had
20 asked it of at the State Police?

21 THE WITNESS: He had asked State Police
22 generically.

23 MS. GLADING: Did he indicate any names?

24 THE WITNESS: No, he did not.

25 MS. GLADING: Did he indicate when he had

1 asked it?

2 THE WITNESS: No, he did not, but at the same
3 time I would have known that you either go through the
4 press office or the records office or for the
5 Superintendent to get those.

6 MS. GLADING: Had Mr. Hesse been requesting
7 consent-to-search documents from the State Police?

8 THE WITNESS: He had been asking generally
9 what the availabilities of -- he told me -- he told me
10 that he had been asking for the availability of numbers
11 from State Police and that he had been told that it was
12 not available in that format.

13 MS. GLADING: Okay. And at this point -- you
14 were familiar at this point with the work that
15 Detective Sergeant Serrao was doing? I'm not sure
16 actually of his rank but --

17 THE WITNESS: No.

18 MS. GLADING: You were not -- Mr. Dunlop had
19 not spoken with you about the ongoing audit?

20 THE WITNESS: At what point in time are you
21 talking about?

22 MS. GLADING: March 15th. Aren't we on March
23 16th of 1999?

24 THE WITNESS: At some point in time Mr.
25 Dunlop -- I think it was after this that I may have

1 become aware of the fact that Dunlop was doing some
2 additional work, but that was in conjunction with my
3 saying this is where we're going with the racial
4 profiling report. If you've got anything you want to
5 bring to my attention, bring it to my attention.

6 MR. CHERTOFF: Would you take a look at G-33?
7 Will you tell me as you go through this, what were the,
8 of this book, what were the specific documents that you
9 felt had been withheld from you that were the problem
10 that caused you to go upstairs to see Mr. Verniero?

11 THE WITNESS: Well, here part of this was I
12 had been told that we didn't know what the statistics
13 showed.

14 MR. CHERTOFF: Who told you that?

15 THE WITNESS: When I asked Mr. Rover in terms
16 of any production we had done in the past. And I then
17 received the production on February 26th. And then I
18 am going through here and I am seeing the internal
19 Gilbert memos to Colonel Williams in which he goes
20 through the comparison to the Maryland data. I'm
21 seeing the breakdown of consents. I am seeing the
22 phrase -- I believe in there with respect to some of
23 the numbers and the comparison --

24 SENATOR GORMLEY: It's the first time you had
25 seen a breakdown that was related to the Maryland data.

1 THE WITNESS: That I had seen any of the
2 comparison to the -- that I had seen any of the
3 comparison by Gilbert that was done on the Maryland
4 data.

5 MR. CHERTOFF: So you go up to Mr. Verniero
6 and --

7 MS. GLADING: Well, on that topic -- all
8 right.

9 MR. CHERTOFF: You go up to Mr. Verniero and
10 Mr. Hespe is there and what's the conversation
11 concerning the book that leads to the production of
12 Z-15, which is your memo to the file, and Z-16, which
13 is Peter Verniero's memo to the file?

14 THE WITNESS: It was generally that -- and
15 let me preface it by saying that I had given and
16 checked with a couple people from the Division of
17 Criminal Justice to see whether they had seen these
18 documents before --

19 MR. CHERTOFF: Who did you check with?

20 THE WITNESS: I had spoke with Debra Stone.
21 I had her review -- she was actually -- I reviewed the
22 documents with her. I provided a copy to Jack Fahy.
23 And I provided a copy to Ron Susswein. Keeping in mind
24 that this was all going in a very quick period of time.
25 I did not go back and do any cross-checks.

1 MR. CHERTOFF: Okay.

2 THE WITNESS: I was asking people for initial
3 reactions. And I had a conversation with Rover in
4 particular about the Gilbert memo and the comparison
5 and he said that he had not seen that before.

6 MR. CHERTOFF: So now you're upstairs with
7 Hespe and the Attorney General. What's the discussion?
8 Did you show the Attorney General the book?

9 THE WITNESS: I said have you seen -- did you
10 know that they were keeping these statistics? Have you
11 seen this Gilbert memo here? And those are the ones --
12 I mean in fairness to the Attorney General, I did not
13 review every page with him.

14 MR. CHERTOFF: Did you give him the book?

15 THE WITNESS: I gave him the book to look at,
16 but I drew his attention to a couple of portions of the
17 book.

18 MR. CHERTOFF: What portions did you draw his
19 attention?

20 THE WITNESS: I drew his attention to the
21 Gilbert -- to the Gilbert memo.

22 MR. CHERTOFF: Okay. Would you give us a
23 page, just if you can, give us which memo you're
24 talking about here.

25 (Pause)

1 THE WITNESS: Regrettably mine doesn't have
2 any on it.

3 MR. CHERTOFF: I know. Just give us the memo
4 you're talking about.

5 THE WITNESS: It's the -- I think we all have
6 probably earmarked this a couple times, Sergeant
7 Gilbert, Colonel Williams Justice Department inquiry.

8 MR. CHERTOFF: All right.

9 MR. WEBER: It's undated.

10 MR. CHERTOFF: Undated.

11 THE WITNESS: Undated.

12 MR. CHERTOFF: So you pointed him to that.
13 What else did you point him to?

14 THE WITNESS: I pointed him in particular to
15 the monthly summaries coming out of Cranbury -- or the
16 charts -- bear with me just a second.

17 (Pause)

18 MR. MILLER: We've got the original and it
19 may help the witness.

20 MR. CHERTOFF: Yeah, okay. I think we're
21 going to want the original for the hearing actually.

22 THE WITNESS: It starts -- there's a variety
23 of them. They look like this. And I'm holding up --
24 having remembered what it's like to actually try a
25 case, it's a document that includes a chart that says

1 "Consent Search, Cranbury Station, Moorestown Station."

2 MR. CHERTOFF: Okay. Do you remember --

3 THE WITNESS: And there were a number of
4 those in there.

5 MR. CHERTOFF: -- specifically directing him
6 to those two documents and you gave him the book,
7 right?

8 THE WITNESS: I sat down and reviewed
9 portions with the book. I did not leave the book with
10 him.

11 MR. CHERTOFF: Okay. But you reviewed
12 portions of the book with him, correct?

13 THE WITNESS: Correct.

14 MR. CHERTOFF: And then whose decision --
15 well, whose decision was it to write memos to the file
16 about this?

17 THE WITNESS: There was a discussion of -- I
18 think the question was raised what shall we do about
19 the receipt of this new information or something like
20 that or this issue. And I think there was a discussion
21 in which it was -- I don't know who suggested it, I
22 don't know whether it was David Hesse or who suggested
23 it, which was that because of the significance of some
24 of the documents as it relates to the
25 misrepresentations in terms of having gotten some of

1 these before, that they should go to the --

2 MR. CHERTOFF: What misrepresentations?

3 THE WITNESS: In particular as it relates to
4 the monthly statistics. These hadn't come over before
5 and they hadn't been seen before and I was giving them
6 to the Attorney General and he was now seeing them,
7 that he should -- he should record that to his file.

8 MR. CHERTOFF: Whose idea was that?

9 THE WITNESS: I don't recall, but it was left
10 that there was an agreement that he would -- he would
11 do so and I would memorialize the fact that I had
12 received them the prior day.

13 MR. CHERTOFF: Now, I want to ask you --
14 before I get to the memos, I want to just ask you
15 again. Give us the totality of the discussion with Mr.
16 Hespe, yourself and Attorney General Verniero on March
17 16th as it relates to this book. And in particular I
18 want to know what did Mr. Verniero say about it.

19 THE WITNESS: I came up and said, did anyone
20 know about this monthly collection of statistics out on
21 Cranbury and Moorestown? And the answer I received was
22 no. I then asked -- I said there's a very -- very
23 significant or I don't know if I used the word
24 significant, there's a document here from Gilbert, has
25 that been seen before?

1 MR. CHERTOFF: And what did he say?

2 THE WITNESS: And the answer was no.

3 MR. CHERTOFF: Did anybody say -- did Mr.
4 Verniero say I heard about it or I heard about the
5 Maryland State Police issue?

6 THE WITNESS: No.

7 MR. CHERTOFF: In the entirety of that
8 meeting, did AG Verniero ever indicate to you in any
9 way whether or not he had seen that document, he was
10 generally familiar with the fact that there had been a
11 comparison between the Maryland State Police numbers
12 and the New Jersey State Police numbers?

13 THE WITNESS: No.

14 MR. CHERTOFF: Okay. Keep going, tell us
15 what else was discussed.

16 THE WITNESS: I think that at that point I
17 had a -- I actually concluded that very quickly because
18 in between my receipt of these documents on March 15th
19 I think I was actually pulled out of that meeting to be
20 informed that the motion that I had filed with respect
21 to the requested continuance on Soto was being heard
22 later on that morning and I had to go back down for
23 that -- for that argument.

24 MR. CHERTOFF: What else --

25 THE WITNESS: And there was a telephone

1 conference call that I needed to --

2 MR. CHERTOFF: Again, still on the March 16th
3 meeting. What else was said concerning this matter at
4 the March 16th meeting with you and Mr. Hesse and Mr.
5 Verniero?

6 THE WITNESS: Well, I think the General and
7 Dave were very upset with respect to the monthly
8 statistics and gave me the impression that one, if not
9 the other one, had had some conversation with Carl
10 Williams and saying they had been requesting this and
11 requesting this, but they had never gotten any of this
12 from the Superintendent.

13 MR. CHERTOFF: Who told you that they had
14 been requesting this repeatedly from the
15 Superintendent?

16 THE WITNESS: David Hesse.

17 MS. GLADING: Did he indicate that he had
18 done that in writing?

19 THE WITNESS: He did not indicate. He just
20 said he requested it. He did not indicate whether it
21 was in writing.

22 MR. CHERTOFF: Again, if you'd just -- I want
23 to be clear. The particular monthly figures you're
24 talking about are which ones?

25 THE WITNESS: They are -- and you'll see

1 this, they are the ones that were being collected at
2 the station and forwarded up the chain-of-command,
3 reflecting monthly statistics out at Moorestown and
4 Cranbury. The file will reflect that I sent some
5 subsequent memos to the State Police asking for the
6 computerized format of those records. Those are the
7 documents that I'm talking about. Mine is not Bates
8 stamped either, so...

9 MR. CHERTOFF: Again, if you can just --

10 THE WITNESS: They're about mid-way through
11 the document and they start out with a memo from
12 Sparano through Dunlop and Fedorko to Williams.

13 MR. CHERTOFF: This is the six-month
14 assessment of enforcement activity.

15 THE WITNESS: Correct.

16 MR. CHERTOFF: And this is what you were
17 referring to and this is what you were told had been
18 asked for from the State Police but the State Police
19 had not furnished?

20 THE WITNESS: Correct.

21 MS. GLADING: And the request --

22 THE WITNESS: Well, let me -- that they had
23 asked for, you know, do we have available to us, you
24 know, breakdowns by race of enforcement actions out on
25 the Turnpike? The answer was no. That's actually

1 represented in a letter dated February 8th to a couple
2 of newspapers with respect to a public information
3 request they had. It says in there we don't have stops
4 available in any way, shape or form by race for the
5 period of time that you've requested. And the same
6 thing with respect to consents.

7 MR. CHERTOFF: At the meeting on March 16th
8 with the Attorney General and Mr. Hespe, was there
9 discussion about consent-to-search data as
10 distinguished from stop data as it was --

11 THE WITNESS: No, I was talking in -- well,
12 no. I was talking -- I mean I drew attention to the
13 fact that it was stops and searches and there was no
14 distinction made in terms of the request.

15 MR. CHERTOFF: Now, after Mr. Verniero looked
16 through this -- or saw this book, did he tell you that
17 he had seen some of the documents in this book?

18 THE WITNESS: No. But I did not -- I did not
19 review -- in hindsight, my memo could have been more
20 specific. I did not review all these documents with
21 him and I did not leave the book with him. I reviewed
22 a couple of the main documents that I was concerned
23 about with him.

24 MR. CHERTOFF: In this meeting did you ever
25 -- did you bring up with him the question of whether he

1 had participated in the decision to -- let me withdraw
2 the question.

3 As of the time of this meeting you knew from
4 Mr. Rover that he and Mr. Waugh -- that the Attorney
5 General and Mr. Waugh had been involved in decision-
6 making with respect to what would be transmitted to the
7 Department of Justice, correct?

8 THE WITNESS: Yes.

9 MR. CHERTOFF: Did you ask him in this
10 meeting about whether he had any knowledge about this
11 issue of transmitting documents to the Department of
12 Justice?

13 THE WITNESS: No. The meeting that I had
14 with him on the 16th --

15 MR. CHERTOFF: Right.

16 THE WITNESS: -- was related to essentially
17 the relationship between the Office of the Attorney
18 General, the Division of Criminal Justice and the State
19 Police and whether or not we had internally received
20 documents from them. If subject matter of Department
21 of Justice did not come up at that particular time.

22 MR. CHERTOFF: So you didn't discuss with him
23 the fact that Rover had identified documents that had
24 been withheld from the Department of Justice?

25 THE WITNESS: No. I had -- not on the 16th,

1 no.

2 MR. CHERTOFF: Right. So you didn't connect
3 those two things up in this meeting on the 16th?

4 THE WITNESS: No. I was just very much
5 concerned about that issue at that time.

6 MR. CHERTOFF: And did he in any way, shape
7 or form indicate to you at the meeting that he was
8 aware that the State Police had data and information
9 relating to stops and searches? Did Peter Verniero in
10 any way, shape or form indicate that to you?

11 THE WITNESS: As to the -- as to those two
12 items that I -- the main items that I identified --

13 MR. CHERTOFF: As to anything. Did he
14 indicate to you that --

15 THE WITNESS: Well, I don't seem to -- in
16 fairness, I don't think I can answer the question that
17 way because I don't think I discussed stops and
18 consents absolutely in a general fashion.

19 MR. CHERTOFF: In connection with the book,
20 G-33, that you gave to Mr. Verniero, did he in any way,
21 shape or form indicate to you that he was aware that
22 there were some documents containing data and
23 information relating to stops and searches of minority
24 motorists?

25 THE WITNESS: No.

1 MR. CHERTOFF: If I show you Z-16, it's a
2 memo to the file with a copy to you from Peter
3 Verniero, and it says -- it's a memo to the file from
4 Peter Verniero with a copy to you and David Hesse.
5 "Today I became aware for the first time of the
6 existence of certain State Police documents concerning
7 data and information relating to stops and searches of
8 minority motorists not heretofore produced to us by
9 State Police."

10 Do you know what documents he's referring to
11 here?

12 THE WITNESS: The only documents that I would
13 believe he'd be referring to was the documents that I
14 brought to his attention that day out of the blue
15 binder.

16 MR. CHERTOFF: Did you have a discussion with
17 him about whether he was limiting his memo to those
18 documents or as opposed to the whole binder in general?

19 THE WITNESS: I did not but I do know that
20 there was some discussion of -- I may have seen this
21 memo in this format before it was signed by the
22 Attorney General and David Hesse did as well. And so I
23 did see the contents of this memo before he signed it.

24 MR. CHERTOFF: So in other words, he gave you
25 a draft?

1 THE WITNESS: I believe he did.
2 MR. CHERTOFF: Was that so that it could be
3 worked on to be worded properly?
4 THE WITNESS: Yes.
5 MR. CHERTOFF: And did you make changes to
6 it?
7 THE WITNESS: I don't recall whether I made
8 changes to it.
9 MR. CHERTOFF: Is the use of the phrase
10 "existence of certain State Police documents" to your
11 knowledge deliberately selected so as to be ambiguous
12 as to which documents Mr. Verniero had seen previously?
13 THE WITNESS: I think it was done to be more
14 precise. It wasn't precise enough.
15 MR. CHERTOFF: And it was to be more precise
16 in what respect?
17 THE WITNESS: Because I was identifying that
18 there were certain documents in here that had not been
19 -- that had not been revealed before.
20 MR. CHERTOFF: Did he -- was there any
21 discussion indicating which documents that he had seen
22 previously?
23 THE WITNESS: I did not -- I did not at that
24 time go through the binder with him and say have you
25 seen this, have you seen that? I talked about the

1 Gilbert memo with him and the monthly stop statistics.
2 MR. CHERTOFF: Let me ask you this. If you
3 look at -- I want you to go back to what you identified
4 as the monthly consent-to-search data and the Gilbert
5 memo which you say were the two items you drew his
6 attention to. Do you have those before you?
7 THE WITNESS: I'm sorry. I have the monthly
8 at this point.
9 MR. CHERTOFF: All right. The monthly one is
10 from Major Sparano. How many pages is that? How many
11 pages that we're talking about?
12 THE WITNESS: Ten.
13 MR. CHERTOFF: And then the Gilbert memo is
14 approximately how many pages?
15 THE WITNESS: There were other Gilbert memos
16 in there as well.
17 MR. CHERTOFF: Well, did you show him all the
18 Gilbert memos?
19 THE WITNESS: I asked him about whether or
20 not he had seen memos from Gilbert about consents.
21 MR. CHERTOFF: So you talked about multiple
22 memos from Gilbert.
23 THE WITNESS: Yes.
24 MR. CHERTOFF: So this statement here that he
25 became -- reference to certain State Police documents

1 would include multiple memos from Gilbert, right?

2 THE WITNESS: Well, I asked him, I said there
3 are memos in here from Gilbert, have you seen memos
4 from Gilbert doing analysis of --

5 MR. CHERTOFF: Consents.

6 THE WITNESS: -- consents.

7 MR. CHERTOFF: And he said no?

8 THE WITNESS: Correct.

9 MR. CHERTOFF: Okay. Well, in that case, I'm
10 going to show you what has previously been marked as
11 G-27 for identification. We're going to do a little
12 comparison actually. Let me finish one minute
13 of stuff if I can.

14 THE WITNESS: Well, I'm happy to go -- if you
15 want to finish off --

16 MR. CHERTOFF: I just want to finish
17 literally like a few questions to just keep the flow
18 going here.

19 (Pause)

20 All right. If you look in your book -- maybe
21 we will take a break. That way we can find the --

22 THE WITNESS: It won't be hard for you to ask
23 me that question, I know -- go ahead.

24 MR. CHERTOFF: Well, I want to find it myself
25 so --

1 THE WITNESS: All right.

2 MR. CHERTOFF: Do you have the --

3 THE WITNESS: It's Page --

4 MR. CHERTOFF: Right.

5 THE WITNESS: It's about the seventh or
6 eighth page.

7 MR. CHERTOFF: Right. Do you have that --
8 that memo was in G-33, correct? Is that one of the
9 memos you would have directed his attention to?

10 THE WITNESS: I did not specifically direct
11 his attention to that memo.

12 MR. WEBER: That's the September 24th, '96
13 memo?

14 THE WITNESS: Yes. Yeah. Just so we're
15 clear for the record. It starts off with, "Moorestown
16 Station audit," and it's followed by a number of pages.
17 Is that what you're referring to, Mr. Chertoff?

18 MR. CHERTOFF: Um-hmm. Yes.

19 THE WITNESS: I do not recall bringing that
20 document specifically to his attention at that time.

21 MS. GLADING: Did he request a copy of those
22 package of documents?

23 THE WITNESS: No.

24 SENATOR LYNCH: Did he ever?

25 THE WITNESS: No.

1 SENATOR LYNCH: To your knowledge prior to
2 his leaving the Attorney General's Office ever?

3 THE WITNESS: Not to my knowledge.

4 MR. HOLDEN: Was he saying he had no
5 knowledge of this information or was he speaking more
6 to the format within which this information was being
7 presented?

8 THE WITNESS: I asked him the question as to
9 whether or not he had seen these documents before.

10 MR. HOLDEN: So that is -- that answer is
11 with regard to this format. Did you ask him whether he
12 was familiar with the information contained within the
13 format?

14 THE WITNESS: I did not ask him that
15 question. I presented him with and showed him certain
16 documents. I did not do a follow-up to say whether he
17 was familiar with the information.

18 MR. CHERTOFF: But actually the memo of March
19 16th says, "Today I became aware for the first time of
20 the existence of certain State Police documents."

21 When you participated in drafting this memo,
22 did you understand that to include situations where
23 although he might not have been seen the document
24 itself, it actually was a disclaimer of even awareness
25 of the existence of a document?

1 THE WITNESS: No, I think that's in the
2 context of -- I mean I came up and essentially made the
3 following presentation within the limited review I had
4 done on the production issue at that point in time
5 which was essentially less than 24 hours. Which as
6 based upon my check, that these contained documents
7 that had not been seen by the Office of the Attorney
8 General or the Division of Criminal Justice. I made
9 that statement up front to him and I think that that
10 impacted upon the drafting of the document because I
11 was making a statement and I was coming up to see
12 whether or not the people that I had talked to had not
13 seen the documents and I was coming up to find out
14 whether they had.

15 MS. GLADING: Mr. Zoubek, Mr. Rover was in
16 that meeting on the 15th, the day before, is that
17 correct?

18 THE WITNESS: He was at the meeting, yes.

19 MS. GLADING: Did you ask him whether he knew
20 of the existence of these documents?

21 THE WITNESS: I asked him. I asked him
22 specifically as to whether or not he had seen the
23 Gilbert memo that talked about we were in a very bad
24 spot and he told me he had not.

25 MS. GLADING: Did you ask him whether he knew

1 of the numbers --

2 THE WITNESS: I did not.

3 MS. GLADING: -- that were contained in any
4 of the data?

5 THE WITNESS: At that point in time I was
6 doing a very quick assessment from each of the people I
7 spoke with. I think I spoke to him by phone. I again
8 had an argument scheduled with the Appellate Division
9 on the Soto case at 11:00 and I --

10 MS. GLADING: I'm asking you about the 15th,
11 the day you received --

12 THE WITNESS: No, I'm saying at that -- at
13 that meeting there was receipt -- I do not recall --
14 what I recall is there -- this was delivered to me or
15 presented at the meeting. I then went back and started
16 reading through it and then as I started reading
17 through it, I had some copies cut of it so the people
18 in the Division of Criminal Justice to have them review
19 it whether they had seen it before. I was engaging in
20 a process of trying to make an assessment because it
21 was March 15th I had an argument before the Appellate
22 Division on the 16th and on the 19th I was going down
23 to visit the Justice Department as it relates to the
24 production.

25 SENATOR LYNCH: But that argument was by --

1 that was a telephone conference.

2 THE WITNESS: Yes. I mean what I meant --

3 SENATOR LYNCH: You didn't go to court and
4 have an oral argument.

5 THE WITNESS: No, no, no, but I had to go
6 down and I wanted to try to make a little bit of a
7 preliminary assessment --

8 SENATOR LYNCH: So did you talk to Rover
9 subsequently about it?

10 THE WITNESS: Did I talk to Rover? I asked
11 him about the Gilbert memo, and based upon his having
12 told me that he wasn't familiar with statistical
13 analysis, I did not do a follow-up with him until
14 subsequently before the issuance of the interim report
15 -- ultimately issuance of the interim report, where I
16 went back in, as I was checking line by line and I went
17 back in and reviewed some of his files myself
18 personally to see whether or not he had received
19 certain things. And then I saw that he had received
20 not the Gilbert memo that talks about we're in a very
21 bad spot, but some of the raw numbers.

22 MR. CHERTOFF: Did you actually review this
23 book before you wrote your memo saying you hadn't seen
24 the documents in it earlier?

25 THE WITNESS: I had -- I had reviewed it on

1 -- I had reviewed it on the 15th and made calls to
2 folks, but I did not, regrettably, go back and check it
3 against my files.

4 MR. CHERTOFF: Mr. Verniero actually prepared
5 this memo. There was a draft. He sent the draft to
6 you.

7 THE WITNESS: I believe that I was -- I don't
8 know whether the General prepare it or whether David
9 prepared it, but it was prepared up on the Eighth Floor
10 at that time and I came up from the Fifth Floor. I
11 reviewed it with him.

12 MR. CHERTOFF: You reviewed what with him,
13 the memo?

14 THE WITNESS: The draft.

15 MR. CHERTOFF: The draft. You actually sat
16 with him?

17 THE WITNESS: Yes.

18 MR. CHERTOFF: Did he ever say before I sign
19 off on this, I better look at the book to see if I've
20 actually seen this stuff before?

21 THE WITNESS: No, he did not and in hindsight
22 I wish I had forced that to be done.

23 MR. CHERTOFF: Do you want to take a short
24 break now for lunch purposes, you know, maybe ten
25 minutes? Because I shouldn't be eating and you not

1 eating so let's, you know...

2 THE WITNESS: Well, I'm fine.

3 (Off the record)

4 MS. GLADING: Before we leave the March 16th
5 meeting. Was it your understanding as a result of
6 getting these documents that the consent-to-search data
7 was becoming the most highly relevant data in terms of
8 the Review Team's work?

9 THE WITNESS: It was for a number of factors.
10 And I think that one of the things we did in the
11 interim report was try to deal with the following
12 concept of how you can say there's no racial profiling,
13 there's no racial profiling, there's no racial
14 profiling. But minorities are more likely to be
15 involved in all this stuff and how do you deal with
16 that contrast in terms of that view? And that there
17 was always this debate of can you see the motorist or
18 can't you see the motorist? Can you see the motorist
19 or you can't see the motorist? And that the focus,
20 certainly as I saw some of that data and some of what
21 we were hearing out was occurring on the road was that
22 because there was no issue with respect to the
23 identification at that point, we thought that the
24 consent numbers were a problem in an area that needed
25 to be addressed.

1 MS. GLADING: Had you had any discussions
2 with Colonel Dunlop about the consent-to-search numbers
3 being a problem area that needed to be addressed?

4 THE WITNESS: I stood with the blue binder in
5 front of Colonel Dunlop and Colonel Fedorko and said,
6 here's where I'm going. I don't know where this was
7 before, but here's where we're going. I think this
8 shows there's a problem out there on the road and this
9 is where I'm going with this report. If you've got
10 anything you want to bring t my attention, bring it to
11 my attention. But that's where I'm going with this
12 report.

13 SENATOR LYNCH: Did you ask him right then
14 and there for updated information from Sachetti?

15 THE WITNESS: On the Troop D audit?

16 SENATOR LYNCH: Yes.

17 THE WITNESS: I asked him if you've got
18 anything that is out there, bring it to my attention.

19 MS. GLADING: When was this that you stood in
20 front of them with Gilbert's blue binder?

21 THE WITNESS: I had weekly -- my calendar
22 reflects that I had weekly meetings scheduled with --
23 having Colonel Williams not being there, I had weekly
24 meetings with Fedorko and Dunlop in which I attempted
25 to keep them updated as to the decisions that were

1 being made with respect to the report, the organization
2 of the report and decisions that were being made on the
3 Soto case.

4 MS. GLADING: What date would this have been
5 in relation to March 15th when you received --

6 THE WITNESS: It was shortly after I received
7 the documents. I don't think it was on March 16th, but
8 I think it was the next time I got together with them.

9 MS. GLADING: And did you represent to them
10 that the consent-to-search numbers, as result of seeing
11 this, were the most significant numbers in your mind?

12 THE WITNESS: That they were a primary focus
13 that we were concerned of? Yes.

14 MS. GLADING: Had you had discussions with
15 them before about your concerns about the consent-to-
16 search numbers or was it prompted by this?

17 THE WITNESS: I'd say it was prompted by
18 that, now that I was assigned to the racial profiling
19 review of the State Police Review Team.

20 MS. GLADING: It was prompted -- I'm sorry?
21 Were your concerns about consent-to-search numbers
22 prompted by the numbers you saw in here on the 15th?

23 THE WITNESS: In the preparation of the
24 interim report, yes.

25 SENATOR LYNCH: If you had been overseeing

1 the racial profiling thing going back in time, you
2 would have been looking at consent-to-search a long
3 time ago, wouldn't you?

4 THE WITNESS: It would have been one of the
5 factors you would have been looking at.

6 SENATOR LYNCH: I mean we all know the
7 history of consent to search since the evolution of the
8 exclusionary rules in that that's always been a
9 legitimate focus of what's real and what's not.
10 Whether there's profiling or not.

11 THE WITNESS: It's been one of -- it's one --

12 SENATOR LYNCH: Had you been in charge, you
13 would have been looking at that from the inception.

14 THE WITNESS: Well, that's one of the areas
15 that you would -- one of the areas that you would focus
16 on, yes.

17 MS. GLADING: Could we mark this, Scott? You
18 can use an extra for you guys.

19 (Pause)

20 MR. WHEELER: Can I just ask a question? The
21 numbers that you saw in the Gilbert memo, the Gilbert
22 notebook, they were pretty similar to those numbers,
23 consent-to-search numbers, they're pretty similar to
24 the consent-to-search numbers that you saw back in
25 December of 1998, am I correct?

1 THE WITNESS: Upon subsequent review, yes,
2 the numbers are similar.

3 MR. WHEELER: So that if they concerned you
4 when you received the Gilbert documents in February --
5 or March of 1999, they should have concerned you when
6 you saw them back in December of 1998.

7 THE WITNESS: I think I testified before, and
8 this is as best as I can recollect it, I was not
9 focused on aggregate data at that time. I was focused
10 on the prosecution and yes, I did receive a document
11 that included that information in it, but I did not
12 focus on those consent numbers at that time. And it
13 just is my recollection.

14 MS. GLADING: If you could look at what's
15 been marked F-17 -- Z-17, sorry. And I can move
16 through this document pretty quickly. But the consent-
17 to-search numbers have emerged as, you know, probably
18 the most significant analysis done by the Review Team
19 and people pretty much mark the beginning of concern
20 about them as March 15th, just as you did when the
21 Gilbert notebook comes over. Can you look at the
22 second page of Z-17.

23 THE WITNESS: Um-hmm.

24 MS. GLADING: Section three, Consent-To-
25 Search Options Pertaining to Drug Interdiction. And

1 I'll represent to you that Colonel Dunlop testified
2 that there was a page missing from this in which he
3 continues with other options, including elimination of
4 consent to searches completely, which he represented he
5 thought was one way to address the problem.

6 THE WITNESS: Right.

7 MS. GLADING: Do you recall getting this
8 document?

9 THE WITNESS: Yes, I recall getting the
10 document and I recall having that discussion before
11 receipt of the document with Colonel Dunlop about --
12 because I sat down with Colonel Dunlop and Fedorko and
13 said how are we going to address this issue and --

14 MS. GLADING: This issue being what, I'm
15 sorry?

16 THE WITNESS: This issue, racial profiling,
17 and what can we do about it. And one of the issues
18 that Bob Dunlop identified to me was some of the issues
19 he had of making sure there were better -- there was
20 better supervision, better handling of the consent
21 issues and the consent issue should be something that
22 should be looked at.

23 MS. GLADING: So he had raised consent-to-
24 search issues prior to the March 15th meeting as an
25 issue of concern.

1 THE WITNESS: Yes. And at March 15th,
2 consent was something we wanted to look at.

3 MS. GLADING: Did you discuss with him after
4 you got the Gilbert notebook, did you discuss with him
5 your concerns about not having received this -- the
6 numbers within here in a more timely way -- in a more
7 timely fashion?

8 THE WITNESS: I said to both Fedorko and
9 Dunlop, do you know about this? Did you know about the
10 Gilbert analysis? Did you see the Gilbert analysis
11 that's in here, specifically the comparison to
12 Maryland? And the answer from both of them was no,
13 that they were -- that that was something that was --
14 Gilbert was reporting to Colonel Williams on and that
15 they had not been apprized of those specific analysis
16 or results at the time.

17 MS. GLADING: Okay. Did you have discussions
18 with Attorney General Verniero about Colonel Williams'
19 role in perhaps having knowledge about this?

20 THE WITNESS: Yes.

21 MS. GLADING: It was not disclosed.

22 THE WITNESS: Yes.

23 MS. GLADING: And what was the substance of
24 those discussions?

25 THE WITNESS: The discussion was that I was

1 concerned that on such a significant matter that it
2 would only be -- I've been working with the State
3 Police for 18, 19 months and everything I see from over
4 there goes up the chain-of-command three or four
5 different ways. It's got IOC written on it and it's a
6 very formalized memo. And here I'm seeing this memo,
7 this analysis, as being a direct memo from Lieutenant
8 -- or I think it was sergeant at the time, Gilbert to
9 Colonel Williams and I was concerned that that
10 information was there and had it been shared and why
11 hadn't it been shared.

12 MS. GLADING: And what did the Attorney
13 General say?

14 THE WITNESS: The Attorney General told me he
15 had not seen that memo before.

16 MR. CHERTOFF: Did he say he had heard
17 anything about the content of the memo or the subject
18 matter?

19 THE WITNESS: At the time on the 16th I had
20 subsequent discussions with him about that subject
21 matter, but on the 16th he did not say that.

22 MR. CHERTOFF: What was the subsequent
23 conversation?

24 THE WITNESS: The subsequent conversation was
25 based upon at some point in time I think Colonel Dunlop

1 said to me something to the effect of -- because I was
2 going very hard at him on those documents, he
3 communicated to me, he called me and said that it was
4 his understanding that that had all been -- that it had
5 all been reviewed with the Attorney General. And I
6 believe that was the -- and that the Attorney General
7 was fully aware of all that. And that was my
8 discussion with Dunlop.

9 I then went and spoke to the Attorney General
10 who had said that no one had provided him with that
11 memo before and that he didn't recall it happening that
12 way.

13 MS. GLADING: Did Mr. Dunlop reference the
14 May 20th, 1997 meeting when he said that to you?

15 THE WITNESS: I don't recall -- I think he
16 just said there was a meeting. I don't think he told
17 me what the -- I don't think he told me what the date
18 of the meeting was.

19 MS. GLADING: Okay, I'm sorry. Go ahead.

20 MR. CHERTOFF: Did Mr. Verniero say he hadn't
21 -- say he hadn't seen the memo or did he say to you
22 that he disagreed with the assertion that he had been
23 informed generally about the content of the memo?

24 THE WITNESS: Well, I think initially I came
25 and I said to him that I was told that there was a

1 meeting in which that memo was fully -- was fully
2 reviewed. And he told me that that was not the case.
3 I then had subsequent discussions with him on that
4 subject.

5 MR. CHERTOFF: Give us the back and forth.

6 THE WITNESS: No, I mean that's what he told
7 me that day and I reported that back to Dunlop, that
8 the Attorney General said that he didn't recall
9 receiving that.

10 MR. CHERTOFF: Receiving the memo or talking
11 about the subject matter?

12 THE WITNESS: Or that the -- I had said that
13 the memoranda -- of that being reviewed with him.

14 MR. CHERTOFF: And was there subsequent
15 conversation with the Attorney General about this
16 issue?

17 THE WITNESS: Yes. And part of that was
18 based upon prior to -- prior to the issuance of the
19 report and/or before his hearings, I had a subsequent
20 conversation with Jack Fahy, who advised me that there
21 was -- that he remembers there was a meeting and that
22 there was some discussion of consent numbers. And I
23 also had a conversation at some point with -- with
24 Rover who said that, you know, there was a meeting,
25 there was some discussion. I did not have the benefit

1 at the time of what's been subsequently produced, which
2 is the agenda of the May 20th meeting.

3 MR. CHERTOFF: After you had the conversation
4 with Rover and Fahy, did you go back to the Attorney
5 General and say look, there is some indication this was
6 discussed at the meeting?

7 THE WITNESS: Yes, I did.

8 MR. CHERTOFF: And then what did he say?

9 THE WITNESS: And then he said to me, "If
10 there was a discussion of statistics at that time, it
11 was in the connection that it didn't mean there was
12 racial profiling."

13 MR. CHERTOFF: So he acknowledge for the
14 first time that there might have been a discussion
15 about it.

16 THE WITNESS: Yes. He said that there was --
17 he says -- I said well, you know, I'm hearing from
18 people that there was a discussion with respect to
19 numbers and consents, and his response was that if
20 there was that -- at that -- I don't know if he said if
21 there was that meeting -- I think he was now
22 remembering that there was a meeting, and he said to me
23 that he didn't recall it in other than the context of
24 here are statistics, but it doesn't mean that we're
25 racially profiling and we should still defend the

1 Justice Department's suit.

2 SENATOR LYNCH: When would you say that
3 conversation was?

4 THE WITNESS: That I had with him? Before
5 the issuance of the interim report.

6 SENATOR LYNCH: And so put it in a time
7 frame. Somewhere in --

8 THE WITNESS: Somewhere in April. This is
9 well into April now.

10 SENATOR LYNCH: He was already nominated to
11 the Supreme Court?

12 THE WITNESS: Yes.

13 MR. CHERTOFF: Was it before you guys
14 testified at the Senate Judiciary Committee hearing on
15 racial profiling?

16 THE WITNESS: I believe -- I believe it was.

17 MR. CHERTOFF: Was that conversation as part
18 of preparing for what would happen if this question
19 came up at the hearing?

20 THE WITNESS: Well, part of it was that it
21 ties into my reviewing the drafts of the interim report
22 to make sure as best as I could that it was accurate.
23 And based upon the impression on March 15th, Debra
24 Stone started an initial draft of the interim report
25 that ended up in Susswein's draft that said the Office

1 of Attorney General and Division of Criminal Justice
2 hadn't received any statistics before. Something to
3 that effect. And I was going back to review the
4 accuracy of that. And in that effort I had some
5 discussions with Fahy and Rover. I think they both
6 called me.

7 MR. CHERTOFF: And they called you up about
8 that point?

9 THE WITNESS: No, they called me up about the
10 point as to whether or not there had been some
11 discussion of statistics.

12 MR. CHERTOFF: So you're telling me that in
13 connection with the preparation of the draft interim
14 report, the initial position the draft took was that
15 the Office of the Attorney General had not received any
16 statistics from the State Police prior to 1999?

17 THE WITNESS: Right. And that was based upon
18 my mistaken impression at that time.

19 MR. CHERTOFF: And then you started to get
20 calls from a couple people, namely Mr. Fahy and Mr.
21 Rover, who said well, wait a second, that might not be
22 completely accurate?

23 THE WITNESS: Well, no. They were not
24 involved in the process of reviewing drafts. I think
25 it was as it relates to upcoming -- the upcoming

1 hearings and issues as to whether or not -- what the
2 level of knowledge was of the Department at the time.

3 MR. CHERTOFF: Is it fair to say that as the
4 hearings were approaching, you and Attorney General
5 Verniero were preparing for the possibility that there
6 were going to be specific questions from the Senators
7 about the issue of what did the Attorney General's
8 Office know and when did they know it concerning
9 statistics?

10 THE WITNESS: Yes. And that was also
11 relevant to a couple of pages in the interim report.

12 MR. CHERTOFF: And in connection with that
13 preparation, you heard from Fahy and Rover who -- well,
14 let me step back. In preparing for these questions,
15 and I -- in preparing for these questions, when you
16 talked to -- obviously you knew you were going to
17 testify and the Attorney General was going to testify,
18 right?

19 THE WITNESS: Yes.

20 MR. CHERTOFF: Initially --

21 THE WITNESS: I was -- I was made aware of
22 that after the issuance of the interim report.

23 MR. CHERTOFF: Okay. What was the Attorney
24 General's initial position about how he was going to
25 answer the question about when did the Attorney

1 General's Office have information that there was a
2 statistical anomaly with respect to minorities?

3 THE WITNESS: Well, I think he was -- he was
4 relying in part as it relates to some of the initial
5 drafts of the interim report saying that none of those
6 statistics had come over. And as I -- I changed that
7 report and then had subsequent discussions with him in
8 which I said that I'm hearing that there were
9 discussions of statistics and that you, over a period
10 of time, may have, you know, received or heard of
11 statistics.

12 MR. CHERTOFF: Well, let me stop you. You
13 mean to say that his initial position with respect to
14 whether the Attorney General's Office had received this
15 information was that he was relying on the interim
16 report to tell him what he experienced back in 1997?

17 THE WITNESS: No, I didn't mean -- I didn't
18 mean to imply that. What I said was I had -- I had
19 presented before him what turned out to be not entirely
20 correct in terms of what was over at our office.

21 MR. CHERTOFF: Now, when you did that, did he
22 say, you know, this is not entirely correct, actually
23 we did get some of this stuff? Did he correct you?

24 THE WITNESS: No, he did not.

25 MR. CHERTOFF: He accepted the report, right,

1 or accepted the draft, right?

2 THE WITNESS: Yes.

3 MR. CHERTOFF: And your understanding was his
4 position was going to be consistent with the draft,
5 namely we didn't have any of this stuff, right? That's
6 what he basically told you he was going to say.

7 THE WITNESS: I don't want to confuse this.
8 What period of time are we talking about? I'm sorry.

9 MR. CHERTOFF: In the evolution of your
10 preparation for the hearings scheduled for April on
11 racial profiling.

12 THE WITNESS: Can I just interject for a
13 second?

14 MR. CHERTOFF: Yeah.

15 THE WITNESS: There's a false assumption
16 there. I mean if you want to go on a specific period
17 of time. I was not informed as to the racial profiling
18 hearing and my participation in that until after the
19 interim -- around the time of the interim report.
20 So --

21 MR. CHERTOFF: All right. Let me step back.
22 There's a period of time he's reviewing drafts for the
23 interim report, right?

24 THE WITNESS: Late in April.

25 MR. CHERTOFF: And what --

1 THE WITNESS: He was reviewing more of the
2 final drafts of the interim report.

3 MR. CHERTOFF: One of the issues in the draft
4 says when did the Attorney General's Office know about
5 statistical issues relating to profiling, correct?

6 THE WITNESS: Uh-huh.

7 MR. CHERTOFF: Is that a yes?

8 THE WITNESS: Yes. I'm sorry.

9 MR. CHERTOFF: And in connection with that,
10 the initial draft by Ms. Stone, who had no firsthand
11 knowledge of this, says the Attorney General's Office
12 didn't get this information until 1999, correct?

13 THE WITNESS: Correct.

14 MR. CHERTOFF: We now know that to be a
15 mistake, correct?

16 THE WITNESS: Correct.

17 MR. CHERTOFF: When that draft was presented
18 to Attorney General Verniero he did not correct or make
19 a comment about that, right?

20 THE WITNESS: He did not.

21 MR. CHERTOFF: And then within a very short
22 period of time thereafter in anticipation of the
23 hearings coming up and preparing for this question
24 coming up at the hearings, you then heard from Mr. Fahy
25 and Mr. Rover that maybe that statement in the draft

1 was not correct, is that true?

2 THE WITNESS: Well, Fahy and Rover, with
3 respect to the -- with respect to the meeting. And I
4 think that the interim report on Page 23 talks about
5 the receipt of documents. It doesn't talk about what
6 was told to the Attorney General.

7 MR. CHERTOFF: So in response to hearing from
8 Fahy and Rover, the Department crafted the report so
9 that it made clear that it was documents that had been
10 not received until '99, but didn't suggest that the
11 information itself hadn't been received?

12 THE WITNESS: Yeah. I think it's important,
13 the two were -- the two were unrelated. Because I
14 think I referenced this before, I at some point in time
15 was concerned about what Rover had seen or what Rover
16 had not seen in terms of the documents. So in one of
17 the last drafts, there was a change on Page 23 because
18 I went back personally myself as opposed to relying on
19 the initial representations. I went back and looked
20 through some of Rover's files and in there I found some
21 of the raw Gilbert data. Not the Gilbert memo that
22 said we're in a very bad spot, but I saw some of the --
23 I saw some of the raw data. So as it related to what
24 was in the Office of the Attorney General and Division
25 of Criminal Justice, which essentially would go to the

1 Department, receipt of documents, that's why I changed
2 that memo -- I mean that portion of the report, and
3 then there were other discussions with the Attorney
4 General as it relates to the review of statistics with
5 him prior to his testimony.

6 MR. CHERTOFF: Well, let me make sure I break
7 this down piece by piece.

8 THE WITNESS: All right.

9 MR. CHERTOFF: As the interim report now
10 reads, it says "In mid-March the Review Team began to
11 receive documents from the State Police pertaining to
12 audits," et cetera, et cetera, "some of which had not
13 previously been provided to the Office of the Attorney
14 General." Now, that's a change from the original
15 draft, right?

16 THE WITNESS: Correct.

17 MR. CHERTOFF: The original draft couched it
18 in terms of receiving information. Is that fair to
19 say?

20 THE WITNESS: Well, it even said more than
21 that. It said that there -- it gave the impression
22 that everything that was in the report had only been
23 received in March of 1999.

24 MR. CHERTOFF: All right. So you changed the
25 final version to reflect the fact that, in fact, some

1 of this information and some of the documents had been
2 received previously by the Office of the Attorney
3 General, correct?

4 THE WITNESS: Yes, and -- yes.

5 MR. CHERTOFF: Now, in connection then at the
6 same time, there's a hearing scheduled for April 26th
7 before the Judiciary Committee, correct?

8 THE WITNESS: Correct.

9 MR. CHERTOFF: And you're preparing Mr.
10 Verniero for his testimony, right?

11 THE WITNESS: I was assisting him in
12 preparation.

13 MR. CHERTOFF: And the question arises about
14 whether he's going to be asked about when this
15 information about statistics and consent-to-search data
16 was first conveyed to him, right?

17 THE WITNESS: Right. And based upon -- yes.
18 Based upon what I had heard from others, I focused on
19 that issue with him.

20 MR. CHERTOFF: And what was his initial
21 answer to that question? Was his initial answer that
22 he hadn't heard anything about this?

23 THE WITNESS: No. I talked about the initial
24 answer, which was on March 16h, but in terms of the
25 preparation it was that the documents -- I mean and/or

1 statistics that he ever saw on the issue were always
2 presented to him in the context. At the same time, he
3 was being told by State Police that racial profiling
4 was not a problem.

5 MR. CHERTOFF: But at that point I take it he
6 did not deny that there had been a conversation
7 comparing the Maryland numbers and the New Jersey
8 numbers relating to consent to search?

9 THE WITNESS: He did not -- he did not deny
10 that and responded as I said, "If there was a
11 discussion of statistics, this was my reaction to the
12 statistics."

13 MR. CHERTOFF: Whereas on March 16th when you
14 showed him the Gilbert memo relating to Maryland
15 statistics and New Jersey statistics, his response was
16 "I've never seen that memo before."

17 THE WITNESS: Correct.

18 MR. CHERTOFF: And he only indicated that he
19 recalled some discussion concerning the Maryland
20 numbers and the New Jersey numbers after you told him
21 that Rover and Fahy were going to recall that that
22 discussion had taken place in a meeting, is that fair
23 to say?

24 THE WITNESS: I mean not were going to
25 recall, had recalled to me. Had recalled to me. And

1 so therefore I attempted to refresh his recollection.

2 MR. CHERTOFF: So he refreshed his
3 recollection based upon the fact that Fahy and Rover
4 said that they recalled the conversation?

5 THE WITNESS: I don't know if I told him that
6 it was Fahy and Rover, but I said I've talked to a
7 couple people who said they were at a meeting, and I
8 was hearing it from Dunlop, I was hearing it from Fahy,
9 and I think Rover said something to me.

10 MR. CHERTOFF: But initially when you
11 conveyed Dunlop's comments, he rejected Dunlop's
12 recollection, he said that's not true.

13 THE WITNESS: Correct.

14 MR. CHERTOFF: But when you said --

15 THE WITNESS: Dunlop's recollections were
16 very strong that all this was discussed at the time.

17 MR. CHERTOFF: And then later when Rover and
18 Fahy added their recollection, then he allowed as how
19 there was some discussion, is that fair to say?

20 THE WITNESS: Correct.

21 MR. CHERTOFF: Now, let me ask you this. The
22 whole conversation with Dunlop actually arose in the
23 context of whether there was going to be some kind of
24 investigation of Colonel Williams, right?

25 THE WITNESS: No.

1 MR. CHERTOFF: Was there a discussion at some
2 point in time about investigating why this blue binder
3 hadn't been turned over?

4 THE WITNESS: Initially.

5 MR. CHERTOFF: Who had that discussion?

6 THE WITNESS: Well, I think the Attorney
7 General turned to me and said, "I want you to find out
8 why these documents haven't been turned over before."

9 MR. CHERTOFF: Was that in the March 16th
10 meeting?

11 THE WITNESS: Yes. And I think there's a
12 reference to my assignment in that regard on Page -- on
13 Z-16 that tells me that we should determine --

14 MR. CHERTOFF: So what happened? Did you
15 carry out -- did you carry out the assignment?

16 THE WITNESS: I did and it evolved over the
17 next few weeks as I was examining the -- having the
18 document production examined and I did so.

19 MR. CHERTOFF: How did it evolve?

20 THE WITNESS: It evolved in terms of
21 checking, you know, having -- checking what, you know,
22 was received from the Department of Justice and
23 ultimately was concluded with my personal review of
24 some of Rover's files to see what had happened. I
25 have -- I can discuss the investigation of Carl

1 Williams' issue if you want me to do so.

2 MR. CHERTOFF: Well, we'll get to that in a
3 second, but just to close this up --

4 THE WITNESS: All right.

5 MR. CHERTOFF: -- to close up this one
6 question.

7 So you ultimately wound up concluding that,
8 in fact, a lot of material had been turned over to the
9 Office of the Attorney General and therefore there was
10 no case to be made that there was any impropriety on
11 the part of the State Police?

12 THE WITNESS: Yes. And in particular --
13 although I had concluded the '97 and '98 materials that
14 we had reviewed previously, which were the monthly
15 breakdowns, had not come over and I don't think there
16 was any record of those coming over. Nor was there any
17 record of the Gilbert memo coming over. I did not -- I
18 did not think there was -- I didn't view this as a
19 criminal investigation at any point in time. And I
20 even had a discussion -- the only discussion I ever had
21 with Carl Williams after his termination was on the
22 subject of whether or not he was under investigation.

23 MR. CHERTOFF: Now, tell us about this issue
24 about --

25 MS. GLADING: Can you just define the time

1 period more closely when you concluded that -- your
2 investigation into this?

3 THE WITNESS: Essentially I would say that at
4 the time of the interim report I had finished
5 evaluating that.

6 MR. CHERTOFF: What was the discussion
7 concerning Colonel Williams being investigated?

8 THE WITNESS: There was no -- the discussion
9 I had with Colonel Fedorko and Colonel Dunlop, because
10 I think it puts the concept of the use of the phrase
11 "obstruction of justice" in context, which I had met
12 with Fedorko and Dunlop at the same time that I
13 reviewed what I believed that I hadn't seen these
14 records before, that I was about to go down to the
15 Justice Department on the 19th of March. I viewed this
16 as very serious, that they had to put their full
17 attention to absolutely ensure that we got all of these
18 records because I had viewed that the Justice
19 Department was going to substantially increase its
20 investigation, and although there had been no subpoenas
21 or anything at that point, we were going to get to a
22 point in time where we all three of us, that meant
23 myself, Fedorko and Dunlop, were going to be on line
24 for whether or not there had been an appropriate
25 production of records. And if there wasn't, people

1 could be facing obstruction of justice charges at some
2 point in time. So that was the context I used that in.
3 And I believed at some point in time there developed
4 rumors that there was an investigation of Carl
5 Williams. I indeed got beeped at a Little League game
6 by Carl Williams, who obviously still had my number,
7 who said he had gotten called by somebody at the
8 *Philadelphia Inquirer* saying that he was under
9 investigation by me for obstruction of justice. I told
10 him that was absolutely false. There was never any
11 such investigation. And I told him that I would
12 contact the reporter or have the reporter contacted to
13 make sure that that was not reported because it was
14 false. There was no investigation. I was conducting
15 -- attempting to find out what the status of the
16 production of documents were. There was no point at
17 time in which I started an investigation of the
18 recently, you know, terminated Superintendent of the
19 State Police on obstruction of justice. That's just
20 wrong.

21 MR. CHERTOFF: Now, as of April 1999, you
22 have an indication that information that you originally
23 thought was withheld by the State Police had actually
24 been turned over to Rover, correct?

25 THE WITNESS: Correct.

1 MR. CHERTOFF: You also had an indication
2 that Rover had withheld documents from the Department
3 of Justice, correct?

4 THE WITNESS: That there were documents that
5 were not produced at the Department of Justice.

6 MR. CHERTOFF: And you knew from your
7 investigation about the State Police documents that
8 Rover apparently had a lot of documents from the State
9 Police that you only saw for the first time in March of
10 1999, correct?

11 THE WITNESS: I'm sorry?

12 MR. CHERTOFF: You knew that Rover had
13 received from the State Police documents which you
14 initially believed only came over in March of 1999, you
15 learned that.

16 THE WITNESS: Based upon my ultimate review
17 of his files.

18 MR. CHERTOFF: So did you go talk to Mr.
19 Rover and say what gives with all this stuff with the
20 documents? Were you holding stuff and you weren't
21 showing it to people?

22 THE WITNESS: I did not at that point. I had
23 closed him off from the Department of Justice contact.
24 I thought, as I said before, that it was very difficult
25 to recreate a record, a clear record of what all those

1 requests were. And at that point in time I was moving
2 forward to the completion of the State Police Review
3 Team. I was becoming the Acting Attorney General and
4 no, I did not go back to Mr. Rover at that point in
5 time because I was not continuing an investigation with
6 respect to the production of records at that time.

7 MR. CHERTOFF: Well, let me ask you this
8 question. In connection with learning that the State
9 Police had, in fact, given a lot of the documents you
10 thought were being withheld to Rover, did you recall
11 the fact that Rover had told you a couple of months
12 earlier that everything he did he did in consultation
13 with Waugh and the General?

14 THE WITNESS: I don't think I specifically
15 thought about it and the reason was at that point in
16 time, as I said before, I found that the Justice
17 Department document requests that had come were so
18 unclear that -- and I had a discussion with the Justice
19 Department on that very issue and we reached agreement
20 across the table that there wasn't -- there wasn't a
21 basis for any obstruction of justice inquiry.

22 MR. CHERTOFF: I'm not talking about
23 obstruction of justice. I just want to connect these
24 dots up.

25 In March you get a series of documents which

1 are -- you think you've seen for the first time,
2 correct?

3 THE WITNESS: Yes.

4 MR. CHERTOFF: You go ballistic, right?

5 THE WITNESS: That's a fair characterization.

6 MR. CHERTOFF: Your initial impression, based
7 on conversations with Mr. Verniero and Mr. Hespe is
8 that this stuff has been withheld from the Office of
9 the Attorney General, correct?

10 THE WITNESS: Correct.

11 MR. CHERTOFF: You come to find out, in fact,
12 that a lot of this stuff has been given to Rover,
13 right?

14 THE WITNESS: Yes.

15 MR. CHERTOFF: You also come to find out that
16 at least the content of some of this stuff was
17 discussed in a meeting which Fahy and Rover remembered
18 included the Attorney General, correct?

19 THE WITNESS: Correct.

20 MR. CHERTOFF: You also knew at the same time
21 that Rover had told you his entire role in this matter
22 was as a conduit and that really he didn't make any
23 substantive decisions except in consultation with Waugh
24 and the General, correct?

25 THE WITNESS: Correct.

1 MR. CHERTOFF: Did you at that point question
2 in your own mind exactly the degree to which the
3 Attorney General had an understanding of what the
4 documents were and the existence of the documents and
5 whether he was being completely forthcoming with you
6 concerning his own role?

7 THE WITNESS: I think prior to the hearings
8 his statements to me were I heard about numbers. They
9 might not have been good numbers. But in context now,
10 but that the advice that he had received was that it
11 wasn't right for -- and frankly, one of the things that
12 had happened was, you know, in the interim report we
13 substantially tried to change on a policy basis the
14 direction and the definition of how the State looked at
15 racial profiling. So we were looking at it under a new
16 standard and his position to me was that the advice
17 that he had received at that point in time was the
18 consent numbers did not mean that they were racial
19 profiling from a legal advice, and also did not mean
20 racial profiling from a subsequent -- substantive
21 factual analysis.

22 MR. CHERTOFF: He told you that his
23 impression was as of 1999 that the consent-to-search
24 numbers were not going to be a problem in terms of, you
25 know, evidential -- from an evidential standpoint?

1 THE WITNESS: He told me that although the
2 numbers could be viewed as a problem, that the advice
3 that he had received was they weren't ultimately
4 determinative in the Justice Department investigation.

5 SENATOR LYNCH: Advice from whom?

6 THE WITNESS: From staff that he had
7 received. Now, I have --

8 SENATOR LYNCH: Who?

9 THE WITNESS: That's what he told me. I have
10 subsequently reviewed records that I know the answer to
11 that question, but in terms of what he told me, he said
12 he received advice.

13 MR. CHERTOFF: So he acknowledged that he
14 focused on this issue and there was actual substantive
15 conversation about the Maryland numbers, the New Jersey
16 numbers and whether or not this was going to be a
17 problem from an evidentiary standpoint.

18 THE WITNESS: I don't know if -- he said the
19 Maryland numbers and the New Jersey numbers -- excuse
20 me a second -- or whether it was that the number --
21 that there was -- I said to him, I said there was a
22 discussion that there weren't good numbers on consent.
23 I don't think I said New Jersey versus Maryland. And
24 his response was is, as I said before, which was, "No,
25 it was in the context of getting a statement that there

1 was no -- it didn't equal racial profiling."

2 MR. CHERTOFF: Well, so he acknowledged that
3 he had been told the numbers did not look good, right?
4 He acknowledged that. That's final at the end of the
5 day.

6 THE WITNESS: He acknowledged that there was
7 a meeting.

8 MR. CHERTOFF: Right. And that the bad
9 numbers were discussed at the meeting, right?

10 THE WITNESS: That numbers were discussed at
11 the meeting.

12 MR. CHERTOFF: And then he said but I got
13 advice that the numbers were not determinative because
14 you could still say it's not -- it doesn't equal racial
15 profiling, right?

16 THE WITNESS: That's what he told me.

17 MR. CHERTOFF: But it was clear to you, at
18 least as of that point, that he acknowledged that he
19 had focused upon the issue of bad numbers and whether
20 that's tantamount to proof of racial profiling.

21 THE WITNESS: That he had attended -- that
22 there was a meeting in that regard, yes.

23 MR. CHERTOFF: And did he refer back to the
24 May meeting?

25 THE WITNESS: Not specifically to the May

1 meeting.

2 MR. CHERTOFF: Did he tell you that the May
3 meeting about the numbers being good or bad was in the
4 context of discussing whether it would be necessary to
5 enter into a consent decree with the Department of
6 Justice?

7 THE WITNESS: It wasn't -- he didn't say
8 consent decree, but at that point in time I had made my
9 own conclusion based on what I heard. It must have
10 been in context of the Justice Department inquiry.

11 MR. CHERTOFF: And was this discussion that
12 you had with him in connection with your preparation
13 for his testimony in the hearings on April 26th?

14 THE WITNESS: I participated in preparation
15 for him both for that hearing, the first hearing, the
16 April 26th hearing, and then so the record is clear,
17 some preparation for the --

18 MR. CHERTOFF: The confirmation?

19 THE WITNESS: -- May 4th -- the confirmation
20 hearing.

21 SENATOR LYNCH: The confirmation hearings are
22 originally attempted to be scheduled in March.

23 THE WITNESS: I don't know the answer to
24 that.

25 MR. CHERTOFF: Did you --

1 MS. GLADING: Just to --

2 THE WITNESS: No, I mean if you're trying
3 to -- let me go back. If you're trying to set -- the
4 reason I mentioned that was if you were trying to set a
5 framework, Mr. Chertoff, I don't recall whether those
6 conversations were before the 26th or after -- which
7 one of the preparation sessions they are.

8 MR. CHERTOFF: Did you guys do a mock
9 profiling hearing?

10 THE WITNESS: Yes.

11 MR. CHERTOFF: And who played the Senators in
12 that?

13 (Laughter)

14 THE WITNESS: There was staff of the Office
15 who played the role, probably senior staff, from the
16 Department of Justice and from the Office of the
17 Attorney General.

18 MR. CHERTOFF: And Peter was the witness and
19 you were the witness?

20 THE WITNESS: I don't know if I had my Power
21 Point presentation. If you wouldn't mind, what date is
22 that?

23 MR. CHERTOFF: It would be April 23rd at
24 2:30. Friday, April 23rd, 2:30, which would be the last
25 business day before the Monday hearing at ten o'clock.

1 THE WITNESS: I think that I went through the
2 Power Point presentation just for my own practice and
3 then there were some -- there was some questioning of
4 the Attorney General.

5 MR. CHERTOFF: Did you anticipate -- I don't
6 mean you personally, but in the meeting or in any
7 meetings in preparation for the hearings, was there
8 discussion about what the answers would be if there
9 were questions about when certain documents were
10 received by the Office of the Attorney General?

11 THE WITNESS: I don't recall that, because in
12 going in on April 22nd, April 26th, that was more of a
13 focus that I was going to speak. My role was to go to
14 speak and spending a little time prepping for that. I
15 did not -- I don't know whether or not one of the
16 questions was -- I don't know were there any
17 preparatory questions on Page 23 before then. I
18 thought about that before I went into it, but I don't
19 recall that coming up in the mock briefing.

20 MR. CHERTOFF: Before the hearing --

21 SENATOR LYNCH: Who participated in this
22 hearing prep?

23 THE WITNESS: Senator, usually -- we had a
24 couple of those and usually -- could you -- what date
25 is that?

1 MR. CHERTOFF: It's Friday, April 23rd. If
2 you look at Z-8.

3 THE WITNESS: Senator, I don't -- at times
4 there might have been people -- it might have been
5 Brian Litten from the Legislative staff in on that.
6 There may have been the Director of the Division of Law
7 or an Assistant Attorney General in the Division of
8 Law. And maybe a Deputy Director.

9 SENATOR LYNCH: Somebody from the Legislative
10 staff participated? Somebody from the -- oh,
11 Legislative liaison.

12 THE WITNESS: Legislative liaison. No, not
13 anybody -- no, a department Legislative liaison. From
14 our Legislative Affairs Office, Senator.

15 MS. GLADING: At that point in time was
16 your --

17 SENATOR LYNCH: Well, what was the other one?
18 You said you had two of these at least.

19 THE WITNESS: Well, I would think, as I said,
20 I would think there was one prior to the April 26th
21 hearing at which I made the presentation and I would
22 think there was one probably before May 4th or 5th,
23 whenever the General's confirmation hearing was.

24 SENATOR LYNCH: Again people were used to ask
25 Verniero questions about the confirmation hearing as a

1 practice run, as it were?

2 THE WITNESS: Yes.

3 MS. GLADING: At this -- you indicated you
4 testified before, and I just want to get a little more
5 specific. That your internal investigation into
6 whether or not documents and numbers and statistics had
7 been withheld from the Department of -- from the Office
8 of Attorney General concluded around the time of the
9 interim report. Do you remember when it was?

10 THE WITNESS: Well, yes. Because the day or
11 two before the interim report came out, I went back to
12 double check what Rover's files were and I found a
13 couple of those -- I found a couple of those documents
14 in his files which led me to change Page 23 and the
15 page after that in a couple respects.

16 MS. GLADING: Your investigation though in
17 terms of documents that were not previously provided
18 which had been provided by the State Police, was that
19 concluded also?

20 THE WITNESS: Well, the investigation was one
21 of my assignments during that period of time and I was
22 inquiring into that. I did not assign someone to head
23 up an investigation on that matter.

24 MS. GLADING: When did you conclude? When
25 did you reach conclusions and decide that you had

1 answers about what had and hadn't been provided to the
2 State Police?

3 THE WITNESS: I believe that I had reached --
4 my review was shortly before the interim report was
5 done. I was doing it in the context of that, keeping
6 in mind that I didn't view that I had, once the interim
7 report was done, a separate investigation open on that
8 issue.

9 MS. GLADING: Okay. And if I can just move
10 for one minute to the testimony before the Senate
11 Judiciary Committee during the racial profiling hearing
12 on that topic.

13 Senator Mattheusin asked you about the --

14 MR. CHERTOFF: Why don't we give the witness
15 a --

16 MS. GLADING: -- asked you about your request
17 of documents of the State Police --

18 MR. CHERTOFF: Why don't we give the witness
19 a copy of the testimony.

20 MS. GLADING: Sure.

21 THE WITNESS: What page are we talking about?

22 MS. GLADING: All right. Let me actually ask
23 you first about -- it's on about Page 26. Probably
24 Page 26, yeah. I had excerpts unfortunately. Do you
25 see a reference --

1 THE WITNESS: What page are we on?

2 MS. GLADING: Let me see the testimony.
3 Thanks.

4 Sorry. Just bear with me a moment.

5 (Pause)

6 Page 25, the bottom of Page 25. No, I have a
7 -- no, I'm sorry, I have a version that's paginated
8 differently. That's the problem.

9 MR. CHERTOFF: Maybe while you're looking,
10 let me jump in with something.

11 MS. GLADING: Sure.

12 MR. CHERTOFF: First of all, was there a
13 discussion in anticipation of the hearings that if
14 there were questions about documents, that the Attorney
15 General would defer to you about whether documents were
16 received?

17 THE WITNESS: No, there was no discussion
18 about how questions were going to be handled and what I
19 was going to answer and he was going to answer at all.

20 MR. CHERTOFF: Did you listen to the Attorney
21 General's testimony in the hearing?

22 THE WITNESS: Yes, I was there.

23 MR. CHERTOFF: Okay. On Page 26, Senator
24 Lynch had asked the following question: "Let me ask
25 the question again. At the time that you filed this

1 brief in Soto in March of 1997, did you consider the
2 need for a survey to determine whether or not there
3 was, in fact, defacto profiling going on on the
4 Turnpike?

5 "ATTORNEY GENERAL VERNIERO: Based on the
6 briefings that I have received and the assurances that
7 I received, no, I did not consider a need to have
8 independent review done at that time."

9 "SENATOR LYNCH: And so there was no
10 statistical analysis ongoing under your watch until
11 sometime after the shootings in April of 1998, correct?"

12 "ATTORNEY GENERAL VERNIERO: If there was an
13 analysis going on at that point in time somewhere in
14 the Department of Law and Public Safety, I was not
15 aware of it in July of 1996, no."

16 Do you remember hearing that answer to that
17 question?

18 THE WITNESS: I do not remember hearing the
19 July of 1996 reference, that it was limited to July of
20 1996.

21 MR. CHERTOFF: Was there a discussion in
22 advance of the hearing that Attorney General Verniero
23 would limit his answers to certain questions about his
24 awareness to pre-November 1996?

25 THE WITNESS: No. I mean I had discussions

1 that I outlined as to what -- and refreshing his
2 recollection of what I had been told, and at that point
3 in time there was no further, you know, advice to him
4 as to what he should say. I did the best efforts I
5 could, based upon what I had heard, to refresh his
6 recollection on certain issues.

7 MR. CHERTOFF: You don't remember catching
8 that answer --

9 THE WITNESS: I do not.

10 MR. CHERTOFF: -- in the hearing and kind of
11 scratching your head a little?

12 THE WITNESS: I do not.

13 MR. CHERTOFF: You'd agree with me that based
14 on what you learned from Rover and Fahy that at least
15 in 1997 there was an awareness in the Office of the
16 Attorney General that there was a statistical analysis
17 going on somewhere in the Department of Law and Public
18 Safety?

19 THE WITNESS: What was that question, I'm
20 sorry? I was reading this.

21 MR. CHERTOFF: You were certainly aware as of
22 the time of this hearing, based on your conversations
23 with Fahy and Rover and your analysis of the records,
24 that at least as of 1997 there had been a statistical
25 analysis going on concerning the issue of the Turnpike.

1 THE WITNESS: Right. But -- yes.

2 MR. CHERTOFF: And let me finish also with
3 this.

4 As of the time of these hearings, you had
5 already been into Rover's file and you had seen that he
6 had a lot of documents that the State Police had
7 prepared, right?

8 THE WITNESS: Um-hmm. Yes.

9 MR. CHERTOFF: Did you report that to
10 Attorney General Verniero?

11 THE WITNESS: I did report to him that some
12 of the Gilbert -- I found that some of the Gilbert
13 memos in -- I'm sorry, some of the Gilbert memos, but
14 not the narrative, in Rover's files.

15 MR. CHERTOFF: And did you tell him for that
16 reason you were going to have to change Page 23 of the
17 interim report to make it clear that, in fact, some of
18 the records had come over way back?

19 THE WITNESS: Yes.

20 MR. CHERTOFF: What was the Attorney
21 General's reaction to that, that the stuff was in
22 Rover's files? Was he upset?

23 THE WITNESS: He was upset that -- he was --
24 about it being in Rover's file?

25 MR. CHERTOFF: Yeah.

1 THE WITNESS: He said at that time that did
2 I, you know, did those -- did those documents that you
3 received reflect that they went to me?

4 MR. CHERTOFF: Okay, wait a second.

5 So his reaction when you said I've got these
6 documents in Rover's files was to ask you whether there
7 was an indication that he had actually personally
8 received them?

9 THE WITNESS: Right.

10 MR. CHERTOFF: And you said what?

11 THE WITNESS: No.

12 MR. CHERTOFF: And then what did he say?

13 THE WITNESS: And then he said that -- that
14 they're documents that were in the files of someone in
15 the Office of the Attorney General at the time. And I
16 told him and that's why I was changing the interim
17 report and that was pretty much the end of the
18 conversation at that time.

19 MR. CHERTOFF: Did he express any
20 consternation or was he troubled or angered about the
21 fact that the person who he had specifically personally
22 assigned to work on this important matter with him,
23 hadn't shown him documents that were significant?

24 THE WITNESS: I don't recall that being
25 discussed.

1 MR. CHERTOFF: In this conversation or in any
2 other conversations did you say to him, by the way,
3 General, I should tell you that Rover has told me that
4 basically he didn't do anything unless he cleared it
5 with you and Alex Waugh?

6 THE WITNESS: I did not say that to him.

7 MR. CHERTOFF: At some point in this period
8 of time between February and April 26th when this whole
9 issue about the arrival of the documents comes onto the
10 front burner, did you ever have a conversation with
11 Alexander Waugh about it?

12 THE WITNESS: I did not.

13 MR. CHERTOFF: Did you consider having a
14 conversation with him about it?

15 THE WITNESS: I did not.

16 MR. CHERTOFF: Did you consider that he might
17 have some knowledge about when documents were
18 transmitted?

19 THE WITNESS: To the Department of Justice?

20 MR. CHERTOFF: To the office of the Attorney
21 General.

22 THE WITNESS: I think the record, the
23 important record that I assigned someone to look at
24 what went to the Department of Justice and what do we
25 have and what do we have to produce.

1 MR. CHERTOFF: I'm sorry, I don't mean to the
2 Department of Justice. I mean when you were trying to
3 figure out whether the State Police had turned over
4 documents to the office of the Attorney General, and
5 particularly documents in that notebook, G-33, you said
6 you asked a number of people like Debra Stone and some
7 other people about whether they had seen it before,
8 right?

9 THE WITNESS: Correct. I did not talk to
10 Alex Waugh.

11 MR. CHERTOFF: Is there a reason you made a
12 decision not to do that?

13 THE WITNESS: I don't know if I made a
14 conscious decision in that regard. He was a Judge on
15 the Superior Court at the time. I did not contact him.

16 MR. CHERTOFF: After your had your
17 conversation with Rover, where Rover said look, with
18 respect to withholding the documents, everything I did
19 I ran by Alex Waugh, did you then consider calling up
20 Alex Waugh and asking him what was in his mind or what
21 -- how he made the judgments on these things?

22 THE WITNESS: As I said, at that point in
23 time I was trying to get a focus on what documents
24 there were and I was -- I was prioritizing my attention
25 at that time, which I had many assignments, and I did

1 not -- I did not contact Mr. Waugh.

2 MR. CHERTOFF: Now, let me ask you this
3 question. At Page 45 of the hearing Senator Mattheusin
4 asks you the following question. He directs your
5 attention to Page 23.

6 THE WITNESS: Right.

7 MR. CHERTOFF: And in the middle of the
8 question he says, "Page 23, indicating that you had
9 started compiling information in mid-March as a Review
10 Team, but noticed that that information that you had
11 been receiving, and I quote, 'some of which had not
12 been previously provided to the Office of the Attorney
13 General of the Division of Criminal Justice.' Who did
14 not provide the information to either the Attorney
15 General's Office or the Division of Criminal Justice?"

16 And you answered: "It had not been received
17 -- had not previously been received by the Attorney
18 General's Office. I made a specific request when I
19 designed what we were going to look at in terms of this
20 study and identify the data that we needed. And we
21 received data with respect to the stops and the
22 searches at Cranbury from 1997 through 1998 that had
23 been collected on a periodic basis by the State Police
24 which we had never received before."

25 Now, when you answered the question, in your

1 mind again, did you make a decision not to mention the
2 1997 Gilbert memo regarding the Maryland State Police
3 consent-to-search data as something that you were
4 continuing to say had not been received?

5 THE WITNESS: Well, I thought -- I thought at
6 that point in time I was focusing on the '97 and '98,
7 because at that point in time I had known that, and
8 that's why I changed Page 23 of the report, I had known
9 that the underlying data on the Gilbert report was
10 over. So when I answered that question, I was more
11 specific as to the compilations for '97 and '98.

12 MR. CHERTOFF: Because at that point in your
13 mind you actually considered that the Gilbert data
14 relating to '96 really had been in some form or fashion
15 conveyed over --

16 THE WITNESS: Yeah, I thought it would have
17 been a very technical distinction for me to just focus
18 on the narrative memo.

19 MR. CHERTOFF: And then you're asked again on
20 Page 46 about that. There's some further questions
21 about when was the information requested and Senator
22 Mattheusin says, "That says the Review Team, but
23 previous to that, when was it requested? It did not
24 come out of the Superintendent's Office."

25 Now, you answered, "We are looking at that.

1 I was not First Assistant at the time. We are
2 examining that issue to see what requests were made and
3 what was not produced, because it was of great concern
4 to us as well as why it is referenced on Page 23 in the
5 report."

6 And then you go on to say, "We are examining
7 putting some of those portions as it relates, depending
8 upon what the investigation reveals."

9 Now, after April 26th, what further
10 investigation did you do at this point?

11 THE WITNESS: I took no further steps.

12 MR. CHERTOFF: Is there a reason that when
13 you testified here did you anticipate doing further
14 investigation?

15 THE WITNESS: I did anticipate doing further
16 investigation. We were focusing on the rest of the
17 State Police review. I became Acting Attorney General.
18 And I did not see the need in particular when I got the
19 sense that there was some concern that this was a witch
20 hunt back against the State Police. That I didn't
21 think that it was necessary to engage in that. It also
22 tied back into the, you know, the kind of the clarion
23 call that there was an indictment coming on
24 Superintendent Williams. And at that point in time I
25 didn't think it was a -- there was any need for me to

1 take any further investigative steps. But it hadn't
2 been closed off at that point in time.

3 MR. CHERTOFF: Were you concerned that one of
4 the problems with investigating it further is that the
5 question of what people in the Attorney General's
6 Office knew and when they knew it was becoming murkier
7 and murkier and it might be very difficult to sort out?

8 THE WITNESS: I thought, and to what I
9 related before was, knowing exactly who knew what, when
10 on those documents would be difficult to sort out. I
11 also concluded that one of the reasons, frankly, that
12 there may have been all this confusion in the evolution
13 between March 15th and April 23rd was the fact that
14 when I started the State Police Review Team, I did it
15 entirely from scratch and I did not go back and sit
16 down with each person that had contact on this issue
17 before. So therefore, I had some mistaken impressions
18 at time with respect to who had received things and
19 not, and I didn't see that there would be a fruitful
20 investigation as it relates to, for example, going back
21 against Carl Williams on that issue. I just didn't see
22 that to be in the public interest at that time.

23 MS. GLADING: Did I misunderstand your
24 testimony earlier to be that by the time of the interim
25 report you had concluded your investigation into why

1 the State Police had not produced documents sooner?

2 THE WITNESS: Well, I had -- I had taken what
3 turned out to be the last step in that investigation.
4 I took no other steps. I didn't conclude the
5 investigation. I didn't say it's done. It was one of
6 the open matters when the transition was occurring that
7 the Attorney General is having hearings. I'm becoming
8 Acting Attorney General. And I made a determination
9 that it wasn't something that I was going to -- going
10 to continue.

11 MS. GLADING: Did you indicate to Attorney
12 General Verniero if your investigation was merely on a
13 hiatus and you were going to continue it or if it had
14 concluded?

15 THE WITNESS: No, I think he had the
16 impression at the time that it might be something to be
17 continued, but I didn't think that it was something, as
18 I was moving in to try to complete the rest of the
19 interim report, Director of Division of Criminal
20 Justice and Acting Attorney General at that time, that
21 the reasons I set forth that there would be a reason to
22 be doing an investigation on the now-retired
23 Superintendent of the State Police. I just didn't see
24 that it was going to be fruitful.

25 MS. GLADING: And just on that same topic.

1 Did you discuss, when Colonel Dunlop called you and
2 indicated that he had heard these rumors and told you
3 that there was -- I think your testimony was that he
4 had told you about an earlier meeting at which numbers
5 were discussed, the Maryland numbers were discussed,
6 did you call Colonel Dunlop back after that phone call
7 on that topic?

8 THE WITNESS: I did have a conversation with
9 Colonel Dunlop. I don't recall using the word
10 "indictment" as it relates to Colonel Williams with
11 Lieutenant Colonel Dunlop. And I was entirely truthful
12 to Carl Williams when I spoke to him on the phone and
13 told him at no time was he under an obstruction of
14 justice investigation.

15 MS. GLADING: So the record is clear, what
16 words did you use with Colonel Dunlop when you spoke
17 with him the first time on this subject?

18 THE WITNESS: Well, I had conversations with
19 him. I was very concerned on how the Superintendent
20 could potentially be sitting on these documents. And
21 that was the context in which I had done it. But I had
22 also talked to him about it and he could have -- I had
23 warned the concept of obstruction of justice, if I
24 didn't going forward get complete records from the
25 State Police and if we weren't in a position to provide

1 that to the Department of Justice.

2 MS. GLADING: So it's --

3 SENATOR LYNCH: Did Dunlop tell you that they
4 had already been forthcoming with most of this
5 information?

6 THE WITNESS: Well, that's -- what he had --

7 SENATOR LYNCH: In that conversation.

8 THE WITNESS: Well, yeah. He told me that
9 there was a meeting -- there was a meeting before. I
10 knew -- I mean he had said he hadn't seen some of this
11 information himself that was over there. He then -- he
12 didn't talk about -- he talked about there was a
13 meeting at which this was all discussed.

14 MS. GLADING: And then after the -- did you
15 then call Colonel Dunlop back and tell him -- on this
16 subject and talk with him about it again?

17 THE WITNESS: When he talked to me about the
18 meeting, I called him back. I think I testified about
19 this a little bit before, in which I said I went in and
20 I spoke to the Attorney General. And then I called
21 back Colonel Dunlop and said, you know, that the
22 Attorney General didn't recall it that way and that
23 we're not -- as it relates to going after Carl Williams
24 again on a non-production, that it wasn't somewhere
25 that I was going to be going.

1 MS. GLADING: Okay. And in the first
2 conversation with him on this you said you probably did
3 use the words "obstruction of justice," but you were
4 talking about a prospective threat?

5 THE WITNESS: I was talking about the fact
6 that I had just received these and I was going down to
7 meet with representatives of the Justice Department and
8 begin a process of identifying what documents had to be
9 produced and that if I was making representations down
10 there at the Justice Department, I wanted them to be
11 accurate. All three of us had an interest of making
12 sure they were accurate because we could be subject to
13 problems if they weren't.

14 MS. GLADING: I thought you testified just
15 before that you had said if information wasn't
16 forthcoming in the future, there would be obstruction
17 of justice charges.

18 THE WITNESS: Well, I said the difference
19 would be -- as I had gotten the indication since there
20 had been a call for Janet Reno to get more involved in
21 this. There had been an announcement by Eric Holder
22 that the investigation was going to be expedited and
23 from my conversations with the Justice Department, it
24 was absolutely abundantly clear to me that they were --
25 they were putting their investigation on a fast-

1 forward. So that we might be at a point in time as
2 opposed to where we were with this informal -- this
3 form request that we received. That we could be at a
4 point in time where we were getting a much more formal
5 inquiry.

6 SENATOR LYNCH: When specifically with
7 Holder? When are you talking about?

8 THE WITNESS: My conversation with Dunlop is
9 -- this would have been on March 11th as it relates to
10 prospectively and what we needed to do with respect to
11 documents. My conversation with him in respect to the
12 General's knowledge would have been sometime after
13 March 15th or 16th, I don't recall specifically whether
14 it was in one of my weekly meetings with Fedorko and
15 Dunlop or by phone.

16 MS. GLADING: And the conversations, your
17 understanding that Justice was cranking up the heat on
18 its investigation and was going to be moving more
19 aggressively. When did you first gain that knowledge?

20 THE WITNESS: I gained that knowledge when
21 Eric Holder stood up on the steps of the Justice
22 Department with various representatives of the State of
23 New Jersey, after everybody was calling that the
24 Attorney General's Office couldn't do this
25 investigation, calling for an expedited review.

1 Calling for them to take over the 7A shooting. And
2 calling for them to come to a result of their
3 investigation.

4 SENATOR LYNCH: When?

5 MS. GLADING: When was that?

6 THE WITNESS: I think the public record will
7 reflect that that's sometime March 8th, March 9th. I'm
8 not certain. I believe that that's about when that
9 announcement was made.

10 MS. GLADING: And you had no conversations
11 with anyone in the weeks immediately prior to that
12 about the Department of Justice investigation being
13 heightened or being turned up?

14 THE WITNESS: Well, I had had -- I had -- in
15 addition to that announcement, I had a direct
16 conversation with Steve Rosenbaum of the Department of
17 Justice sometime at the end of February, introducing
18 myself. That I was going to be the lead person on
19 dealing with the Justice Department inquiry. And he
20 advised me at that point in time that they were going
21 to be expediting the conclusion of their review.

22 SENATOR LYNCH: Let me take you back because
23 I've got to get out of here.

24 Let me take you back to the beginning of your
25 quest, as it were, which I assume is to February the

1 10th when the Attorney General commissions you and
2 says, "I want you to look at this racial profiling
3 issue and making no assumptions, take it totally from
4 scratch. Take it wherever it needs to go."

5 From your perspective, that's when your
6 activity began, correct?

7 THE WITNESS: Correct. Well, the activity
8 with respect to the State Police --

9 SENATOR LYNCH: Right. And at that time some
10 of us assumed that Peter Verniero already knew that he
11 was about to be nominated to the Supreme Court and
12 indeed two and a half weeks later he was.

13 In the middle of March you retrieve this blue
14 book of information and you're also faced with this
15 prospect of the Justice Department breathing down your
16 neck, as it were, and were leading down the road to the
17 Verniero hearings and nomination and the racial
18 profiling hearings. You said before that after the
19 interim report and your testimony at the racial
20 profiling hearings, that you didn't see the need to
21 continue the review, certain reviews, because they
22 might not be able to go anywhere and they might create
23 more disruption than good.

24 THE WITNESS: Well, I thought -- I didn't see
25 the need -- I didn't see the potential success because

1 my evaluation of the confusion with respect to
2 production issues. But what I was addressing in
3 particular was any notion, and frankly a notion that
4 was reported last week, that I was at some point in
5 time focused on indicting Colonel Williams and I wanted
6 to make sure the record was absolutely clear that I
7 never was focused on indicting Colonel Williams.

8 SENATOR LYNCH: And during this same time
9 period, the Troop D audit is going down the road.

10 THE WITNESS: The Troop D audit is being --
11 continued to be worked on.

12 SENATOR LYNCH: And you had a report in the
13 early part of -- some kind of a --

14 THE WITNESS: February 10th.

15 SENATOR LYNCH: -- minimal report in
16 February.

17 THE WITNESS: Well, actually I had the
18 synopsis -- what is referred to as Z-3, which was a
19 substantive description -- no, not Z-3. The document,
20 the synopsis of the audit that included the results of
21 that audit. And I knew that they were going to
22 continuing with aspects of it.

23 SENATOR LYNCH: Right. All right. And were
24 you reviewing that with Colonel Dunlop during that time
25 period? Were you asking for updates as to what was

1 going on?

2 THE WITNESS: I was -- I was asking him --
3 that would be part of -- as I said, I set up the weekly
4 meetings and some of those issues may have been
5 discussed at those times. And at that point, after
6 February 10th, there were things that they had to
7 complete before they were ready to make the referrals
8 that they needed to make.

9 SENATOR LYNCH: In compiling the information
10 for the interim report, was Sachetti called in by you
11 or others to provide his information in the context of
12 the interim report?

13 THE WITNESS: Well, I think -- I think as I
14 had said before, on the day that the interim report was
15 announced, we had had the previously-scheduled meeting
16 in which he presented that data to me, so I had the
17 data.

18 SENATOR LYNCH: Wherever he was at at that
19 point in time.

20 THE WITNESS: Wherever he was at as of
21 February 10th, 1999.

22 SENATOR LYNCH: Well, how about when you're
23 getting down to the time that you have the -- you're
24 about to publish the interim report? What did you with
25 Sachetti and the Troop D audit between February and

1 then in terms --

2 THE WITNESS: I was at that point --

3 SENATOR LYNCH: -- of gleaning information?

4 THE WITNESS: At that point waiting for
5 additional -- additional information and the completion
6 of that work. Part of what was going on was the
7 evaluation of the evidence. So I was waiting back for
8 a report. I did not receive any additional statistical
9 or other information from the Troop D audit prior to
10 the issuance of the interim report.

11 SENATOR LYNCH: Did you think it was
12 relevant?

13 THE WITNESS: I thought if they had provided
14 me with additional data that was able to be included,
15 it could have --

16 SENATOR LYNCH: Did you ask Dunlop if they
17 had any additional data?

18 THE WITNESS: What I said -- what I said to
19 Lieutenant Colonel Dunlop was, and he understood
20 because there was a conversation I had with him and
21 also Lieutenant Colonel Fedorko, as to the direction we
22 were going. Advising him that the recommendation was
23 that we were going to be withdrawing the Soto case and
24 we were considering that. That if they had any data
25 that they wanted to bring to my attention, to bring it

1 to my attention as soon as possible. And so I was
2 expecting them when they were ready that they would
3 bring that to me, because the State Police felt very
4 strongly on this issue.

5 SENATOR LYNCH: And going back to February
6 10th, you wanted to get all the information you could
7 that was relevant to this data. Have you ever read the
8 final analysis and report from the Troop D audit team?

9 THE WITNESS: That would have been provided
10 to, and I don't think it was completed, the work on
11 that was completed --

12 SENATOR LYNCH: I asked you a question. Have
13 you ever read the final report from the Troop D audit
14 team --

15 THE WITNESS: I have as part of the review of
16 documents. That would have --

17 SENATOR LYNCH: When?

18 THE WITNESS: Recently, within the creation
19 of the archive. But in terms of --

20 SENATOR LYNCH: When was that filed?

21 THE WITNESS: When was what filed?

22 SENATOR LYNCH: When was that final report
23 filed by the audit team for Troop D?

24 THE WITNESS: I never -- I did not myself
25 directly receive that because that would have been a

1 completion by Internal Affairs and then a referral of
2 potential cases with respect to further investigation.

3 SENATOR LYNCH: I thought your mission was --

4 THE WITNESS: I'm a little -- I'm a --

5 SENATOR LYNCH: -- to take complete charge of
6 this mission and take it wherever it goes?

7 THE WITNESS: I'm sorry, Senator, I'm
8 confused by your question on Troop D. Troop D audit
9 was something that was being completed by the State
10 Police.

11 SENATOR LYNCH: Right.

12 THE WITNESS: I received updates periodically
13 by Lieutenant Colonel Fedorko as to the status of that.
14 At some point in time, either in May or June, he
15 advised me that they weren't receiving additional or
16 results on the investigation and that his
17 recommendation was that he was receiving from his
18 people, that that audit, they were to complete what
19 they had done already and then they were going to refer
20 that in the Internal Affairs evaluation for further
21 work.

22 SENATOR LYNCH: Did you read Lieutenant
23 Sachetti's deposition that was taken in these
24 proceedings?

25 THE WITNESS: I don't -- no, I did not.

1 SENATOR LYNCH: Were you briefed on it?

2 THE WITNESS: Perhaps generally.

3 SENATOR LYNCH: Perhaps generally. And who
4 briefed you on it?

5 THE WITNESS: I would have had had meetings
6 with counsel beforehand.

7 SENATOR LYNCH: So you were aware that
8 Lieutenant Sachetti says that sometime in May of 1999
9 that his audit team was shut down temporarily.

10 THE WITNESS: And that was -- if that
11 occurred, which I understand that it did, it was based
12 upon Lieutenant Colonel Fedorko, then Superintendent of
13 the State Police, calling me with his recommendation
14 that the use of manpower and resources on that point in
15 time, they weren't finding additional discrepancies and
16 it was his recommendation to close it down at that
17 point.

18 SENATOR LYNCH: But it wasn't closed down as
19 per Lieutenant Sachetti for about a month, they were
20 put on hold for a month, until the hearings were
21 concluded, all of the hearings, including the
22 confirmation hearing, were finalized and that Peter
23 Verniero was sworn in as a Justice of the Supreme
24 Court.

25 THE WITNESS: I was -- I can tell you I was

1 advised that Sachetti testified that State Police
2 officers were sitting for a period of time without
3 anything to do, which is the first time I have ever
4 heard that. And it was my understanding that they were
5 -- one of the reasons they were sitting there was
6 because they weren't getting responses from their
7 letters, and if they weren't getting responses from
8 their letters, I would have had an expectation that
9 they would go out and visit the people and try to find
10 out the information. That's the first I've ever heard
11 of that and --

12 SENATOR LYNCH: But, Mr. Zoubek, you had
13 already been made aware of that there was some kind of,
14 as you put it, some kind of reporting issue between the
15 State Police and the Attorney General's Office, at
16 least some indication that there was reporting issues,
17 when you were given this charge and responsibility on
18 February 10th, 1999. Armed with that, why weren't you
19 looking for the actual report from Lieutenant Sachetti
20 and the audit team?

21 THE WITNESS: Because what I had done was I
22 had set up weekly meetings with the Superintendent and
23 the lead Lieutenant Colonel each week to receive
24 updates as to what was going on and did have -- did
25 have a follow-up and a recommendation, and at the same

1 time was involved in the process of --

2 SENATOR LYNCH: None of which is in writing.

3 THE WITNESS: None of which is in writing?

4 SENATOR LYNCH: Those follow-ups and
5 recommendations, they're not in writing.

6 THE WITNESS: My meetings with Fedorko and
7 Dunlop --

8 SENATOR LYNCH: And your problem before with
9 the State Police was you weren't getting things in
10 writing, as least you thought you weren't getting
11 things in writing. That that was part of the problem
12 that, as you saw it, existed between the Attorney
13 General's Office and the State Police on these profile
14 issues.

15 THE WITNESS: And what I received on February
16 10th was an extensive in-writing document which advised
17 me as to the status of the Troop D audit. I continued
18 my --

19 SENATOR LYNCH: But it in no way expressed
20 itself as a final report.

21 THE WITNESS: No. And I would have an
22 expectation that the final report would be concluded.
23 So I had met in December. I had met in February. And
24 I had discussions with Lieutenant Colonel Fedorko as to
25 what was happening with respect to that. He came back

1 with me and he told me that his people were
2 recommending that they move on from what they are
3 doing. I accepted that recommendation and then the
4 final Troop D results were ultimately referred over to
5 the office that we created as a result of the review
6 process --

7 SENATOR LYNCH: Whose office?

8 THE WITNESS: The Office of State Police
9 Affairs. So that those -- so the results of that --

10 SENATOR LYNCH: And who was in charge of
11 that?

12 THE WITNESS: I was temporarily in charge of
13 that in the summer of July of 1999 before Martin Cronin
14 came on and before we got a new Superintendent, but
15 all --

16 SENATOR LYNCH: When did Cronin come on?

17 THE WITNESS: Cronin came on in September of
18 1999.

19 SENATOR LYNCH: So you referred it to
20 yourself for the next several months and during the
21 time that you referred it to yourself, did you ask for
22 a report?

23 THE WITNESS: I got a report from Lieutenant
24 Colonel Fedorko who said --

25 SENATOR LYNCH: In writing?

1 THE WITNESS: Over the phone, to the
2 completion, that they weren't completed. That they
3 were going to close it down. And my assumption is, and
4 that's what's happened on the Internal Affairs side of
5 the house, because that's what we're talking about at
6 this point in time, that Internal Affairs reports they
7 are required under their SOP's to complete their
8 results, put a final report together. They then make
9 an evaluation as to whether or not they get referred
10 criminally. That is the paper process that has worked
11 in that, and it was my understanding that that's what
12 would be happening in this instance.

13 MS. GLADING: Are you aware --

14 SENATOR LYNCH: As the head of the Division
15 of Criminal Justice, were you during this same time
16 period because you continued in that role until June of
17 2000?

18 THE WITNESS: June of 2000, yes.

19 SENATOR LYNCH: Were you interested in any of
20 the reports that were coming back from the audit team,
21 that there may have been intentional doctoring of
22 reports as it relates to race and/or consent to search?

23 THE WITNESS: Absolutely. And that's why one
24 of the major focuses of the --

25 SENATOR LYNCH: So you had another role --

1 THE WITNESS: -- final -- of --

2 SENATOR LYNCH: -- here. So you had another
3 role here, didn't you?

4 THE WITNESS: As set forth in the final
5 report of the State Police Review Team, which we were
6 working on in April and May, what we did was recommend
7 an entire reformation of the Internal Affairs process
8 in the New Jersey State Police and my expectation was
9 that those new processes and procedures would receive
10 the final Troop D audit and would act on it
11 accordingly.

12 SENATOR LYNCH: But in at least two arenas
13 you should be someone that's being reported to on the
14 results from the Troop D report through Lieutenant
15 Sachetti and the chain-of-command, correct?

16 THE WITNESS: Yes. And what I would
17 receive --

18 SENATOR LYNCH: And have you now learned that
19 they never filed, Sachetti never filed what purports to
20 be a final report even though he was shut down until
21 the fall of 2000?

22 THE WITNESS: And it is my -- yes. It is my
23 understanding --

24 SENATOR LYNCH: When did you learn that?

25 THE WITNESS: It was my understanding that

1 the Troop D audit was combined with some other audits
2 that were going on under the Traffic Bureau, and that
3 those were completed. And that was part of the
4 assignment that I oriented a new Superintendent to and
5 the Director of State Police Affairs was to take
6 absolute control over the Troop D audit and make sure
7 it's handled appropriately.

8 SENATOR LYNCH: Mr. Zoubek, let's stick to
9 the Troop D audit. They were shut down in May of 1999.

10 MS. GLADING: June actually.

11 THE WITNESS: I disagree.

12 SENATOR LYNCH: Okay. They were shut down in
13 June of '99 and disbanded, correct?

14 THE WITNESS: At the recommendation of
15 Lieutenant Colonel Fedorko.

16 SENATOR LYNCH: Forgetting about whose
17 recommendation. It's now clear that they were
18 disbanded in June of 2000 and that they had not
19 finished all of what they had set out to do, correct?

20 THE WITNESS: I disagree with that. The
21 Troop D audit was set up to make an evaluation of
22 discrepancies on the highway. It was reported to me
23 that they had reached a point in time in which they
24 weren't discovering any further --

25 SENATOR LYNCH: Where is their evaluation?

1 THE WITNESS: What's that?

2 SENATOR LYNCH: Where is their evaluation?
3 They were set up to make an evaluation. You show me
4 the evaluation.

5 THE WITNESS: The evaluation I can provide to
6 the Committee if there's anything that hasn't been
7 provided in the -- in the documents. There was a
8 follow-up in --

9 SENATOR LYNCH: I don't see a final report,
10 do you see a final report --

11 THE WITNESS: -- and a follow-up
12 investigation.

13 SENATOR LYNCH: -- in these records from the
14 Troop D audit?

15 THE WITNESS: It was my understanding there
16 are some documents with respect to the Troop D audit
17 that related to a completion after -- I will inquire --
18 if counsel reminds me as to the time frame of that, I
19 will inquire, Senator, because I know we may be seeing
20 each other again. I will provide it to the Committee.
21 It's my understanding that there was follow-up on the
22 Troop D audit and there were other reports on the Troop
23 D audit. I did not receive those during the period of
24 time of April and May of 1999.

25 SENATOR LYNCH: Did you review the final

1 report?

2 THE WITNESS: At the time the final report
3 came in, Martin Cronin was put in place and --

4 SENATOR LYNCH: I asked you a question. Did
5 you review the final report?

6 THE WITNESS: I have -- I have seen reports
7 with respect to the ultimate outcome of the Troop D
8 audit.

9 SENATOR LYNCH: Mr. Zoubek, did you review
10 the final report?

11 THE WITNESS: I don't know what you're
12 referring to in terms of the final report.

13 SENATOR LYNCH: The last report that Sachetti
14 filed, which was in the fall of 2000.

15 THE WITNESS: I have seen parts of that
16 document.

17 SENATOR LYNCH: And is there any indication
18 in that final report that there may have been criminal
19 violations committed by others who were involved in the
20 Troop D audit, namely with misstating race and also
21 misstating consent to search?

22 THE WITNESS: It's my understanding that some
23 files were referred to the Division of Criminal Justice
24 by -- sometime in the summer of 1999 for review and
25 evaluation as to whether or not there would be a

1 criminal prosecution. So that there was --

2 SENATOR LYNCH: When was this done? When was
3 this done?

4 THE WITNESS: It would have been sometime in
5 the summer of 1999.

6 SENATOR LYNCH: I'm telling you that this
7 report wasn't filed until the fall of 2000.

8 THE WITNESS: And I'm telling you that there
9 were referrals, because what happens in the course is
10 that there were referrals of individual cases for
11 review and that's part of the process. There's just
12 not some large final report document that occurs and
13 that's the only thing that comes out of these cases.
14 There are referrals.

15 SENATOR LYNCH: Well, I suggest that you read
16 Lieutenant Sachetti's testimony for the benefit of the
17 people of the State of New Jersey and for the benefit
18 of the State Police. Because what he indicates is that
19 the reason that he forced the final report to be
20 submitted, or the final report, at least what could be
21 considered a final report since he wasn't able to
22 complete his investigation, that he suggested that it
23 was inherent on fairness in certain members of the
24 State Police getting reprimanded, having blue cards in
25 their folders, and other who were walking, in effect,

1 scot-free who did much more serious things, at least
2 based upon the audit because no one paid a heed or
3 wanted the final report.

4 THE WITNESS: And all I will say --

5 SENATOR LYNCH: And that he literally had to
6 force the final report into the Superintendent's Office
7 in the fall of 2000.

8 THE WITNESS: And the question that I would
9 ask is why if it was, as being told to me, that
10 Lieutenant Sachetti is saying one of the reasons they
11 weren't able to complete it is because all they were
12 doing was sending letters out to witnesses and they
13 didn't have work to do in the office. My question is
14 is why there wasn't a process of driving to people's
15 houses, knocking on doors and completing that --

16 SENATOR LYNCH: Did you ever talk to
17 Lieutenant Sachetti about what he did or didn't do?

18 THE WITNESS: I didn't have direct contact
19 with Lieutenant Sachetti.

20 SENATOR LYNCH: Who did?

21 THE WITNESS: I deal with the Superintendent
22 or the Lieutenant Colonels.

23 SENATOR LYNCH: And so from the time that
24 Lieutenant Colonel Fedorko left, or Acting
25 Superintendent Fedorko, which was -- I don't know, the

1 fall of 1999, from that point forward, did you ever ask
2 Superintendent Dunbar for the final report?

3 THE WITNESS: I have asked -- I have asked as
4 to the status and making sure that there's a follow-up.
5 We now have --

6 SENATOR LYNCH: When?

7 THE WITNESS: I oriented -- I oriented
8 Director Cronin as to this issue when he arrived. I
9 oriented Superintendent Dunbar. And the way the office
10 is set up right now, we created a new function in the
11 office, it's Director of State Police Affairs. And
12 that's something that Martin Cronin's office follows up
13 on. And so I get periodic reviews. I am not -- I am
14 not the person that gets reported to on this issue at
15 the time.

16 SENATOR LYNCH: From the time Cronin
17 succeeded you in that capacity in September of 1999,
18 from that date forward, are you saying you had no
19 direct interaction with the State Police on the
20 reporting of the Troop D audit team?

21 THE WITNESS: Other than discussing with
22 Martin Cronin, updates with respect to that, the
23 reports would go in to Mr. Cronin and would be handled
24 by Superintendent Dunbar.

25 SENATOR LYNCH: If there were any.

1 THE WITNESS: Yes.

2 SENATOR LYNCH: And you don't know whether
3 there were any. At least until the fall of 2000.

4 THE WITNESS: I don't -- I don't here know
5 what the chronology is after the spring of 1999. I'm
6 happy to look at that further for the Committee so they
7 have that information.

8 SENATOR LYNCH: But armed with all of the
9 skepticism about reporting from the State Police to the
10 Attorney General, you didn't feel it incumbent upon you
11 as the Director of the Division of Criminal Justice and
12 the First Assistant Attorney General to ensure that
13 this information flowed freely and that whatever was in
14 it was carried out, either on the criminal side or from
15 the State Police --

16 THE WITNESS: Absolutely, and that has -- and
17 that has certainly -- that has certainly been done to
18 the best of my understanding. And as it relates to May
19 and April of 1999, I was trying to commit what I
20 believe is an obligation to the State Police and the
21 citizens of New Jersey, to set up a system in the State
22 Police where we could ensure that Internal Affairs was
23 being handled appropriately and create an office within
24 the Office of the Attorney General that was more
25 completely following up on these issues. And I believe

1 they have.

2 SENATOR LYNCH: It sure looks like this all
3 started on February the 10th and ended on the date
4 somebody got sworn in. And from that date forward, not
5 a whole lot happened.

6 THE WITNESS: Well, I know, Senator, that
7 this meeting and these questions focus on the racial
8 profiling report, but I think what is missing from the
9 analysis is there was also a final report that was
10 issued on July 2nd that totally restructures the way
11 Internal Affairs operates. And so the statement that
12 is that nothing happened on this issue after May 4th or
13 May 10th, 1999 as it relates to the reforms in the New
14 Jersey State Police, those have been --

15 SENATOR LYNCH: But don't you see from our
16 standpoint in the Legislature and the public's
17 standpoint? Your office ballyhooed this Troop D audit,
18 that it was going to be comprehensive for four months.
19 It was going to address everything that occurred on the
20 Pike starting first with Cranbury or whatever, and then
21 ultimately going on through Newark. Was going to
22 address all of those issues, give us a full picture of
23 what occurred in that time frame. And it received a
24 whole lot of notoriety. And at the end of the day, we
25 don't get anything.

1 THE WITNESS: As I said, I would be happy to
2 provide --

3 SENATOR LYNCH: It all seems to go away.

4 THE WITNESS: It certainly hasn't gone away
5 for me, Senator, and certainly from February 10th, 1999
6 I have been involved in the process of State Police
7 reform and the following up on that and it hasn't gone
8 away from this chair.

9 MS. GLADING: Are you aware that Lieutenant
10 Sachetti testified that in the middle of May he was
11 waiting because he needed orders to move to phase three
12 of the audit for Moorestown and Newark, and that he was
13 told by Colonel Fedorko it's in the Attorney General's
14 hands, they'll make the decision, just tell these guys
15 to stand by? And that's the status he was left in
16 until June 10th.

17 THE WITNESS: And I believe that I did read
18 Colonel Fedorko's transcript. Colonel Fedorko says
19 that --

20 MS. GLADING: I didn't ask you about Colonel,
21 I asked you about Lieutenant Sachetti's testimony. Are
22 you aware that that was his testimony?

23 THE WITNESS: Until you read it to me,
24 portions of it, I did not read Sachetti's testimony
25 because I did not have direct contact with Sachetti on

1 discussing that subject.

2 MS. GLADING: And it was your testimony that
3 after February 10th when you got the status report on
4 the Troop D audit from Lieutenant Sachetti, that you
5 didn't have any other paper update on the status of the
6 Troop D audit, is that correct?

7 THE WITNESS: That's correct.

8 MS. GLADING: Up until the time of the
9 interim report.

10 THE WITNESS: That's correct.

11 MS. GLADING: And in the second paragraph of
12 the interim report, I'd like to read it to you. It
13 says, "During the course of the investigation of the
14 April 23rd, 1998 incident, an additional inquiry into
15 the practices of State troopers assigned to the
16 Moorestown and Cranbury barracks of the New Jersey
17 State Police was initiated. That investigation is
18 examining stops made by troopers assigned to those
19 barracks for the first four months of 1998 and is still
20 pending. However, some of the data collected as part
21 of that investigation are used in this interim report."

22 Do you recall -- well, you hadn't been
23 updated on the status of the interim report for more
24 than two months when this document was published, is
25 that correct?

1 THE WITNESS: At the time that that was
2 written, the Troop D audit was something that was
3 ongoing and those representations are absolutely
4 accurate.

5 MS. GLADING: Okay. But Sachetti --
6 Lieutenant Sachetti testified that in March his detail
7 was increased to more than -- to 30 guys and they were
8 working full steam on this.

9 THE WITNESS: Which reflects the investment
10 of resources to get the job done on this particular
11 case as opposed to any withdrawing from that
12 obligation.

13 MS. GLADING: Can you explain why you
14 wouldn't have wanted to get updated information that
15 was more than -- that was less than two and a half
16 months old when the interim report came out? I'm
17 assuming this paragraphs refers to the Troop D audit.

18 THE WITNESS: Yes.

19 MS. GLADING: Is that correct?

20 THE WITNESS: Yes.

21 MS. GLADING: Can you explain why you
22 wouldn't have wanted updated information when this
23 report came out reflecting what the Troop D audit might
24 have found up to this date?

25 THE WITNESS: Well, the Troop D audit, I was

1 aware of what the Troop D audit had found in terms of
2 discrepancies. That was generally part of the basis,
3 an underlying basis for the report. And if -- I
4 instructed the State Police that if there were
5 additional findings, they should bring it to our
6 attention.

7 MS. GLADING: Okay. And you indicate that
8 some of the data collected as part of that
9 investigation are used in this interim report. Where
10 is that data in the interim report, do you recall?

11 THE WITNESS: Well, the data is as it relates
12 to our concern with respect to numbers and some of the
13 discretion. I think it's in terms of not specific data
14 by numbers, but it's part of the information that they
15 used in the report.

16 MS. GLADING: If it's only the information
17 regarding concerns about falsification of data?

18 THE WITNESS: No. I mean it's in terms of
19 also the reaction to some of the percentages that we
20 saw in February of -- that we saw on February 10th of
21 1999.

22 MS. GLADING: Okay. But none of the actual
23 data --

24 THE WITNESS: It's not broken out in terms of
25 charts, no.

1 MS. GLADING: Excuse me. None of the actual
2 data from Lieutenant Sachetti's work is actually in the
3 report, is that correct?

4 MR. MILLER: You mean numbers.

5 MS. GLADING: Correct.

6 THE WITNESS: Numbers. No.

7 MS. GLADING: All of the numbers in the
8 interim report, aside from the arrest statistics, are
9 either out of Lieutenant Gilbert's blue notebook or out
10 of Lieutenant -- or out of boxes that were delivered to
11 Mike LoGalbo by George Rover regarding the DOJ
12 investigation, is that correct?

13 THE WITNESS: Correct. And in part, one of
14 the reasons for that is is that the audit contained a
15 four-month period which was covered already in the
16 aggregate by the '98 aggregate data.

17 MS. GLADING: Okay. And the representation
18 made in the second paragraph of the interim report that
19 it's still pending -- well, it really -- that was as
20 far as it ever got at that point, isn't it, within a
21 couple of weeks?

22 THE WITNESS: Well, at that point in time it
23 was pending. It was being done. It wasn't until
24 Lieutenant Colonel Fedorko called later on to make
25 those recommendations that there were any -- that there

1 were any other direction. And there...

2 MS. GLADING: Okay. Go ahead.

3 MR. CHERTOFF: Let me finish, finish up.

4 I want to just kind of close up some things
5 we talked about earlier. I want to go back to this May
6 16th memo to the file -- I'm sorry --

7 THE WITNESS: March 16th?

8 MR. CHERTOFF: -- March 16th memo to the
9 file, Z-16.

10 MS. GLADING: Mike, I'm sorry. Before you go
11 there, can I ask one more question on this topic?

12 Was there a -- were the statistics that
13 Lieutenant Sachetti gathered as part of his report,
14 were they used in the context of the Hogan and Kenna
15 records falsification indictment to guard against
16 charges of selective prosecution? And by that I mean
17 were they used to establish a benchmark of records
18 falsification Troop D-wide to compare against records
19 falsification by Hogan and Kenna?

20 THE WITNESS: I don't understand the
21 question.

22 MS. GLADING: Did the prosecutors involved in
23 the Hogan and Kenna case rely upon Lieutenant
24 Sachetti's data to -- as a point of comparison to reach
25 the conclusion that the records falsification by

1 Troopers Hogan and Kenna reached a criminal level
2 compared to other troopers?

3 MR. MILLER: Ms. Glading, I don't know the
4 answer to that question, but I don't think I would
5 allow him to answer it the way you phrased it, because
6 I think it would require him to disclose what the
7 prosecutors in the Hogan and Kenna case did as part of
8 their criminal case.

9 (Off the record)

10 MR. CHERTOFF: All right. Let me just go
11 back to March 16th when this memo was prepared to the
12 file from the Attorney General and you indicated you
13 were up there, actually worked on the draft with him
14 before it was finally initialed, is that correct?

15 THE WITNESS: I reviewed the draft, yes.

16 MR. CHERTOFF: Now, in connection with the
17 decision to write this memo, am I correct that as of
18 March 16th Peter Verniero had already been nominated
19 for the Supreme Court?

20 THE WITNESS: Correct.

21 MR. CHERTOFF: Was the decision to write this
22 memo discussed at any point in terms of the fact that
23 it would be necessary to have this in case this issue
24 arose in the confirmation hearings?

25 THE WITNESS: No, not in that context. It

1 was discussed that it would -- it would be appropriate
2 to write a memo, but it wasn't sent because of the
3 nomination hearings.

4 MR. CHERTOFF: What was the reason?

5 THE WITNESS: Because it was -- it was
6 important documents that were being provided. It was
7 the first time he was seeing it and the decision was it
8 would appropriate for him to send a memo to the file.

9 MR. CHERTOFF: Had he ever written a memo
10 like that before?

11 THE WITNESS: I don't know the answer to that
12 question.

13 MR. CHERTOFF: To your knowledge.

14 THE WITNESS: To my knowledge? Not that I'm
15 aware of.

16 MR. CHERTOFF: And again, between the time
17 that you showed him this binder, this blue binder,
18 which is G-33, until the time this memo was finalized,
19 to your knowledge did he ever say to you, let me look
20 at all the documents to make sure of what I've seen and
21 what I haven't seen?

22 THE WITNESS: No. He -- I reviewed the
23 documents that I discussed before with him and that was
24 the extent of it.

25 MR. CHERTOFF: He didn't look at the rest of

1 the binder?

2 THE WITNESS: I don't believe so.

3 MR. CHERTOFF: You didn't stop him from
4 looking at it, did you? You didn't pull it away from
5 him?

6 THE WITNESS: No.

7 MR. CHERTOFF: Had he asked you to leave it
8 with him, would you have refused to do so?

9 THE WITNESS: No.

10 MR. CHERTOFF: Also, with respect to this
11 interim report, there came a point in time that you
12 were instructed to actually produce the State Police
13 racial profiling section in advance of the completion
14 of the entire State Police review, which was scheduled
15 for four months from February 10th, correct?

16 THE WITNESS: Correct.

17 MR. CHERTOFF: Who told you to do that?

18 THE WITNESS: It was in discussions I had
19 with the Attorney General as to decisions that had to
20 be made regarding the Soto case.

21 MR. CHERTOFF: And when did that occur?

22 THE WITNESS: That would have occurred after
23 -- sometime on the 16th or the 17th, I think, of March.

24 MR. CHERTOFF: After this --

25 THE WITNESS: I think on the 17th of March.

1 There's a document sometime that week that reflects
2 that there was a determination made to expedite the
3 report. I think it was during that week.

4 MR. CHERTOFF: The week of March 16th?

5 THE WITNESS: Yes.

6 MR. CHERTOFF: And is that the same week that
7 a decision was made to ask to delay the Soto argument?

8 THE WITNESS: No. What had happened is on
9 March 5th I filed a motion with the court and there was
10 a date of a brief scheduled on March 12th. There then
11 was the telephone call, conference call on that motion
12 on March 16th.

13 MR. CHERTOFF: Now, what was the motion you
14 filed on March 5th?

15 THE WITNESS: The motion I filed on March 5th
16 was a motion, because one of the, what I thought one of
17 the issues as it related to racial profiling in the
18 State Police review was if we're doing that report, I
19 thought it was relevant to the Soto position that we
20 had taken and that we should be evaluating our position
21 in that litigation.

22 MR. CHERTOFF: Why did you make that decision
23 as of March 5th that there ought to be an evaluation, a
24 re-evaluation and not earlier than March 5th?

25 THE WITNESS: Well, I -- I'm sorry, could you

1 repeat that question?

2 MR. CHERTOFF: Why did you make the decision
3 on or around March 5th to ask for this delay as opposed
4 to an earlier point in time?

5 THE WITNESS: Because the amicus brief of the
6 ACLU and other amicus was at the end of January. We
7 had a brief that was due on March 12th. And I received
8 -- I received the brief, which was a clear decision
9 point for me because it was the first filing that would
10 have been done under my direction as Director of the
11 Division of Criminal Justice, and it framed some of the
12 prior discussions we had as to concerns regarding the
13 Soto case. And my position was that we should be
14 examining withdrawing from the case.

15 MR. CHERTOFF: Did you discuss that with
16 Peter Verniero?

17 THE WITNESS: Yes, I did.

18 MR. CHERTOFF: When was that?

19 THE WITNESS: That would have been shortly
20 before the filing of this motion and after my review of
21 the opinion, Judge Francis' opinion, and the reading of
22 the briefs that I received.

23 MR. CHERTOFF: Sometimes in February would
24 that be?

25 THE WITNESS: I probably received the brief

1 sometime in February.

2 MR. CHERTOFF: Now, what was the Attorney
3 General's reaction to the suggestion that the Soto
4 appeal might be withdrawn?

5 THE WITNESS: He, particularly late in
6 February, right before this motion was filed, he was
7 willing to have the State's position reconsidered, but
8 he thought that in conjunction with the review that we
9 were doing, that it should be done as part of the
10 decision-making that's done during the State Police
11 review process.

12 MR. CHERTOFF: Well, let me ask you this. To
13 your knowledge, prior to your discussions with the
14 Attorney General in February of 1999, had he ever
15 expressed any willingness to consider changing the
16 State's position in Soto?

17 THE WITNESS: Not to me.

18 MR. CHERTOFF: To anybody else as far as you
19 know?

20 THE WITNESS: Not that I'm aware of.

21 MR. CHERTOFF: So you come up and you say to
22 him -- you sit down with the Attorney General and you
23 say what?

24 THE WITNESS: I told him that -- because I
25 had been receiving continuing advice from Debra Stone

1 and others about the position in the case and I told
2 them that we ought to be looking -- that I wasn't in a
3 position to have our Deputies filing this responsive
4 brief and appearing for oral argument during the
5 pendency of this review because I thought that although
6 there are different periods of time, 1988 and 1991 was
7 involved, in Soto we were dealing with a different
8 period of time. That we ought to be evaluating whether
9 it was in the State's best interest to have the issue
10 of racial profiling and the law that would be set on
11 racial profiling, set by a 1988 to 1991 fact pattern as
12 opposed to what we were going to be looking at doing in
13 terms of reforms of the New Jersey State Police.

14 MR. CHERTOFF: All right. Let me ask you
15 this question. So you basically went to him and you
16 said look, we write an appeal pending but since we're
17 going out to find underling facts, we ought to reserve
18 the right to change our position on appeal if the new
19 facts we find are bad. Is that basically what it boils
20 down to?

21 THE WITNESS: Yes. With a notion that based
22 upon my review of the Francis opinion, that I was
23 already starting to argue that I didn't think it was in
24 the public interest to have this issue resolved in 1999
25 on a fact pattern 11 years ago on an SOP, when even

1 Colonel Dintino's SOP didn't exist.

2 MR. CHERTOFF: And did the Attorney General
3 agree with that? What did he say? Did he say, yeah,
4 that makes a lot of sense to me?

5 THE WITNESS: He agreed with me that -- he
6 had -- we discussed because he had -- the advice that
7 he had received and the positions that we had taken
8 were with respect to some significant legal issues,
9 frankly, that we disagreed with on Judge Francis'
10 analysis. And the question was whether you can
11 maintain those legal questions as to whether there
12 should be individual hearings by way of example and go
13 forward with the case. And that was what was being
14 evaluated at that time and the decision was made to,
15 given the fact that this appeal had now been pending
16 almost three years, that to file the motion, to give us
17 an opportunity to complete this so that we would be
18 able to take an appropriate position.

19 MR. CHERTOFF: Did he agree with you that it
20 was appropriate to reconsider the position in Soto,
21 depending on what an audit review of fact-finding of
22 the actual facts showed?

23 THE WITNESS: I convinced him of that, yes.

24 MR. CHERTOFF: And you told him that that's
25 what you were going to be doing in the next couple of

1 months, right?

2 THE WITNESS: Well, I told him that that's
3 what I would be filing.

4 MR. CHERTOFF: Did you know that back in 1996
5 and early 1997 Deputy Attorney General Fahy and Deputy
6 Attorney General Susswein were engaged in a review of
7 the 1996 audit figures with the understanding that
8 depending on how those figures came out, it could
9 potentially affect the State's position in Soto?

10 THE WITNESS: I was not aware of that.

11 MR. CHERTOFF: Did the Attorney General ever
12 say to you, oh, you know, we went through this exercise
13 back in 1996 and 1997 to see if we should change our
14 position in Soto? Did he say that?

15 THE WITNESS: No.

16 MR. CHERTOFF: Did Mr. Fahy say to you, you
17 know, I was at a Committee meeting with the State
18 Police back in 1996 and we looked at the Moorestown
19 numbers with a specific intent to see whether those
20 numbers ought to cause us to reconsider our position in
21 Soto?

22 THE WITNESS: No, I didn't have that specific
23 discussion with him.

24 MS. GLADING: Did he ever indicate that they
25 had looked at the numbers for the individual troopers

1 who were involved in the consolidated Soto cases?

2 THE WITNESS: Did the Attorney General tell
3 me that?

4 MS. GLADING: Mr. Fahy.

5 THE WITNESS: Mr. Fahy. He may have at some
6 point. I learned that at some point in time. I don't
7 recall.

8 MR. CHERTOFF: Did you know that -- if you
9 look at your interim report and you look at the actual
10 numbers contained from Page 25 through 29, that at
11 least as to the numbers that relate to activities
12 before 1997, that those numbers were compiled by the
13 State Police as of 1997?

14 THE WITNESS: I subsequently learned that
15 there were some numbers that they had compiled in that
16 period of time, yeah.

17 MR. CHERTOFF: And those were the numbers
18 that appear in this report, right?

19 THE WITNESS: Yes and no.

20 MR. CHERTOFF: I mean as it relates to the
21 numbers prior to '97, aren't those numbers that had
22 been compiled as of 1997 by Sergeant Gilbert?

23 THE WITNESS: As it relates to consent to
24 searches.

25 MR. CHERTOFF: Yes, as to consent to

1 searches.

2 THE WITNESS: Yes.

3 MR. CHERTOFF: And what about as it relates
4 to --

5 THE WITNESS: If I can just -- the Soto case,
6 I mean we had an analysis which related to consent to
7 searches that impacted the interim -- the State
8 Police's review, but consent to searches were not an
9 issue in the Soto case.

10 MR. CHERTOFF: Well, let me ask you this
11 question. If you go back to the -- if you go back to
12 the period in 1996, did you know that there was a
13 review committee on which Deputy Attorney General Fahy
14 and Deputy Attorney General Susswein sat with the State
15 Police to deal with the issues that were presented in
16 Soto?

17 THE WITNESS: By the time I filed this
18 motion, yes, I was aware of that generally.

19 MR. CHERTOFF: And did you know that one of
20 the purposes of that committee was to evaluate whether
21 there should be a change of the State's position in
22 Soto?

23 THE WITNESS: I don't know if I specifically
24 knew that at the time. Again, my assignment was to
25 look at this issue from scratch, so I didn't go back

1 and look at specifically what positions were taken in
2 1996 and before that. I looked at it based upon what I
3 could gather at that time.

4 MR. CHERTOFF: Now, did you -- you said you
5 showed drafts of the interim report to Attorney General
6 Verniero.

7 THE WITNESS: Some of the very latest drafts.

8 MR. CHERTOFF: Did you go over it with him?

9 THE WITNESS: Yes.

10 MR. CHERTOFF: Did you go over --

11 THE WITNESS: Well, I left it for him to
12 review and then we met to go over portions.

13 MR. CHERTOFF: Did you discuss the stop and
14 arrest and search data information contained in Pages
15 25 through 29?

16 THE WITNESS: Mr. Chertoff, I think there was
17 evolution of that data, depending upon the draft. So I
18 did have discussions with him with respect to it, but I
19 think it probably --

20 MR. CHERTOFF: It was different pages
21 perhaps.

22 THE WITNESS: Yes, it was different pages.

23 SENATOR GORMLEY: Could I?

24 THE WITNESS: Yes.

25 SENATOR GORMLEY: Maybe I could help. When

1 you were talking to him about the report, did you talk
2 to him about the consent-to-search data in the report?
3 The impact of the consent-to-search data in the report,
4 that information, did you talk to him about that?

5 THE WITNESS: We reviewed the report. The
6 report in and of itself included that substantially.
7 He didn't question that or say anything further to me
8 about that, no.

9 SENATOR GORMLEY: When you went over the
10 significant parts of the report, did you indicate that
11 the consent-to-search statistics were significant?
12 Well, obviously you were giving him the, let's call
13 them the power points.

14 THE WITNESS: Well, actually, I mean keeping
15 in mind I had already discussed with him that I thought
16 the consent numbers that had gone back and advised him
17 that I thought that was -- that was very significant,
18 going back to March 16th. So by the time that one of
19 Mr. Susswein's 200 drafts became to a point of my
20 handing it to the Attorney General, that subject matter
21 had already been identified.

22 MR. CHERTOFF: Did you discuss with the
23 Attorney General what eventually became the statement
24 in the final report, final version of the report that
25 says, "Certain consent-to-search data provided to us

1 are sufficient cause for concern as to warrant careful
2 case-by-case review to be undertaken by the
3 Superintendent." Did you discuss that with him?

4 THE WITNESS: Not specifically. I gave him a
5 copy of the report and he read it.

6 MR. CHERTOFF: Did he ever express -- did he
7 ever discuss the issue of consent-to-search data with
8 you?

9 THE WITNESS: Yes. And what he said to me
10 was that what he had been told in the past was that
11 consent-to-search data wasn't something that was really
12 focused on in either the Soto analysis or the
13 Department of Justice analysis.

14 MR. CHERTOFF: Well, now let me direct your
15 attention to G-27. Do you have a copy of that in front
16 of you?

17 THE WITNESS: I haven't done a good job of
18 organizing all these, but I'm sure it's around.

19 MS. GLADING: What document are you on?

20 MR. CHERTOFF: G-27. It's a memo to Peter
21 Verniero from Alexander Waugh dated July 29, 1997.

22 THE WITNESS: Yes.

23 MR. CHERTOFF: Look at the --

24 THE WITNESS: I have it in front of me.

25 MR. CHERTOFF: Now, you obviously didn't see

1 this at the time because you weren't involved with this
2 stuff at the time, right?

3 THE WITNESS: I was at the office but I was
4 not involved in it at the time.

5 MR. CHERTOFF: Do you remember when the first
6 time you saw this document was, if ever?

7 THE WITNESS: I don't recall.

8 MR. CHERTOFF: All right. Take a look at the
9 last page. Do you see the last page? It says Consent
10 Searches, 1995.

11 THE WITNESS: Um-hmm.

12 MR. CHERTOFF: Do you see it says that of 144
13 consent searches, 62 percent were of minority drivers?

14 THE WITNESS: Yes.

15 MR. CHERTOFF: And you see this went to Peter
16 Verniero.

17 THE WITNESS: Yes.

18 MR. CHERTOFF: This memo. Did he ever
19 indicate to you, oh, you know, I actually saw
20 statistics about consent-to-search information back
21 relating to 1995?

22 THE WITNESS: When I discussed the issue of
23 consent-to-search numbers that he may have been aware
24 of at some point in time, he said that he was told that
25 that was not determinative of racial profiling.

1 MR. CHERTOFF: And who did he say told him
2 that?

3 THE WITNESS: I believe he said that he
4 received advice and I believe there actually is a memo
5 from Rover to Waugh that reflects that analysis.

6 MR. CHERTOFF: And what was the -- did he
7 tell you like what was the analysis? What was it based
8 on?

9 THE WITNESS: No, I think he -- he just told
10 me that we were taking a different view of the
11 relevance of consent to search to this issue than had
12 been taken before.

13 MR. CHERTOFF: Okay. Well, so in other
14 words, you're having a discussion with him and he says,
15 you know, he says in substance, you know, I was always
16 told consent-to-search data was really not
17 determinative of racial profiling.

18 THE WITNESS: And that it wasn't -- yes.

19 MR. CHERTOFF: All right. Now, you're
20 presenting a report to him that says essentially
21 consent-to-search data in and of itself is sufficient
22 cause for concern to warrant a careful case-by-case
23 review. Did he say to you, what changed? Why do you
24 think it's important when I was told before it's not
25 important?

1 THE WITNESS: Yes. And I told him that I
2 thought that given the continuing nature of the
3 complaints on this issue and some of the reports from
4 the road, that instead of getting lost in a debate on
5 the stops as to whether you can see people or not, that
6 the consent to search was something that was very
7 discretionary and indicated a problem. It didn't
8 necessarily in each instance say that it was based upon
9 a constitutional violation in a particular instance,
10 but it provided -- it provided an analysis of the -- a
11 different analysis of the problem.

12 MR. CHERTOFF: Did he say to you that that --
13 did he indicate to you that was news to him or some new
14 approach to things that he hadn't been told about
15 before?

16 THE WITNESS: No, just that he agreed that we
17 had to provide new and different guidance to the State
18 Police on it and we should -- and because it was a
19 major initiative in terms of the new policy we were
20 setting forth, and he agreed with that.

21 MR. CHERTOFF: He told you that he had
22 previously been told consent-to-search data was not
23 determinative of racial profiling?

24 THE WITNESS: He told me that the focus that
25 had been given to him in the past was that it was on

1 stops, stops and stops. And that's where the focus
2 was.

3 MR. CHERTOFF: When he says the focus, did he
4 tell you that he had been told that the Department of
5 Justice was focused on the stops, or that he had been
6 told that New Jersey ought to keep the focus on stops,
7 because if they got a consent to search, it was going
8 to be a big problem for the State of New Jersey?

9 THE WITNESS: I did not have that discussion.

10 MR. CHERTOFF: Did he tell you that he
11 received a memo from Mr. Rover in which Mr. Rover
12 specifically told him that the reason the Department of
13 Justice would be focusing on consent-to-search
14 statistics was because it was that type of statistic
15 that had been used in Maryland to support a finding of
16 selective prosecution?

17 THE WITNESS: He did not -- we did not
18 discuss that, no.

19 MR. CHERTOFF: I take it you would agree with
20 me that would be a very significant factor in focusing
21 your attention precisely on consent-to-search
22 statistics.

23 THE WITNESS: Yes, and to your potential
24 exposure.

25 MR. CHERTOFF: Right. In other words, if you

1 were told in a memo the following, and I'm reading,
2 just for the record, from G-18 which is a memo
3 submitted to the -- prepared by George Rover and
4 submitted to the Attorney General through Alex Waugh,
5 with notations indicating that the Attorney General had
6 read it. I want you to listen to the following
7 passage. "I anticipate that USDOJ will attempt to
8 follow the same course of action pursued by plaintiffs
9 in the Maryland case. The use of consent-to-search
10 statistics is evidence of selective prosecution. In
11 the Maryland action, the plaintiffs successfully argued
12 that the percentage of minorities subjected to consent
13 to searches, supported a finding that the Maryland
14 State Police engaged in selective prosecution. What is
15 very troubling is that the basis for the entry of the
16 consent order was the fact that the Maryland State
17 Police requested consent to searches from what the
18 plaintiffs' claim was a high percentage of minorities."

19 Would you agree with me that that passage
20 actually pinpoints to the reader that consent-to-search
21 data is very, very relevant and significant in a racial
22 profiling case?

23 THE WITNESS: I think it focuses the fact
24 that it should be one of the issues that is looked at
25 and I agree with that.

1 MR. CHERTOFF: And you agree with what is
2 said here, that that is a very important issue to look
3 at.

4 THE WITNESS: Well, that was the approach
5 that we took in the interim report.

6 MR. CHERTOFF: In the interim report, but Mr.
7 Verniero told you when you presented him with this that
8 he had previously been told and been advised that
9 consent-to-search statistics were really not
10 particularly relevant.

11 THE WITNESS: In terms of a determination
12 ultimately of whether the force was racially profiling
13 and that he had gotten -- he had gotten representations
14 that racial profiling wasn't occurring.

15 MR. CHERTOFF: And did he indicate to you
16 when he got these representations that he took any --
17 that he asked the people making the representations to
18 conduct a careful case-by-case review in order to
19 determine whether, in fact, consent to searches were
20 indicative of racial profiling?

21 THE WITNESS: That was not discussed in the
22 conversation I had with him.

23 MR. CHERTOFF: Now, you suggested a case-by-
24 case review, right?

25 THE WITNESS: Yes.

1 MR. CHERTOFF: But he didn't indicate that he
2 had suggested it back when he originally learned about
3 the consent-to-search data?

4 THE WITNESS: No, he did not.

5 MR. CHERTOFF: In fact, let me do this. I
6 just want to compare what you recommended to him in
7 1999 with what was the case back in 1997. In 1999 you
8 had an understanding that there was a high proportion
9 of minorities being asked to consent to search,
10 correct?

11 THE WITNESS: Correct.

12 MR. CHERTOFF: And, in fact, if we go to the
13 report you showed on Page 27 in Table -- I guess Table
14 2, right, Table 2, proportions of minorities being
15 searched. You had, for example, blacks at around 50
16 percent. Hispanics at around 20 percent of the total
17 searches. So it would be approximately 70 percent,
18 right?

19 THE WITNESS: Correct.

20 MR. CHERTOFF: And you viewed that as
21 statistically significant warranting a careful case-by-
22 case review, right?

23 THE WITNESS: Yes. And in particular because
24 the justifications I was hearing back from the State
25 Police was that the percentage find ratios of 19 to 25

1 percent warranted -- meant that they were doing it the
2 right way.

3 MR. CHERTOFF: Now, let's go to -- let's go
4 to G-27 which was presented to the Attorney General in
5 1997. If you look at the last page of that it says,
6 "Minority driver consent searches, 62 percent." And
7 this relates to Moorestown and Cranbury, right?

8 THE WITNESS: Correct.

9 MR. CHERTOFF: And you'd agree with me that
10 62 percent is functionally very close to 70 percent in
11 terms of indicating a statistical anomaly.

12 THE WITNESS: I'm sorry, Mr. Chertoff, on the
13 last memo you did is that 62 percent all persons of
14 color or --

15 MR. CHERTOFF: Sixty-two percent minorities.
16 Whereas what you have in your report is you have when
17 the statistics approach about 70 percent, right? Do
18 you see that as a significant difference, the 62
19 percent?

20 THE WITNESS: It's about -- it's --

21 MR. CHERTOFF: They're close.

22 THE WITNESS: -- within a reasonable
23 distance.

24 MR. CHERTOFF: So if you think 70 percent is
25 worth looking at a case-by-case study, probably 62

1 percent is worth looking at it too, right?

2 THE WITNESS: That's not substantially
3 different.

4 MR. CHERTOFF: Okay. And you then, in fact,
5 indicated that there should be careful case-by-case
6 review, but Mr. Verniero indicated to you that back in
7 '97 he made no such suggestion or request, right?

8 THE WITNESS: No, I think you said in my
9 conversation with him, did he bring that up with me?
10 And I said no, he did not.

11 MR. CHERTOFF: Right. He didn't indicate to
12 you that he had asked for a case-by-case review back in
13 1997.

14 THE WITNESS: Correct.

15 MR. CHERTOFF: And you've never heard that he
16 asked for a case-by-case review in 1997, right? No one
17 has ever told you that he asked for a case-by-case
18 review in 1997.

19 THE WITNESS: No.

20 MR. CHERTOFF: What he told you -- what Peter
21 Verniero told you --

22 THE WITNESS: I'm sorry, I was confused for a
23 second. You were asking me before about some period of
24 time with Susswein and Fahy, that's not the same period
25 of time you're talking about, is it?

1 MR. CHERTOFF: Now, let me -- I want to be
2 100 percent clear on this.

3 In 1999 you're presented with the following:
4 approximately a 70 percent minority is being asked to
5 consent to search, correct?

6 THE WITNESS: Correct.

7 MR. CHERTOFF: Based on that, you suggest,
8 and you tell the Attorney General, it's appropriate to
9 have a case-by-case review to determine -- because this
10 is suggestive of perhaps racial profiling in requests
11 for searches, correct?

12 THE WITNESS: Yes. It is indicative of a
13 problem of disparate treatment.

14 MR. CHERTOFF: Right. And you need to then
15 go further and analyze the underlying facts, right?

16 THE WITNESS: Correct.

17 MR. CHERTOFF: Now, you're now aware that in
18 1995 the statistics as they were -- well, I should take
19 that back. You're now aware that in 1997 there's a
20 memo to the Attorney General indicating that the 1995
21 statistics were 62 percent minorities being searched,
22 right?

23 THE WITNESS: Yes.

24 MR. CHERTOFF: And you've agreed with me that
25 62 percent and 70 percent are essentially the same in

1 the sense of raising the specter of disparate
2 treatment, right?

3 THE WITNESS: Well, they're within ten
4 percent of each other.

5 MS. GLADING: Are they in the same ball park?

6 THE WITNESS: They are eight points apart
7 from each other.

8 MR. CHERTOFF: Okay.

9 THE WITNESS: And I think the record will
10 reflect that.

11 MR. CHERTOFF: All right. Now, the Attorney
12 General does not tell you that back in 1997 based on
13 those figures he asked for a case-by-case review,
14 correct?

15 THE WITNESS: Correct.

16 MR. CHERTOFF: And as far as you know, he
17 didn't ask for a case-by-case review in 1997, right?

18 THE WITNESS: I don't have any information on
19 that.

20 MR. CHERTOFF: What the Attorney General
21 tells you is that back in 1997 he was told that this
22 consent-to-search data really didn't amount to racial
23 profiling and that's where he left it.

24 THE WITNESS: Correct.

25 MR. CHERTOFF: And he didn't explain to you

1 why his position in 1999 when you came in to him and
2 presented him with the statistics was different than
3 what his position was in 1997.

4 THE WITNESS: Yes, he did.

5 MR. CHERTOFF: What was the difference?

6 THE WITNESS: I was providing him advice that
7 hadn't been provided before.

8 MR. CHERTOFF: So the difference he told you
9 was the difference between your advice and George
10 Rover's advice?

11 THE WITNESS: No, he didn't say it.
12 Specifically was that this was -- this was a different
13 or somewhat different approach that he had been
14 presented on this issue before.

15 MR. CHERTOFF: When you went in to him in
16 '99, were you aware of the -- talk about this data,
17 were you aware of the fact that the Maryland case
18 consent decree had turned upon the consent-to-search
19 data?

20 THE WITNESS: Yes. I knew that that was the
21 primary issue, one of the primary issues in Maryland.

22 MR. CHERTOFF: And was that one of the things
23 you told him in 1999 by way of explaining why this
24 consent-to-search information was important to explore
25 it further?

1 THE WITNESS: I don't know if I specifically
2 mentioned Maryland, but certainly that was my
3 presentation as to why I thought it was important, and
4 I also thought it helped explain some of the complaints
5 we were getting as opposed to focusing on just those
6 who are arrested that get -- that get stopped and
7 searched. There's also a percentage of people that are
8 being shown by this that are being asked to consent to
9 search and that that's a problem.

10 MR. CHERTOFF: And did he indicate to you in
11 1999 that he had any previous awareness that the
12 consent-to-search information was significant with
13 respect to the Maryland litigation?

14 THE WITNESS: He told me that this was a new
15 approach and that he agreed with the new policy that we
16 were going to put in place to try to eliminate the
17 confusion of stop versus consent.

18 MR. CHERTOFF: There's a statement in the
19 interim report that says, a conclusion which is much
20 quoted, that says that "Racial profiling is real and
21 not imagined."

22 THE WITNESS: I think actually it's on Page 2
23 and it says, "The problem of disparate treatment is
24 real, not imagined."

25 MR. CHERTOFF: When in your mind did that

1 fact first become evident? And what -- all right,
2 answer that question. I have a second one.

3 THE WITNESS: During the -- at what point in
4 time are we talking about?

5 MR. CHERTOFF: When did you come to believe
6 that the problem of racial profiling, the disparity
7 that -- I'm sorry, that racial profiling is real and
8 not imagined?

9 THE WITNESS: I think if I -- and I can. I
10 think that the phrase that we used there is that the
11 problem of disparate treatment is real, not imagined.

12 MR. CHERTOFF: Direct me to the page.

13 THE WITNESS: Page 2.

14 MR. CHERTOFF: Page 2. That doesn't seem to
15 be on my Page 2.

16 THE WITNESS: Or three. Well, when did I --
17 when did I come to that conclusion? I had discussed
18 growing concerns -- if somebody gives me a copy of the
19 final report, I can --

20 MR. CHERTOFF: Here, let me give it to you.

21 I'm sorry, bottom of Page 4. Okay. You say,
22 and this is a quote from Page 4, "For the reasons set
23 out fully in this report, we conclude that the problem
24 of disparate treatment is real, not imagined."

25 When did you come to that conclusion?

1 THE WITNESS: During the work on the racial
2 profiling portion of the State Police Review Team work.

3 MR. CHERTOFF: And was it the statistical
4 anomaly --

5 THE WITNESS: Let me sure that I -- that's
6 not to say that, you know, there weren't times before
7 that that, you know, the complaints of minority
8 motorists weren't of concern or significance.

9 MR. CHERTOFF: But the basis for this
10 conclusion in the report is the statistical
11 disproportionality in terms of consent to searches and
12 stops as it relates to minorities, correct?

13 THE WITNESS: No. No. I think it's
14 important to recognize that the report sets forth
15 there's a collection and there's a specific reference
16 on one of the pages of all the -- all that was relied
17 on to reach this conclusion. And I think it was
18 complaints and information from troopers that had filed
19 lawsuits against the State. Some interviews with some
20 troopers as to conduct within the State Police. Things
21 that had been learned in other investigations.
22 Anecdotal -- other anecdotal information. We focused
23 on the consents as a problem. The stops we said aren't
24 necessarily as conclusive. So I think that we didn't
25 -- we highlighted that consents are something that we

1 need to look at and look at anew, but I wouldn't say
2 that it's statistics alone that drove that report.

3 MR. CHERTOFF: It was also, for example,
4 complaints from troopers who said that was racial
5 profiling.

6 THE WITNESS: Yes.

7 MR. CHERTOFF: Now, did you know those
8 complaints were made in 1996?

9 THE WITNESS: I came to know that.

10 MR. CHERTOFF: And do you know, in fact, that
11 those complaints were transmitted to the Attorney
12 General as part of G-27, it makes reference to those
13 complaints?

14 THE WITNESS: I know that now, yes.

15 MR. CHERTOFF: So what else besides the
16 statistical disparities and the complaints by troopers
17 came to light that is the foundation for this
18 conclusion?

19 THE WITNESS: That's the best I recall. But
20 if I could, I would also refer to -- there's a
21 substantial passage in the interim report that deals
22 with that subject matter that says what we have relied
23 on. And I -- but I think I've covered most of them
24 with liberty to add if necessary.

25 MR. CHERTOFF: Are you aware of anything that

1 was unavailable in 1997 and only available thereafter
2 that you used to support your conclusion on Page 4 that
3 the problem of disparate treatment is real, not
4 imagined?

5 THE WITNESS: Let me make sure I understand
6 that question. Do you mean that -- we have data, it's
7 in here for 1998. I don't understand your question.

8 MR. CHERTOFF: My question is, is it your
9 position that it was the data in '98 that made it --
10 led to your conclusion that the problem of disparate
11 treatment is real, not imagined? Was it that -- was it
12 necessary to have that data to reach the conclusion?

13 THE WITNESS: Well, I think it was important
14 to have data post the Soto decision and the steps that
15 were taken post-Soto to try to address some aspects of
16 racial profiling. I think it was important to see what
17 was happening in the more recent period to see if the
18 problem was out there. And frankly, in terms of, you
19 know, an ability to say on a significant issue like
20 this at the time that we were doing it, to go back to
21 older data, that would necessarily be fair in terms of
22 the process if you wanted as much recent data as
23 possible.

24 MR. CHERTOFF: Did the Attorney General tell
25 you when you discussed this report with him in 1999

1 that he had specifically requested to be kept up-to-
2 date with respect to statistics on stops and searches
3 after 1997?

4 THE WITNESS: I didn't have that specific
5 discussion with him, no.

6 MR. CHERTOFF: Did you have a general
7 discussion where he ever indicated any such action on
8 his part to be kept up-to-date?

9 THE WITNESS: No, but I never had a
10 discussion with him. I said, Attorney General, tell me
11 all the steps you've taken over the last three years to
12 deal with this issue.

13 MR. CHERTOFF: Well, let me ask you this.
14 Did you ever say to the Attorney General before
15 February of 1999, what did the Department of Law and
16 Public Safety do to address the issue of racial
17 profiling?

18 THE WITNESS: On a historic basis?

19 MR. CHERTOFF: Yeah.

20 THE WITNESS: I think until that I became
21 involved in the State Police review, I really wasn't
22 looking at it from a historic basis. I was looking at
23 the issue after my arrival in the Department as it
24 relates to the investigations that were in place.

25 MR. CHERTOFF: No, you misunderstood me, I'm

1 sorry. I wasn't clear.

2 After you got involved in the State Police
3 review --

4 THE WITNESS: Oh, I'm sorry.

5 MR. CHERTOFF: -- did you ever ask the
6 Attorney General historically to tell you from his
7 experience what the Department had done to address
8 racial profiling prior to the State Police review in
9 February?

10 THE WITNESS: I did not. And as I emphasized
11 before, one of the things that we did was we tried to
12 start from scratch as much as possible. Take a brand
13 new look at this and, frankly, one of the things I
14 didn't want to have happen was by going out and being
15 wedded to what was done in the past. So I did not have
16 that conversation with him.

17 MR. CHERTOFF: Now, I want to show something
18 I started off with which is Z-1 for identification.
19 This is an internal investigation relating to Hogan and
20 Kenna and the falsification of records, correct?

21 THE WITNESS: Correct.

22 MR. CHERTOFF: And you directed this
23 investigation be commenced in May of 1998, right?

24 THE WITNESS: The decisions were made by
25 people under my supervision and at the State Police to

1 begin this investigation.

2 MR. CHERTOFF: And this report is the result
3 of the Internal Affairs investigation?

4 THE WITNESS: That's my understanding.

5 MR. CHERTOFF: And it was concluded before
6 December 16th, 1998.

7 THE WITNESS: The report is dated December
8 16th, 1998. I am not myself familiar with the day-to-
9 day actions necessarily.

10 MR. CHERTOFF: But it was presented to you in
11 or around December 16th, 1998?

12 THE WITNESS: No. When you say presented to
13 me, what would have happened here -- I presume what
14 would have happened here is that it would have gone
15 over to Chuck Grinnell who was working on that portion
16 of the case and/or Debra Stone. And that they -- well,
17 the way it would work, is they would go to them. They
18 would continue the work they need to continue and then
19 they would report the results. I didn't necessarily
20 receive in cases the referral -- unless it was a matter
21 that was just coming in for the first time that needed
22 some approval for an investigation, I would not receive
23 that and in the instance it would go to people working
24 on it.

25 MR. CHERTOFF: When did you first hear about

1 the results of the Hogan and Kenna investigation as it
2 relates to falsification of records?

3 THE WITNESS: I was updated during the course
4 of that investigation and I learned sometime in early
5 1999 that it was completed.

6 MR. CHERTOFF: When in 1999?

7 THE WITNESS: I can't -- I can't recall a
8 specific date, Mr. Chertoff. I know it was sometime --

9 MR. CHERTOFF: January?

10 THE WITNESS: -- in the winter probably of
11 1999.

12 MR. CHERTOFF: Was it before you began your
13 work on the State Police review?

14 THE WITNESS: Likely yes, but I don't have a
15 specific recollection.

16 MR. CHERTOFF: Now, the shooting incident
17 Grand Jury began on December 8th, 1998, correct?

18 THE WITNESS: If you're reading from our
19 Appellate brief, I will stipulate to that.

20 MR. CHERTOFF: You have no doubt about it.
21 All right.

22 And you say probably in about January of 1999
23 you got the report that the investigation relating to
24 Hogan and Kenna's alleged falsification was concluded,
25 correct?

1 THE WITNESS: The Division of Criminal
2 Justice received the report.

3 MR. CHERTOFF: What was the next step to be
4 taken in that investigation?

5 THE WITNESS: It would be evaluated for its
6 prospects for further prosecution.

7 MR. CHERTOFF: Who evaluated it?

8 THE WITNESS: In the first instance it would
9 be by the Deputies that were working on the case,
10 Grinnell and Stone.

11 MR. CHERTOFF: So Grinnell and Stone --

12 THE WITNESS: I'm sorry, Grinnell was the DAG
13 and Debra Stone, who was the Deputy Director of
14 Operations at the time.

15 MR. CHERTOFF: So they evaluated the referral
16 in terms of prosecutive merit, right?

17 THE WITNESS: That's what it would be in the
18 normal course.

19 MR. CHERTOFF: Is that what happened here?

20 THE WITNESS: I believe so.

21 MR. CHERTOFF: And when did they --

22 THE WITNESS: I don't know -- I don't know
23 the respective roles of -- Stone was supervising
24 Grinnell and Gerrow may have also been involved in
25 parts of it, but I don't know specifically.

1 MR. CHERTOFF: Did Gerrow, Stone or Grinnell
2 come to a conclusion about whether the case ought to be
3 indicted?

4 THE WITNESS: Yes.

5 MR. CHERTOFF: Or presented to a Grand Jury?

6 THE WITNESS: Yes.

7 MR. CHERTOFF: When was that?

8 THE WITNESS: There were discussions -- there
9 were discussions with respect to the continuation of
10 the Hogan and Kenna shooting, a Grand Jury
11 investigation, and Hogan in general, and I would have
12 been informed at some point as to what their
13 recommendation was and it would have been sometime
14 between, I would think between January and mid-March,
15 but I don't -- I don't recall that.

16 MR. CHERTOFF: What were the discussions
17 about the continuation of the shooting Grand Jury?

18 THE WITNESS: Well, it was -- it was ongoing.
19 The dates are reflected in the Appellate papers and I
20 don't really think that I can answer that question with
21 your permission not to answer that question.

22 MR. CHERTOFF: Well, when did they come to
23 you and say to you that they wanted to present evidence
24 with respect to the falsification?

25 THE WITNESS: They had indicated that there

1 was a case there -- if you want to get into the
2 scheduling of it, I think that may just take us through
3 it a lot easier.

4 MR. CHERTOFF: Well, I mean for what it's
5 worth, a separate Grand Jury was convened to look at
6 this on March 29th. When did they come to you and
7 suggest to you that there was a case to be presented?

8 THE WITNESS: I knew that there was a case to
9 be presented prior to March 29th. If you want to ask
10 me questions about scheduling, then perhaps I can take
11 you down a path that may get the information that
12 you're looking for.

13 MR. CHERTOFF: All right. Well, let's talk
14 about scheduling then. How did this all get scheduled?

15 THE WITNESS: On March 10th, 1999, that's a
16 reflection in my calendar, that there is a meeting that
17 takes place involving the Attorney General, myself,
18 Debra Stone and Jim Gerrow. And at -- that's fine, I
19 know where it is. I don't know that the time of it is
20 necessarily relevant. And at that meeting the Attorney
21 General was asking for an update on the status of the
22 Hogan and Kenna investigations. And at that meeting he
23 was informed that the prosecutors believed that the
24 falsification portion of the case was ready to go.
25 That that portion had been completed. But that there

1 was much more that needed to be done, particularly
2 given our involvement of Dr. Henry Lee in the case and
3 that there had to be a reenactment or reconstruction of
4 the shooting on the highway.

5 MR. CHERTOFF: And what was the response to
6 that?

7 THE WITNESS: And Prosecutor Gerrow, I
8 believe, informed us -- informed the Attorney General
9 that the expectation was that the shooting Grand Jury
10 would not be done for a number of months and the
11 question that the Attorney General asked was, can we
12 move the falsification indictment because we need to
13 demonstrate action on this because we were getting
14 subject to criticism of delay in this investigation.

15 MR. CHERTOFF: Delay in which investigation?

16 THE WITNESS: Delay of the investigations of
17 the shooting.

18 MR. CHERTOFF: Was there anybody who -- at
19 this point in time was the fact that there was a
20 falsification investigation underway public knowledge?

21 THE WITNESS: No. What that was in reference
22 to was there were -- we were upcoming to the first
23 anniversary of the shooting and there was a discussion
24 of concerns of the length of time that the overall
25 investigations were talking about. I think all the

1 public knew about at the time -- I'm not speaking for
2 the public, but I think it's a matter of public record,
3 they were aware of the shooting investigation, but not
4 of the falsification. And there had been recent calls
5 for that investigation to be taken over because it was
6 taking too long. And the Attorney General asked if we
7 could move -- he was told there was no way that the
8 shooting Grand Jury could be moved along any quicker
9 than what Mr. Gerrow anticipated and then there was a
10 discussion of whether or not there could or should be
11 an indictment, separate indictment, on the -- on the
12 falsification portion of the case.

13 MR. CHERTOFF: Tell us about that discussion.

14 THE WITNESS: The Attorney General asked
15 let's move the -- let's move the falsification portion
16 of the case. And then a discussion of that avenue
17 ensued. And there was an identification for the
18 Attorney General of the various options and the various
19 issues that were raised -- were raised by the --

20 MR. CHERTOFF: What did people say in
21 response to that suggestion?

22 THE WITNESS: That there were a number of
23 concerns that were raised as to that direction of
24 moving that separately. That what you have to be
25 concerned about at that point in time is that because

1 there's another Grand Jury pending, you have to be
2 concerned about the potential issue of taint of that
3 first Grand Jury. And then the Attorney General
4 inquired, "Well, is there any way that that can be
5 dealt with?" And it was described to him the way that
6 that's dealt with is called a Brook-Murphy hearing in
7 which the person in the Grand Jury, subject to the
8 supervision of the State Grand Jury Judge, would review
9 with the Grand Jurors to ensure that there hadn't been
10 any taint. And if the -- if the Grand Jury -- it was
11 determined by the Judge that the Grand Jury had not
12 been tainted, then that case could move forward.

13 MR. CHERTOFF: What were the other concerns
14 that were raised?

15 THE WITNESS: I think that was really -- I
16 think that was the main focus and the main discussion,
17 that the risks that that might cause to the shooting
18 Grand Jury case by filing the -- by filing the
19 falsification indictment. But that the Attorney
20 General was advised that -- there were concerns as
21 going that avenue, and he was advised that the way to
22 cure that would be going through the Brook-Murphy
23 process. That painstaking efforts had already been
24 taken on the Brook-Murphy issue before the first Grand
25 Jury and that if that continued to be the case in front

1 of the Grand Jury, then -- and the Grand Jury was
2 approved, if you will, by the supervising Grand Jury
3 Judge, that an indictment on the falsification would
4 not adversely impact the shooting indictment.

5 MR. CHERTOFF: Was he told what would happen
6 if the Brook-Murphy hearing was held and it turned out
7 that they hadn't satisfactorily been able to screen the
8 Grand Jurors from the taint?

9 THE WITNESS: He was -- he was advised that
10 that could result in the need to re-present to another
11 Grand Jury.

12 MR. CHERTOFF: And that would add yet further
13 delay.

14 THE WITNESS: Correct.

15 MR. CHERTOFF: So that essentially he was
16 told that the risk of doing this is the possibility of
17 invalidating all the work that had been done up to that
18 point.

19 THE WITNESS: No, he was not -- it was not
20 invalidate all the work that was done up to that point
21 in time, because there had been some meetings of the
22 Grand Jury, a major effort that was being planned was
23 the reconstruction and that had -- he was told that it
24 could result in a delay and the fact that you'd have to
25 re-present, but you'd still have the same -- you'd have

1 the investigation in and of itself, you'd just have the
2 issue of what might have been presented to the Grand
3 Jury.

4 MR. CHERTOFF: Was the original intention or
5 thought that the false statement case would be
6 presented to the same Grand Jury hearing the shooting
7 case?

8 THE WITNESS: That issue -- that issue had
9 not -- had not been resolved up until the May 10th --
10 not the May 10th, the March 10th meeting on the options
11 as to whether or not it was separate or it got
12 presented in some way as part of the other Grand Jury.

13 MR. CHERTOFF: Well, was that possibility
14 discussed with the Attorney General at the March 10th
15 meeting?

16 THE WITNESS: The possibility was -- the
17 alternative was that there would -- you know, you
18 wouldn't go forward with that falsification and it
19 would await to a later date more proximate to the time
20 of the shooting Grand Jury result.

21 MR. CHERTOFF: And that it would be presented
22 as part of a single case.

23 THE WITNESS: Not necessarily.

24 MR. CHERTOFF: But that it would be brought
25 out at the same time, correct?

1 THE WITNESS: That wasn't specifically
2 discussed, but I think that was presumed in the
3 conversation.

4 MR. CHERTOFF: Of the people present, did
5 everybody -- well, did everybody -- let me withdraw the
6 question.

7 What were the recommendations that the people
8 present made to the Attorney General concerning the
9 timing issue?

10 THE WITNESS: Well, I think it was review of
11 seeking our professional advice as to what the risks
12 were and advising him as to what the risks bore and
13 what decision points he had on this issue. And I think
14 that Gerrow, Stone and myself identified that there
15 were some significant risks as it relates to the issues
16 with respect to taint, but that could be cured by an
17 appropriate Brook-Murphy hearing and that -- and that's
18 the extent of it.

19 MR. CHERTOFF: And what is a Brook-Murphy
20 hearing, by the way?

21 THE WITNESS: A Brook-Murphy hearing is just
22 the name of a defendant in a State case in which there
23 is a requirement for the prosecutor in the first
24 instance to check to see whether publicity or there's
25 been any taint, bias or anything. It's really the

1 qualification of the Grand Juror to sit as an impartial
2 Grand Juror.

3 MR. CHERTOFF: Did you explain to the
4 Attorney General or as far as you know was he aware of
5 what would actually be involved in the holding of a
6 Brook-Murphy hearing?

7 THE WITNESS: I think that was -- that was
8 outlined to him.

9 MR. CHERTOFF: And what does that actually
10 entail?

11 THE WITNESS: It entails, based upon
12 procedure that occurs, now I'm not going to discuss
13 what may or may not happen in --

14 MR. CHERTOFF: No, just in general, what does
15 it --

16 THE WITNESS: In general, an inquiry to the
17 Grand Jurors.

18 MR. CHERTOFF: By the Assignment Judge?

19 THE WITNESS: By the prosecutor in the first
20 instance under the supervision of the supervising Judge
21 for the Grand Jury, with involvement of the supervising
22 Judge and signing off on the propriety of the Brook-
23 Murphy hearing.

24 MR. CHERTOFF: And does that involve
25 questioning individual jurors about what they've seen

1 and heard?

2 THE WITNESS: Sometimes it does.

3 MR. CHERTOFF: And what other things does it
4 entail?

5 THE WITNESS: That's my general understanding
6 of it, Mr. Chertoff.

7 MR. CHERTOFF: So that you basically advised
8 the Attorney General that if he insisted on doing this
9 falsification indictment ahead of the shooting
10 indictment, there would certainly have to be a Brook-
11 Murphy hearing with whatever time is necessary to
12 conduct that hearing and that there would be a risk if
13 the hearing showed taint, that you'd have to re-present
14 to a brand new Grand Jury.

15 THE WITNESS: I think that's a fair
16 characterization.

17 MR. CHERTOFF: Did anybody -- did everybody
18 recommend -- did anybody make any recommendations as to
19 whether the falsification indictment ought to be
20 brought out quickly or ought to wait the shooting
21 indictment?

22 THE WITNESS: I think more what we talked
23 about were the risks of that. I think there was an
24 understanding that the anniversary of the shooting was
25 coming and that there was a substantial focus on issues

1 surrounding the case.

2 SENATOR GORMLEY: Excuse me. Excuse me. Who
3 brought that up? Who brought that up as a reason for
4 doing this? Who verbalized it? Who said well the --

5 THE WITNESS: Well, I think the Attorney
6 General putting it into that context, but at the same
7 time we had all known and in some respects we were
8 looking to try to see, as the April 23rd date was the
9 anniversary date, that we would have liked to
10 originally had the shooting -- the whole thing
11 completed by.

12 SENATOR GORMLEY: You would have liked to,
13 but as someone who has vast experience in the Criminal
14 Justice system, as to a great degree of your career has
15 been in prosecuting cases or whatever, what was your
16 preference?

17 THE WITNESS: I think there was a balance of
18 interest and I understood those and I said to the
19 Attorney General that if he went that route, I
20 understood why he believed it would be in the public
21 interest to do so. But if he went that route, this was
22 the risk and we expressed the concerns to him and he
23 gave us the direction that he gave us.

24 MR. CHERTOFF: Did anybody there recommend
25 that the indictment -- besides the Attorney General,

1 did anybody recommend that the falsification indictment
2 be brought out before the anniversary of the shooting?

3 THE WITNESS: That was brought up by the
4 Attorney General.

5 MR. CHERTOFF: He was the one who recommended
6 or raised that issue.

7 THE WITNESS: Yes.

8 MR. CHERTOFF: Did anybody else advocate that
9 at the meeting?

10 THE WITNESS: I don't think it was a matter
11 of anybody advocating it. We advised him as to what
12 the risks of taking that particular approach were. And
13 then he advised us that his decision was to go forward
14 with it.

15 SENATOR GORMLEY: So it really started -- in
16 other words, he had made his decision.

17 THE WITNESS: Well, no, he -- the meeting was
18 designed to talk about the status of the Turnpike
19 incident and investigations related to it. And when it
20 was determined that the shooting portion was not
21 completed, it then turned to that discussion. I have
22 no knowledge as to what decisions may have been made
23 before that, but it was a status meeting on 7A.

24 MR. CHERTOFF: Let me ask you this question.
25 Did anybody discuss the possibility of indicting the

1 falsification case and sealing it?

2 THE WITNESS: No, because in the context of
3 it, of needing to -- the suggestion that there was some
4 need to move it before the shooting, the need was to
5 move it in the public interest --

6 MR. CHERTOFF: Public.

7 THE WITNESS: -- for the public to know about
8 it so therefore --

9 MR. CHERTOFF: In other words --

10 THE WITNESS: -- so therefore there was not
11 any discussion with respect to moving it and sealing
12 it.

13 MR. CHERTOFF: Okay. So let's be clear.
14 There was certainly no statute of limitations issue,
15 correct?

16 THE WITNESS: No.

17 MR. CHERTOFF: There was no legal reason
18 that the falsification case had to be brought in April
19 as opposed to waiting until the end of the year,
20 correct?

21 THE WITNESS: No.

22 MR. CHERTOFF: The only reason put forth for
23 proceeding more rapidly with the falsification
24 indictment was in order to have a public charge filed
25 against Hogan and Kenna by the anniversary of the

1 shooting, correct?

2 THE WITNESS: To have action on this case
3 before the shooting.

4 MR. CHERTOFF: But, in fact, the
5 falsification charges really have nothing to do with
6 the shooting case, do they?

7 THE WITNESS: I would prefer -- that's an
8 issue that may or may not come up in the criminal case
9 and I really don't want to -- I'd really prefer not to
10 discuss that.

11 MR. CHERTOFF: Let me put it this -- let me
12 ask you this. Is there a charge in the falsification
13 indictment that with respect to the individual stop
14 that occurred when the shooting --

15 THE WITNESS: Can we go off the record for a
16 second?

17 MR. CHERTOFF: Sure.

18 (Off the record)

19 MR. CHERTOFF: On the face of the indictment,
20 on the face of the indictment in the falsification
21 case, is there any reference to the stop that led to
22 the shooting on the Turnpike?

23 THE WITNESS: I accept -- I believe no, but I
24 think that the document speaks for itself.

25 MR. CHERTOFF: And is it clear, at least as

1 of March of 1999, it was not -- there had not yet been
2 a decision by the Grand Jury to indict the shooting
3 case, correct?

4 THE WITNESS: That's a matter of public
5 record.

6 MR. CHERTOFF: In fact, there was further
7 investigation and evidential activity to be
8 accumulated, right?

9 THE WITNESS: That's a matter of public
10 record. I don't mean to be smart, but I mean --

11 MR. CHERTOFF: Well, no, but --

12 THE WITNESS: -- that's what -- there's
13 enough in the public record to answer that question yes
14 without me discussing anything further.

15 MR. CHERTOFF: And therefore, as a matter --

16 MR. MILLER: Mr. Chertoff, the witness is
17 being very careful not to discuss anything involving
18 Grand Jury.

19 MR. CHERTOFF: I understand. And therefore,
20 as a matter of just the way the Grand Jury process
21 works in general as a matter of law, until the Grand
22 Jury indicts and makes a decision, they're free to
23 indict or not to indict, right? Correct?

24 THE WITNESS: That's what we expect of them,
25 yes.

1 MR. CHERTOFF: So as of March of 1999, in
2 fact, there was guarantee the Grand Jury was going to
3 indict on the shooting, right?

4 THE WITNESS: On the shooting?

5 MR. CHERTOFF: Yes. Because the Grand Jury
6 -- it wasn't presented to the Grand Jury to be voted
7 upon in March of 1999, right?

8 THE WITNESS: Yes.

9 MR. CHERTOFF: Okay. So --

10 THE WITNESS: Can I --

11 MR. CHERTOFF: Yeah.

12 THE WITNESS: At the same time, this is very
13 precarious ground with the motions pending. You know,
14 there was no reason -- did I expect the shooting -- I
15 just don't know where you're going.

16 MR. CHERTOFF: I'm asking you a very simple,
17 straightforward proposition. In 1999 in March the
18 indictment -- the Grand Jury investigation was ongoing,
19 correct?

20 THE WITNESS: Yes.

21 MR. CHERTOFF: It was expected that it would
22 not be presented to the Grand Jury for a vote as to the
23 shooting until sometime later in the year, right?

24 THE WITNESS: Yes.

25 MR. CHERTOFF: As a matter of law, you can't

1 guarantee what the Grand Jury is going to do at the end
2 of the process, right?

3 THE WITNESS: Absolutely.

4 MR. CHERTOFF: So therefore, there was no
5 anybody knew in March of 1999 what that Grand Jury
6 would eventually do.

7 THE WITNESS: Absolutely.

8 MR. CHERTOFF: So now in March of 1999 you
9 talk about doing something in terms of the anniversary
10 of the shooting. It was clear to everybody at that
11 March 10th meeting that there was not going to be a
12 charge filed with respect to that shooting case as of
13 April 1999, given the Grand Jury schedule for the
14 shooting Grand Jury, correct?

15 THE WITNESS: One of the things I want to
16 make sure was, the presentation of the matter to the
17 Grand Jury always included on either case, you know,
18 the option that there would be -- there would be no --
19 it's up to the Grand Jury to decide that.

20 MR. CHERTOFF: So the suggestion that was put
21 out by the Attorney General was not that there would be
22 action on the shooting that would occur by April -- by
23 the anniversary, but that there would be action against
24 the two people who were involved in the shooting on
25 another case, right?

1 Let me withdraw the question. Let me try to
2 put it in plain English and be less like a lawyer for a
3 minute.

4 What you're telling us is basically the
5 Attorney General said look, we have to show some action
6 on the shooting.

7 THE WITNESS: We have to show some action
8 with respect to before the anniversary of the shooting.
9 And I said at the beginning he asked about the status
10 of the shooting and then he moved off to the other
11 portion of the case.

12 MR. CHERTOFF: Okay. So this is the way it
13 goes. He starts by saying basically look, we've got to
14 show -- can we show some action on the shooting before
15 the shooting anniversary comes up, right?

16 THE WITNESS: On the investigation.

17 MR. CHERTOFF: Right. And basically the --
18 and, of course, the fact that there's a shooting
19 investigation is public knowledge because the shooting
20 was public and it's clear there's an investigation,
21 right?

22 THE WITNESS: It was certainly public
23 knowledge.

24 MR. CHERTOFF: So presumably the Attorney
25 General is suggesting that there is some public

1 pressure, are you guys going to get to the bottom of
2 the shooting and can you get, you know, resolve the
3 case and come up with your end of your investigation
4 and your charges by the anniversary of the shooting
5 date, right? And show the public that we're really
6 moving this thing, correct?

7 THE WITNESS: That the matters -- that the
8 matter has been investigated and concluded. Not
9 necessarily mean that there would be a charge.

10 MR. CHERTOFF: And the answer is --

11 THE WITNESS: Because it's up to the Grand
12 Jury.

13 MR. CHERTOFF: All right. The answer that
14 the Attorney General has given is we can't conclude it
15 by the anniversary because we've got more work to do
16 and it's going to take us into the fall, right?

17 THE WITNESS: We have more work to do and
18 it's going to be a matter of months. He didn't say
19 into the fall.

20 MR. CHERTOFF: Okay. So the consequence of
21 that is that as far as the public, the investigation
22 which the public is aware, namely the investigation of
23 the shooting, it is not practical to conclude that
24 investigation by the anniversary date, correct?

25 THE WITNESS: Correct.

1 MR. CHERTOFF: So the next suggestion in
2 effect is well, can we find some other charges or some
3 other action we can take with respect to these two
4 individuals who are also the subject of the shooting
5 investigation, correct?

6 THE WITNESS: It was with respect to matters
7 under investigation of the -- of actions out on the
8 Turnpike. One portion was the shooting. The other
9 portion was actions with respect to interactions with
10 motorists during the four months prior to the shooting.

11 MR. CHERTOFF: Now, nobody in the public --
12 let me withdraw the question.

13 As far as you know, there was no public
14 statement or public indication that there was a
15 falsification of records investigation going on with
16 respect to Hogan and Kenna, right?

17 THE WITNESS: No.

18 MR. CHERTOFF: So the public, as far as you
19 know, wasn't out there agitating, wondering when is the
20 falsification of records investigation going to be
21 done, right?

22 THE WITNESS: No.

23 MR. CHERTOFF: As far as you knew.

24 So was the suggestion being made in effect,
25 look, maybe we can't conclude the shooting

1 investigation, but if we can give the public this
2 against Hogan and Kenna, at least it will show we're
3 doing something. Was that in effect what was
4 suggested?

5 THE WITNESS: No, I disagree with that.

6 MR. CHERTOFF: Well, how was the -- how was
7 the -- how was the presentation of charges with respect
8 to the falsification issue going to address the public
9 clamor about getting a resolution to what happened with
10 respect to the shooting?

11 THE WITNESS: Because it related to pressure,
12 issues, concern as it related to what was happening out
13 on the Turnpike and it related to that generally. The
14 Turnpike shooting began a very strong focus of the
15 public on activities on the Turnpike. And one of the
16 issues that was discussed was if the allegations of the
17 falsification indictment were correct, that impacted
18 upon the operations of the State Police, and that some
19 action should be taken on that.

20 MR. CHERTOFF: Well, you had already
21 announced a special State Police review about a month
22 earlier, correct?

23 THE WITNESS: Yes.

24 MR. CHERTOFF: So the public was already made
25 aware that there was going to be a complete review of

1 the way the State Police was handling things along the
2 Turnpike, correct?

3 THE WITNESS: Yes, but I wouldn't suggest
4 that that was accepted universally as the only thing
5 that should be done.

6 MR. CHERTOFF: So there was still more clamor
7 for more action, right, from the public?

8 THE WITNESS: Yes, there had been a recent
9 announcement for the Justice Department to come in and
10 take over -- requests for the Justice Department to
11 take over our work because we weren't moving quickly.

12 MR. CHERTOFF: And was there specifically a
13 request for the Justice Department to take over the
14 Hogan and Kenna investigation?

15 THE WITNESS: And for them to also come on
16 and investigate the State Police in general.

17 MR. CHERTOFF: And so was there in the course
18 of the discussion that you had either on March 10th or
19 at any other point in time, any suggestion by anybody
20 that one way to allay the pressure to have the Justice
21 Department come in and take over these cases, would be
22 to show that the State could police itself by bringing
23 a fast criminal case for racial profiling?

24 THE WITNESS: I can't answer that because
25 your characterization of the case in the last portion

1 of it.

2 MR. CHERTOFF: Well, let me redo it this way.
3 Was there some discussion about the way in
4 which the State could respond to this pressure for the
5 Department of Justice to come in and take over the
6 Hogan and Kenna investigation and take over looking at
7 the issue of racial profiling?

8 THE WITNESS: As I said, the discussion that
9 took place on that issue occurred on March 10th and I
10 believe I have, as best as I can by my recollection,
11 described what was discussed at that meeting.

12 SENATOR GORMLEY: Excuse me for one second.
13 When the indictment, the second Grand Jury,
14 was announced on the falsification --

15 THE WITNESS: Yes.

16 SENATOR GORMLEY: -- what date was that
17 announced?

18 THE WITNESS: I believe that is Monday, April
19 19th.

20 SENATOR GORMLEY: Monday, April the 19th.
21 Was it at a press conference?

22 THE WITNESS: It was announced by way of
23 press conference, yes.

24 SENATOR GORMLEY: Where was the press
25 conference?

1 THE WITNESS: I believe the press conference
2 -- I believe it was on the Fourth Floor, Conference
3 Center, at the Hughes Justice Complex.

4 SENATOR GORMLEY: How large of a crowd did
5 they have for the press conference?

6 THE WITNESS: There was a -- there was a
7 crowd.

8 SENATOR GORMLEY: Big crowd. Who led off the
9 press conference?

10 THE WITNESS: Attorney General Verniero.

11 SENATOR GORMLEY: Was there any conversation
12 as to whether or not he should do a press conference?

13 THE WITNESS: A press conference was
14 scheduled. It occurred and I don't there being any
15 specific objection to that occurring.

16 SENATOR GORMLEY: Did you advise him to do a
17 press conference?

18 THE WITNESS: I did not tell him not to do
19 one. I did not schedule it myself, but I did not tell
20 him not to do it.

21 SENATOR GORMLEY: Did he tell you he was
22 going to do a press conference?

23 THE WITNESS: Yes. If I --

24 SENATOR GORMLEY: Was it that morning? How
25 far in advance did he tell you he was going to do a

1 press conference?

2 THE WITNESS: Well, I think -- our experience
3 has generally been that whether you announce it or you
4 release it, you are going to be having significant --
5 cameras and media coming over. So I think there was an
6 expectation that there would be some dealing with the
7 press that day.

8 SENATOR GORMLEY: Well, this is my area of
9 expertise. There are intended and unintended photo
10 ops. This was an intended photo op, correct? It was a
11 scheduled photo op.

12 THE WITNESS: It was --

13 SENATOR GORMLEY: I want to be -- in other
14 words, he wanted to be in front of the cameras that
15 day.

16 THE WITNESS: Well, there was a press
17 conference that occurred that day.

18 SENATOR GORMLEY: Fine. It was scheduled and
19 announced.

20 THE WITNESS: Yes.

21 SENATOR GORMLEY: Okay, fine. Who else spoke
22 at the press conference? Were you at the press
23 conference?

24 THE WITNESS: I was at the press conference.

25 SENATOR GORMLEY: Okay. Who else spoke?

1 THE WITNESS: I think Jim Gerrow spoke.

2 SENATOR GORMLEY: How long was the second
3 Grand Jury empaneled?

4 THE WITNESS: I think the record reflects,
5 and it's set forth in the Appellate -- I'm sorry, do
6 you mean the shooting or the --

7 SENATOR GORMLEY: The falsification.

8 THE WITNESS: I believe the record reflects
9 that it first met on March 29th, 1999.

10 SENATOR GORMLEY: Excuse me, when was the
11 indictment returned?

12 THE WITNESS: It was returned April 19th.

13 SENATOR GORMLEY: Oh, and he did the press
14 conference the same -- oh, he did the press conference.
15 What day did he do the press conference? He did it the
16 same day it was returned?

17 THE WITNESS: If somebody checks their
18 calendar, whatever day of the -- it would meet the same
19 day, March 29th, and if March 29th is a Monday and
20 April 19th is a Monday, then it would have been a Grand
21 Jury on a Monday. So I think it was on Monday, April
22 19th, that the Grand Jury --

23 SENATOR GORMLEY: Were there any discussions
24 or meetings that you had or comments made to the
25 Attorney General that he was doing this for the

1 purposes of publicity for his appointment to the
2 Supreme Court? Were you in the presence of anyone who
3 said that to him?

4 THE WITNESS: No.

5 MR. CHERTOFF: Do you know how -- ultimately
6 there was a Brook-Murphy hearing in this case, right?

7 THE WITNESS: Yes.

8 MR. CHERTOFF: Do you know how long that
9 lasted?

10 THE WITNESS: I don't know, Mr. Chertoff.

11 MR. CHERTOFF: Is it fair to say that it
12 involved both general questioning to the entire Grand
13 Jury and then each Grand Juror had to be individually
14 questioned about what they had read and what they knew?

15 THE WITNESS: I would assume that's the case.
16 I've read the briefs. I'm not specifically familiar
17 with what --

18 MR. CHERTOFF: Is it fair to say that it was
19 a fairly lengthy process to voir dire all those
20 individual Grand Jurors?

21 THE WITNESS: I hate to put it this way, but
22 the record on appeal speaks for itself. I don't want
23 to -- I don't have any other -- other than -- I mean
24 other than what I have read in those briefs, that's the
25 limit of my knowledge on what happened that day, other

1 than the ultimate conclusion. So I'd be speculating
2 otherwise.

3 MR. CHERTOFF: Well, will you agree with me
4 that the -- you don't dispute my characterization that
5 the brief has indicated there was individual
6 questioning of each of the Grand Jurors and then the
7 supervising Judge had to conduct a review with respect
8 to this, correct?

9 THE WITNESS: Yes.

10 MR. CHERTOFF: In fact, the supervising Judge
11 had to review -- and this is from what you said on the
12 record and according to the brief, all the pages of the
13 transcript and go through each particular juror and
14 then give findings with respect to each juror about the
15 Court's determination about whether the jurors had been
16 tainted or not, correct?

17 THE WITNESS: Yes.

18 MR. CHERTOFF: And there were some jurors
19 excused and some jurors not excused.

20 THE WITNESS: I believe there was at least
21 one who was excused.

22 MR. CHERTOFF: And then there were -- in
23 fact, a couple of days of activity relating to this and
24 then a number of telephone calls subsequently with
25 additional questions with respect to the jurors,

1 correct?

2 THE WITNESS: I accept your representation.

3 MR. CHERTOFF: Before we do, let's make sure
4 I'm...

5 Actually I want to be -- I may be back in
6 1998, so I just to just correct that and take a look at
7 this. Hold on.

8 THE WITNESS: Well, again, Mr. Chertoff, if I
9 can help in this. Other than what's in that brief and
10 what's written there, I don't know.

11 MR. CHERTOFF: You don't know.

12 SENATOR GORMLEY: Can I just go over a point?
13 I apologize if I'm being repetitive.

14 When you had the meeting when it was decided
15 to convene a second Grand Jury --

16 THE WITNESS: Yes -- well, to present it to a
17 second Grand Jury. I believe it was an already
18 empaneled Grand Jury.

19 SENATOR GORMLEY: All right. Thank you.

20 When it was decided -- as it was presented,
21 the Attorney General started with the, in effect, the
22 conclusion that there would be the separate presentment
23 of the falsification. That's really how the
24 conversation started, with the conclusion. And then
25 people dealt with the conclusion.

1 THE WITNESS: No, I don't think that's a fair
2 characterization. I mean there was a discussion of the
3 options. Professional advice was given by the
4 prosecutors that were there. And it was a very
5 substantive discussion and then we received the
6 direction from the Attorney General.

7 SENATOR GORMLEY: Let's say there's two tiers
8 of professional advice. The first tier is whether to
9 do it in the first place. Did anybody in that room say
10 just don't do it?

11 THE WITNESS: Ultimately -- no, in the
12 conversation --

13 SENATOR GORMLEY: Did some people say don't
14 do this? Why are you doing it, just for publicity
15 sake? You know the point I'm getting to.

16 THE WITNESS: No, I think it was discussed as
17 it relates to his concern that there needed to be some
18 movement. And then we discussed the options as we set
19 forth. And as part of that, those concerns and risks
20 that were identified was the response of the others
21 that were in the room.

22 SENATOR GORMLEY: So you brought up the
23 potential risks. He weighed the risks and made a
24 decision.

25 THE WITNESS: Yes.

1 MR. CHERTOFF: Was there any subsequent
2 discussion about this with the Attorney General?

3 THE WITNESS: Once that decision was made
4 that day, no.

5 MR. CHERTOFF: And you'd agree with me --

6 THE WITNESS: About the decision-making
7 process, Mr. Chertoff?

8 MR. CHERTOFF: No, about the decision to go
9 ahead and bring the indictment down, publicly, in
10 advance of the --

11 THE WITNESS: That was pretty much determined
12 on March 10th, 1999.

13 MR. CHERTOFF: Did the Attorney General
14 actually ever say to you why he felt it was important
15 to bring charges down before the anniversary date of
16 the shooting?

17 THE WITNESS: No, but there had been -- in
18 context, there had been a lot of discussions and,
19 frankly, I had already -- you'll see it in my outline
20 for State Police review issues, assigning our community
21 Outreach folks to be prepared for the April 23rd
22 shooting because there might -- anniversary -- because
23 of the focus. There tends to be a focus on a matter on
24 an anniversary date after its occurrence.

25 MR. CHERTOFF: To your knowledge at this

1 point in time in March, did anybody raise the question
2 that the handling of the Hogan and Kenna matter might
3 be the subject of communications with the Senate in
4 connection with the Attorney General's confirmation
5 hearings? That that might come up in the hearings, the
6 Hogan and Kenna matter?

7 THE WITNESS: I know that -- I don't know if
8 it was as of March 10th, Mr. Chertoff, I don't know if
9 it had happened at that point in time. There was
10 certainly some correspondence that came in from some
11 Senators, including I think Senator Lynch, at some
12 point that listed a series of questions that had come
13 in. I think that's a matter of public record.

14 MR. CHERTOFF: And did those questions
15 include what was going on with the Hogan and Kenna
16 matter?

17 THE WITNESS: I don't think -- I don't
18 recall. I do think it dealt with racial profiling
19 generally. I don't know if it dealt with Hogan and
20 Kenna at that point.

21 MR. CHERTOFF: All right. Let me correct
22 what I said earlier. The actual Brook-Murphy hearing
23 with respect to the false statements indictment
24 occurred in June of 1999 and according to the brief,
25 and I take it you don't disagree with this, there was

1 about 112 pages of questioning on June 8th. That was
2 filed with the court on June 11th. The Court reviewed
3 it and then had a telephone conference with the State
4 on June 15th and excluded a couple of jurors and made
5 specific findings, and that's about a 78-page
6 transcript. Then there was a further Brook-Murphy
7 hearing on June 29th with more voir dire. Further
8 communication with the Judge. And ultimately a juror
9 was allowed to remain. Does that seem approximately
10 correct?

11 THE WITNESS: I accept your review of the
12 brief.

13 MR. CHERTOFF: And it's fair to say that it
14 was anticipated that a Brook-Murphy hearing would be
15 somewhat time-consuming and would certainly be
16 necessitated by the release of these charges, correct?

17 THE WITNESS: Yes. That the instructions
18 were that it had to be extensive and thorough.

19 MR. CHERTOFF: And I take it it was also
20 clear that the more publicity given to the release of
21 the falsification charges, the more onerous it would be
22 to survive the Brook-Murphy hearing because the more
23 likely people would have read about it, correct?

24 THE WITNESS: The level of publicity would
25 have -- would relate to the potential exposure that

1 individuals would have, yes.

2 MR. CHERTOFF: And the March 10th meeting,
3 was there any discussion of the idea of indicting the
4 case, but doing it in a comparatively low-key way so as
5 to minimize the amount of publicity?

6 THE WITNESS: We had -- we had found to date
7 that anything that happened with respect to matters on
8 the Turnpike or that case had significant publicity
9 attached to it. So that there wasn't a discussion of
10 minimizing it because there was an expectation or
11 realization that if there was some action, there would
12 be some focus on it.

13 MR. CHERTOFF: From your experience with
14 Brook-Murphy proceedings in Grand Jury, what is usually
15 the reason -- well, a Brook-Murphy proceeding has to be
16 carried out anytime you need to determine whether
17 people have prior information or contact that might
18 taint them in a case they're sitting in, correct?

19 THE WITNESS: Correct. Although from the
20 beginning in this -- the 7A, Hogan and Kenna matters,
21 because of the publicity, one of the issues in that
22 kind of case was instructions to the grand jurors to
23 avoid newspapers. It's much different then, let's say,
24 if it was an unlawful possession of a firearm case.

25 MR. CHERTOFF: And I take it it's not that

1 uncommon to have a Brook-Murphy hearing at the
2 beginning of a proceeding if it's, you know, a Grand
3 Jury proceeding if there's any possibility that it has
4 some public attention or anything of that sort?

5 THE WITNESS: Correct.

6 MR. CHERTOFF: And then you'd have a Brook-
7 Murphy hearing in the middle of a proceeding if
8 something unanticipated occurred that focused a high
9 degree of publicity on a case, correct?

10 THE WITNESS: Correct.

11 MR. CHERTOFF: Are you familiar with any
12 other cases besides the Hogan and Kenna case where a
13 Brook-Murphy hearing was necessitated in the middle of
14 a Grand Jury investigation because of some other case
15 which the State brought during the pendency of the
16 first Grand Jury investigation?

17 THE WITNESS: During the period of time that
18 I've been with the State, no.

19 MR. CHERTOFF: To the extent you can, would
20 you give us your best recollection of what was the
21 reason articulated by the Attorney General for his
22 desire to have some public action before the April
23 anniversary of the Turnpike shooting?

24 THE WITNESS: With all due respect, I do
25 believe I've answered that question a couple of times.

1 MR. CHERTOFF: I mean how did he articulate
2 it, I guess is my question? Or was it just understood?

3 THE WITNESS: I went through all of the --
4 what was said at the meeting. What are you focusing
5 on?

6 MR. CHERTOFF: I want to know, in explaining
7 or articulating the positive argument in favor of let's
8 do something by the shooting anniversary, what did the
9 Attorney General actually say?

10 THE WITNESS: I think he said that -- the
11 reason I'm hesitating, there are some aspects of it
12 that deal with the evidence in the case and the
13 characterization of the activities of the troopers that
14 I don't want to get --

15 MR. CHERTOFF: I'm interested in the timing
16 issue. What he said in favor of or in support of the
17 notion we have to do something or show some action
18 before the anniversary date.

19 THE WITNESS: Some of it related to what I
20 discussed before in terms of the anniversary and the
21 need to move forward. And some of it related to
22 somewhat of a review of some of the evidence in that
23 case or the significance of that case. And it related
24 to his view of the significance of the alleged actions
25 in that case.

1 MR. CHERTOFF: But in terms of the need to do
2 it before the anniversary, what was his reason for
3 saying we need to do something before the anniversary
4 date? Did he express a reason?

5 THE WITNESS: I think he expressed that there
6 was again given the view of the alleged actions in that
7 case, that it was -- and I mean the falsification, that
8 in conjunction with what he viewed as the need to move
9 forward, that there were aspects of the evidence in
10 that case or the allegations in that case that
11 warranted it.

12 MR. CHERTOFF: Maybe we're still
13 misunderstanding each other. I'm going to try once
14 more.

15 I'm not asking you why he thought there was a
16 good case --

17 THE WITNESS: All I'm saying --

18 MR. CHERTOFF: -- I'm asking you why he --
19 did he express any or articulate any reason why
20 something should happen in the case before the
21 anniversary date of the shooting?

22 THE WITNESS: Part of it was the discussion
23 as well is if that portion of the case was completed
24 and the allegations in that portion of the case were
25 significant, that we should move with that portion of

1 the case.

2 MR. CHERTOFF: And what was the other part of
3 what he said?

4 THE WITNESS: As I said, the other part of it
5 relates to our discussions of the characterization of
6 the evidence in that case, and I really would prefer
7 not to discuss that.

8 MR. CHERTOFF: No, but I mean -- but in terms
9 of the timing issue and the connection with the
10 anniversary, what did he --

11 THE WITNESS: Well, it wasn't -- the
12 connection was if that's ready to be presented, then
13 present it if you're concluded with it.

14 MR. CHERTOFF: But how did he connect it up
15 with the anniversary, that's my -- I seem to be having
16 difficulty pinpointing --

17 THE WITNESS: To the extent -- I'll say to
18 the extent to which it related to the issue of
19 activities out on the Turnpike, and that's really the
20 limit of what I can say.

21 MR. CHERTOFF: When you and Mr. Gerrow and
22 Mr. Grinnell and Ms. Stone left the meeting, did you
23 have any discussion among yourselves about what had
24 just transpired?

25 THE WITNESS: It was immediately after that

1 or shortly after that that we either sat down or talked
2 about it, and I said look, we've got to be all
3 comfortable with this. If, you know, on further
4 thinking, just let me know if you're not comfortable
5 with this approach.

6 MR. CHERTOFF: Well, in saying that we have
7 to be comfortable with it, was that a response to
8 anybody expressing discomfort or unhappiness with the
9 decision?

10 THE WITNESS: It was essentially a review of
11 the risks that we had talked about and that I wanted to
12 make sure that we were continuing to focus on that.
13 And if there was a recommendation, that we needed to
14 engage in any further analysis or anybody who further
15 disagreed with it, I wanted to hear from them.

16 SENATOR GORMLEY: But it was the consensus
17 that if there were not this need for public relations,
18 it would be better not to do it.

19 THE WITNESS: Well, I don't think that
20 necessarily there was a rejection of the issue in terms
21 of the timing and action. So that wasn't --

22 SENATOR GORMLEY: But all I'm saying is, if
23 there were not this need for public relations -- I mean
24 this is about a balance of risk, risk reward. And the
25 Attorney General had made a determination that the

1 potential risk was offset by the public relations value
2 of the announcement of indictments.

3 THE WITNESS: In fairness, Senator, I would
4 -- I would replace your characterization of public
5 relations, that's not how it was expressed to me, but
6 it was expressed in terms of view of that's what the
7 public interest was at that time.

8 MR. CHERTOFF: When you left the meeting --

9 THE WITNESS: The Attorney General's view of
10 the public interest at that time.

11 MR. CHERTOFF: When you left the meeting, did
12 Debra Stone express any opinion about what had
13 happened?

14 THE WITNESS: We had a discussion as to the
15 risks and at that point we had received a decision
16 based upon the advice we had given, and she said --

17 MR. CHERTOFF: Here is my question.

18 THE WITNESS: -- and she said at that point
19 that we would move forward at that point.

20 MR. CHERTOFF: I want to know, when you got
21 out of the meeting, what did Debra Stone say about what
22 happened in the meeting?

23 THE WITNESS: I think I said first I want to
24 make sure that we're all comfortable with this and if
25 we're not, it's our obligation to take some further

1 steps.

2 MR. CHERTOFF: And what did everybody else
3 say?

4 THE WITNESS: And I think the recognition was
5 it wouldn't have been the preference to go this
6 direction, but that there was no further objection
7 raised.

8 Let's go off the record a second. It was
9 5:15 we were talking about as opposed to 4:15?

10 MR. CHERTOFF: Yeah. Let's go off the
11 record.

12 (Off the record)

13 MR. CHERTOFF: Let me ask you two more
14 questions just about the issue of the -- about this
15 Hogan and Kenna falsification.

16 First of all, were there other -- without
17 mentioning names, were there other troopers who were
18 under investigation as of March 10th, 1999, under
19 investigation for possible falsification?

20 THE WITNESS: I believe that part of the
21 synopsis that I received on February 10th -- yes. I
22 believe it was reflected in some of the information I
23 received in February 10th regarding some troopers and
24 the Troop D audit.

25 MR. CHERTOFF: At the March 10th --

1 THE WITNESS: And by -- when I received the
2 synopsis of the audits, keeping in mind that what I
3 mean by investigation was that Internal Affairs
4 investigation is what I was aware of.

5 MR. CHERTOFF: After -- at the March 10th
6 meeting, was there any discussion about whether there
7 were any other troopers who should be investigated in
8 the Grand Jury with respect to falsification of
9 records?

10 THE WITNESS: I don't believe that was
11 discussed at the time.

12 MR. CHERTOFF: As of March 10th, 1999, was
13 there a referral of other troopers for possible
14 criminal investigation for falsification of records,
15 based on the Internal Affairs review?

16 THE WITNESS: I don't know the answer to that
17 question.

18 MR. CHERTOFF: To your knowledge from
19 February 1999 to the present, was any other trooper
20 ever indicted for falsification of record?

21 THE WITNESS: Indicted -- indicted, no.

22 MR. CHERTOFF: In relation to racial
23 profiling.

24 THE WITNESS: Indicted, no.

25 MR. CHERTOFF: On March 10th did the Attorney

1 General ask you about the status of investigations into
2 whether other troopers were engaged in falsifying
3 records relating to racial profiling?

4 THE WITNESS: That may -- Troop D may have
5 come up in that, but I don't recall.

6 MR. CHERTOFF: But he didn't press you to
7 move other cases with respect to Troop D?

8 THE WITNESS: He said to move -- we weren't
9 moving forward any cases in terms of Grand Jury at that
10 time, no.

11 MR. CHERTOFF: Right. He didn't press you to
12 present anything else to the Grand Jury besides --

13 THE WITNESS: No, because he had not been
14 advised that anything else was ready to go with the
15 Grand Jury at that time.

16 MR. CHERTOFF: Now, let me go back in time.
17 We focused on March 10th and we focused on the Attorney
18 General's indication that it was in the public interest
19 to move forward with respect to the Hogan and Kenna
20 falsification indictments before the anniversary. But
21 now let me take you back to 1998. The Hogan and Kenna
22 investigation began, if I'm not mistaken according to
23 Z-1, on approximately May 8th, 1998 as it relates to
24 falsification of records, right?

25 THE WITNESS: I would agree, yes

1 MR. CHERTOFF: Okay. And then if I follow --

2 THE WITNESS: If you're reading from the
3 document, yes.

4 MR. CHERTOFF: And if you follow along with
5 me on Z-1, there's activity on May 8th, May 9th, May
6 12th, May 13th, May 14th. We go to Page 15. It's
7 continuing into June 3rd and June 5th. On Page 31 we
8 have June 25th. Page 35 is June 26th. Page 53 is July
9 2nd.

10 THE WITNESS: Page 53 you jumped to?

11 MR. CHERTOFF: Yeah. Page 59 is July 21st.
12 Page 64 is August 7th. Page 70 is September 11th. And
13 then you have -- the next entry after September 11th
14 occurs --

15 MS. GLADING: Page 89, maybe?

16 THE WITNESS: No, Page 88.

17 MR. CHERTOFF: Page 88 which is --

18 THE WITNESS: September 16th.

19 MR. CHERTOFF: -- September 16th. Then after
20 September 16th, there's something on September 26th,
21 October 19th and 20th. There's reviewing something.
22 On October 21 and 26th there's a meeting with somebody.
23 On October 26th there's marking and logging things. On
24 October 27th and 28th there's another meeting. On
25 October 29th there's another activity. On November

1 12th there's an interview. On November 25th there's an
2 interview. On December 1st there's a review. On
3 December 9th there's a re-interview. And basically
4 there's some -- a little bit of activity on December
5 15th and December 16th.

6 THE WITNESS: I think to add, on December
7 16th there was an interview.

8 MR. CHERTOFF: Okay. Now, in this entire
9 period of seven months, did Attorney General Verniero
10 ever call you up and ask you whether it would be
11 possible to push this investigation with respect to the
12 falsification of records on Hogan and Kenna so as to
13 get it done let's say by the end of the calendar year
14 1998?

15 THE WITNESS: No. But we had frequent
16 discussions about trying to move the investigations as
17 quickly as possible.

18 MR. CHERTOFF: But with respect to a
19 directive to actually get an indictment out by a
20 particular deadline, the first time you got a directive
21 like that was on March 10th, 1999.

22 THE WITNESS: Yes and no. There were a
23 series of goal dates that had been set on the overall
24 investigation and the shooting that were not met along
25 the way.

1 MR. CHERTOFF: What were those goal dates?

2 THE WITNESS: Of estimates in talking to Mr.
3 Gerrow as to when we thought that overall case would be
4 completed, but as I said, that portion got more and
5 more complicated and got elongated. So I want to leave
6 an impression that there was no discussion of timing.

7 MR. CHERTOFF: But as to the falsification of
8 records, the first time you were given a deadline or
9 had discussion about timing was on March 10th?

10 THE WITNESS: We had discussions as to the
11 overall progress of the other investigation as it
12 relates to the timing of an indictment and the
13 scheduling of an indictment, yes, March 10th.

14 MR. CHERTOFF: You were not pushed to
15 complete that investigation and get it indicted in
16 1998, is that correct?

17 THE WITNESS: No, I was pushed to get the
18 overall Turnpike shooting done.

19 MR. CHERTOFF: The falsification indictment.
20 You were not pushed to complete the falsification
21 investigation and get it done in 1998, correct?

22 THE WITNESS: I was told by the Attorney
23 General that whatever resources are necessary to move
24 that case as quickly as possible should be made
25 available. And that was the discussion I had with him.

1 Whether you want to characterize it as pushing or not,
2 but he did seek updates as to how all of these
3 investigations were going.

4 MR. CHERTOFF: Now, I want to direct your
5 attention to what I'm going to show you is G-25.

6 MS. GLADING: Before we leave this topic, I
7 want a quick question.

8 My understanding from a draft statement that
9 was in the document release of April 19th, a draft
10 statement by Verniero. I don't know if it was actually
11 released, is that -- well, it indicates that we suspect
12 that at least ten other troopers may have falsified
13 records. And that was in this draft statement that was
14 in a document release by the Office of the Governor.
15 Do you recall if that was the case at the time the
16 falsification indictment was announced?

17 THE WITNESS: I recall that that was what we
18 were advised at around that time.

19 MS. GLADING: And at that point in time was
20 there a possibility that those troopers might be
21 indicted?

22 THE WITNESS: That they would refer it for
23 evaluation. There were a category of cases that had
24 been referred or identified for analysis to see whether
25 or not a criminal investigation or prosecution was

1 warranted.

2 MS. GLADING: Analysis by whom?

3 THE WITNESS: By both -- conjunction. State
4 Police and the Division of Criminal Justice.

5 MS. GLADING: Okay. And was there any
6 concern about presenting to a Grand Jury, the timing of
7 presenting to a Grand Jury two cases involving
8 falsification while then others were still not resolved
9 and might ultimately end up before a Grand Jury or not?

10 THE WITNESS: No, because there -- no.

11 MS. GLADING: Why would that be?

12 THE WITNESS: Because then you'd be at a
13 point in time where you would have to wait for any
14 action until all the rest of the cases are concluded
15 and that isn't -- that isn't the way in which the
16 Prosecutor's Office often operates.

17 MR. CHERTOFF: Do you have G-25 in front of
18 you?

19 THE WITNESS: I do.

20 MR. CHERTOFF: Did you recognize this
21 document?

22 THE WITNESS: I recognize them, yes.

23 MR. CHERTOFF: Okay. Was this a document --
24 when did you see this document for the first time?

25 THE WITNESS: I believe I saw the document

1 for the first time in the blue binder. I think it's in
2 the blue binder. And these are the documents that I
3 found, among a couple of documents that I found when I
4 went back to look at Rover's files before the issuance
5 of the interim report and that I referred to as in
6 essence the underlying documents that -- or some of the
7 raw data that deals with the narrative.

8 MR. CHERTOFF: To your knowledge is this what
9 is referred to in the memo that you received from
10 George Rover on February 26th, which is Z-14, which
11 makes reference to a document not produced at DOJ,
12 namely a statistical breakdown of motor vehicle stops
13 for the sample dates?

14 THE WITNESS: No, because this is consents.

15 MR. CHERTOFF: Okay. So there's something --
16 this is something different.

17 THE WITNESS: Yes. So that you would look
18 through one through -- there's no identification of any
19 statistical analysis of --

20 MR. CHERTOFF: What about the second page of
21 G-25, does that look like it's the statistical
22 breakdown of motor vehicle stops for the sample dates?

23 THE WITNESS: No. See, what was pointed out
24 to me by Mr. Rover, you will recall that I had the
25 conversation with him in which I said where are the

1 statistical analyses? And he had identified to me
2 there's a couple of -- there's a couple of charts --
3 there's a couple of charts here -- are we talking about
4 number three, Mr. Chertoff?

5 MR. CHERTOFF: Yes.

6 THE WITNESS: The statistical breakdown for
7 the sample dates.

8 MR. CHERTOFF: Um-hmm.

9 THE WITNESS: I had asked him if he had
10 summaries for the sample dates and what he gave me were
11 the stop -- or pointed out to me the stop summaries
12 that are in the blue binder, I believe, that have the
13 -- it's like a table and it says sample dates and it's
14 got the stops.

15 MS. GLADING: Look like this?

16 THE WITNESS: No, it's actually -- it's black
17 -- gray portions and white portions to it. It's a much
18 more presentable actual chart. Here they are.

19 MR. CHERTOFF: Okay. Mr. --

20 THE WITNESS: Motor vehicle stop rate data
21 information. New Jersey Turnpike Troop D. Samples of
22 randomly-selected dates in 1995. That's --

23 MR. CHERTOFF: That's what Mr. Rover was
24 referring to in the memo?

25 THE WITNESS: Well, that's what I understood

1 him to be referring to.

2 MR. CHERTOFF: And this document, G-25, was
3 another document you found in Rover's files as well.

4 THE WITNESS: I found in his files before the
5 issuance of the report, yes.

6 MR. CHERTOFF: Okay. Let me ask you just a
7 couple more questions.

8 I don't know if we -- we may have covered
9 this, but it's late in the day and I may have
10 forgotten. Just to be clear, what reason were you
11 given for --

12 MR. MILLER: Mr. Chertoff --

13 THE WITNESS: Okay. Wait one second.

14 MS. GLADING: I'm sorry. I just need to see
15 what page he's referring to.

16 THE WITNESS: I'm sorry, Mr. Chertoff.

17 MR. CHERTOFF: What reason were you given for
18 accelerating the completion of the portion of the
19 report, interim report, that relates to racial
20 profiling from a four-month deadline to a two-month
21 deadline?

22 THE WITNESS: That went around my discussions
23 with the Attorney General as it relates to the Soto
24 appeal and my recommendations to withdraw the Soto
25 appeal. And I didn't -- by the time I was coming up to

1 March 16th in my oral argument, I had concerns about
2 the Soto appeal. After the oral argument I had even
3 more concerns about the Soto appeal based upon some
4 questions that I received from some of the panel. And
5 then I think within a couple of days of that, my
6 recommendation was that I really did not want someone
7 from the Division of Criminal Justice going up -- given
8 some of the questions that I was asked in that
9 Appellate, discussions just on continuance, as to
10 status of review, issues with respect to the record in
11 that case, that I thought I was strongly arguing that I
12 thought we must withdraw from that case and I was
13 uncomfortable filing a brief on April 21st. Again, not
14 just because of some of what we found.

15 MR. CHERTOFF: You're missing my question.
16 My question is why was the profiling portion of the
17 interim report accelerated?

18 THE WITNESS: I'm about to answer that in the
19 next two sentences. And I was advised that if that was
20 the direction we were going and it reached preliminary
21 results, that before the withdrawal of Soto, we should
22 expedite and come out with a preliminary report on
23 racial profiling. That would serve as partly a
24 foundation or explanation for the change in position on
25 the Soto case.

1 MR. CHERTOFF: But you had asked for 120 days
2 delay in Soto, right?

3 THE WITNESS: Yes.

4 MR. CHERTOFF: So 120 days would have taken
5 you to approximately June, right?

6 THE WITNESS: But I didn't get that. The
7 Court -- the Court did the following. It ordered -- on
8 March 16th it rejected the continuance till the 4th of
9 June and said I still have to file the brief on April
10 21st and still had to appear on the 28th. I could
11 limit the arguments that my staff would make. I
12 thought that put us in an untenable position. I didn't
13 really like the result of what the Court had provided
14 us. And I was strongly arguing that we needed to
15 withdraw before April 28th. So then that decision was
16 made and there are some documents that reflect -- I
17 think I sent something to Justice that says sometime in
18 the week of 17th or 18th of March, it says we've made a
19 determination and we're going to issue our preliminary
20 findings before April 28th.

21 MR. CHERTOFF: Okay. I don't have anymore
22 questions.

23 MS. GLADING: On the decision to -- well, on
24 the motion to seek a delay in the Soto case, you
25 indicate in your certification in that motion -- it was

1 marked, but I don't know if it was given to the
2 witness, Z-18.

3 MR. WHEELER: Z-18.

4 MS. GLADING: I could just read you the
5 passage I want to ask you about.

6 THE WITNESS: All right. Go ahead. I'm not
7 doing a good job of keeping track of them for you.
8 Sorry.

9 MR. WHEELER: I think it's the last document
10 in the pile.

11 THE WITNESS: Here we go, I've got it.

12 What page are you on, Ms. Glading?

13 MS. GLADING: On Page 2 of your
14 certification.

15 THE WITNESS: Yes.

16 MS. GLADING: At the bottom of it. You
17 indicate, "During the course of the investigation of
18 the April 23, 1998 incident, an additional inquiry into
19 the practices of troopers assigned to the Moorestown
20 and Cranbury barracks of the New Jersey State Police
21 was initiated. That investigation is examining stops
22 made by troopers assigned to those barracks for the
23 first four months of 1998 and is still pending."

24 Is that a reference to the Sachetti audit?

25 THE WITNESS: Yes, I believe so.

1 MS. GLADING: Do you see that it's item
2 number eight?

3 THE WITNESS: Yes, I do.

4 MS. GLADING: Okay. Why was that relevant to
5 the need to delay Soto?

6 THE WITNESS: Well, no, I think it was all
7 relevant to the decisions we were making as it relates
8 to racial profiling. And at that point I saw that in
9 addition to the legal issues in the case, that our
10 position in that case I thought would be impacted by
11 whatever determinations the State Police Review Team
12 made or should be impacted by it.

13 MS. GLADING: Number 11 on the next page.
14 "In light of pending investigations and pending
15 comprehensive review of State Police practices, it's
16 appropriate the State of New Jersey also undertake a
17 comprehensive review of the positions taken to date in
18 this litigation."

19 THE WITNESS: Yes.

20 MS. GLADING: Was there any evidence before
21 you at this point that -- or what -- let me ask you.
22 What evidence was before you at this point that was
23 making you -- that was prompting you to revisit the
24 position in this litigation?

25 THE WITNESS: Well, I think was some of the

1 concerns that Debra Stone had identified to me, both
2 orally and in writing. And the knowledge that, in
3 combination with this review, I was re-examining the
4 State's position.

5 MR. WHEELER: Actually, along those same
6 lines, I have a couple questions.

7 You testified, and I'm going to refer to the
8 testimony from the April 26th public hearing on the
9 racial profiling, and on Page 17 you testified that you
10 filed a motion with the Appellate Division on March 5th
11 because you -- it says, "During the course of that
12 there was some concerns that I had with respect to the
13 numbers that I was seeing as it relates to our
14 investigation, and that possible relevance back to that
15 in the Soto case."

16 What numbers -- is that the numbers that
17 you're talking about when you just answered Ms.
18 Glading's question? I mean you said you had seen some
19 data or at least you had --

20 THE WITNESS: Well, I think at the time I had
21 seen some data and I think I could have completed that
22 answer a little bit more by also talking about the
23 March 16th conference call I had had with the Appellate
24 Division, at which time I had more information and in
25 which there was a discussion of potentially withdrawing

1 the case. So --

2 MS. GLADING: What additional information did
3 you -- oh, never mind. I'm sorry, go ahead.

4 MR. WHEELER: Well, I just want to refer you
5 -- Deb Stone, I'm going to refer back to her testimony.
6 At the time you received those boxes of documents from
7 George Rover, I think we pinned it at mid-February
8 somewhere.

9 THE WITNESS: I think the record reflects
10 it's February 26th, the date of the document.

11 MR. WHEELER: Okay. She says that after you
12 received this box of documents, you had asked her to
13 review -- go through the documents to determine if
14 there are any documents that are relevant to the Hogan
15 and Kenna investigation. Is that -- do you recall
16 that?

17 THE WITNESS: I think there's a combination
18 of what I provided to her. At some point I did make
19 that request. I don't know if it was specific as to
20 the February 26th date or the blue binder of documents
21 but --

22 MR. WHEELER: No, I'm just saying that after
23 you received the boxes of documents from George Rover,
24 did you at some point ask Deb Stone to look through
25 those documents to see if there are -- that were

1 relevant to the Hogan and Kenna investigation?

2 THE WITNESS: I probably did.

3 MR. WHEELER: Well, she says that after she's
4 told that, she reviews the boxes of documents, goes
5 through them, and finds some consent search numbers and
6 that they were extremely high. Do you recall her ever
7 going to you -- this is now probably end of February,
8 very beginning of March, do you recall her going to you
9 and indicating those high consent search numbers?

10 THE WITNESS: Well, I think that in
11 conjunction I think what she's speaking about there is
12 when we sat down and we went over these consent
13 numbers --

14 MR. WHEELER: I'm sorry to interrupt you, but
15 she actually said in her testimony that she's talking
16 about the boxes of documents that George Rover brought
17 to you. She's not talking about the Gilbert documents.
18 They were separate. She had a different reaction. She
19 had the same reaction that you did, she was very upset
20 about that. But what I'm saying is she testified that
21 after George Rover brought over these boxes of
22 documents, you asked her to review them, to go through
23 them, to determine if there was any -- if they were
24 relevant to the Hogan and Kenna investigation, and in
25 doing so, she found some consent search numbers that

1 were very high. Do you recall her bringing that to
2 your attention?

3 THE WITNESS: I believe that the timing that
4 she has is off and I'd like to explain why.

5 MR. WHEELER: Okay.

6 THE WITNESS: Because when I gave this blue
7 binder of documents to Debra Stone, she was as upset as
8 I was because she was seeing some of the consent
9 numbers for the first time and told me that. So that -
10 - so that I don't know how consistent it is necessarily
11 that she had -- because this is really where we framed
12 the discussion. And I don't really recall her
13 referring me back to Rover documents when we had that
14 discussion at all.

15 MR. WHEELER: Okay.

16 MS. GLADING: Just to clarify, G-25, which is
17 the July 10th --

18 THE WITNESS: Got it.

19 MS. GLADING: Okay. 1997 memo. Did you
20 indicate that you thought this was in the Gilbert
21 notebook?

22 THE WITNESS: I thought it was in the Gilbert
23 notebook. There's documents similar to this in the
24 Gilbert notebook.

25 MS. GLADING: I'd ask you to take a look at

1 this. The page that looks like this is fairly --
2 probably ten, 15 pages into it.

3 THE WITNESS: Would you mind bring that over?

4 MS. GLADING: No. Are you thinking about
5 this?

6 THE WITNESS: Yes.

7 MS. GLADING: Okay.

8 THE WITNESS: Those documents like that
9 consist of my ability to check back, but these were in
10 the category -- yes. These are the three documents I
11 think I was referring to.

12 MS. GLADING: Okay. If I can just stay here
13 for a minute.

14 THE WITNESS: Sure.

15 MS. GLADING: I just want to point out that
16 this deals with 38 files on the consent to search for
17 the 30 sample dates.

18 THE WITNESS: Right.

19 MS. GLADING: And this document deals with
20 37. So they are different documents and different
21 statistics. So I'm wondering if you still think this
22 was in there.

23 THE WITNESS: Well, no. Whatever is in here
24 is in here. What I was saying is that when I went into
25 -- when I went into Rover's files, it was documents

1 similar to G-25 which were -- seemed to be documents
2 that correlated to Gilbert's narrative memo, which to
3 me meant that the substance of that one Gilbert
4 narrative had come over to the office prior that and
5 they were documents similar to that.

6 MS. GLADING: Did you ask Mr. Rover or anyone
7 when they came over to the office?

8 THE WITNESS: I presumed at that point that
9 they had come over during the Justice Department
10 collection that he was doing.

11 MS. GLADING: So you think sometime in 1997.

12 THE WITNESS: I would -- I would think that
13 was -- yeah. I would think that given the activity
14 period of the Justice Department investigation, it
15 would have been sometime around then.

16 MS. GLADING: Okay. And, Scott, could you
17 give him that?

18 MR. WEBER: Sure.

19 MS. GLADING: I'm just going to -- I'm going
20 to do this very quickly.

21 MR. WEBER: Well, why don't I just -- I'll
22 mark it Z-19.

23 MS. GLADING: And just so we're clear, your
24 testimony just now as I understood it was that numbers
25 similar to this July 10th, 1997 statistical memo about

1 the 30 sample dates were in George Rover's boxes that
2 he brought to Mike LoGalbo?

3 THE WITNESS: Yes.

4 MS. GLADING: And you concluded from that
5 that these numbers had come over to the Department, or
6 some documents like this had come over to the
7 Department at some point in 1997?

8 THE WITNESS: I concluded that they had come
9 over to the Department prior to my involvement. So I
10 was focusing on the accuracy of the statement on Page
11 23 as to the production in March. I didn't have any
12 specific focus on when they came over.

13 MS. GLADING: Okay, very good.

14 What you've been given is a collection of
15 different synopses, different excerpts of Mr.
16 Susswein's various and many drafts.

17 THE WITNESS: Yes.

18 MS. GLADING: And I just have about five
19 quick questions on them.

20 THE WITNESS: Sure.

21 MS. GLADING: If you could turn to Page 75 of
22 the -- and this is marked -- what is this marked,
23 Scott?

24 THE WITNESS: Do you have --

25 MR. WEBER: Z-19.

1 THE WITNESS: Do you have OAG numbers on
2 those?

3 MS. GLADING: Yes. OAG2698, which is a
4 passage from the April 7th version of the interim
5 report. And I'm looking at the --

6 THE WITNESS: Hold on a second. I have it.

7 MS. GLADING: -- the last full paragraph. If
8 I could just read it to you.

9 "We've also learned of instances" -- and I'll
10 represent that this paragraph is deleted from the final
11 version of the interim report. "We have also learned
12 of instances where neither the Division of Criminal
13 Justice nor the appropriate County prosecutor was
14 advised when an internal investigation revealed that a
15 trooper had falsified information in a report. This is
16 a serious problem, one that not only directly affects
17 the integrity of the organization, but also implicates
18 the ethical and discovery obligations of prosecutors.
19 These matters will be fully addressed as part of the
20 comprehensive review of State Police management
21 practices."

22 Mr. Susswein's testimony was that this was
23 taken out because it was a topic for the final report.

24 THE WITNESS: That's correct.

25 MS. GLADING: I read through the final report

1 last night and didn't find anything this specifically
2 -- this is pretty heavy-handed language.

3 THE WITNESS: Well, I think there was a
4 discussion of the communication of Internal Affairs and
5 one of the things I referred to before was that I was
6 very concerned that we weren't receiving referrals on
7 falsification. So that we were ensuring that we
8 received referrals on falsification so that we could
9 engage in an analysis of what needed to be produced.

10 MS. GLADING: Okay. Were there cases to your
11 knowledge where the ethical discovery obligations of
12 prosecutors had been implicated?

13 THE WITNESS: In instances in which going
14 through Internal Affairs files, that if there hadn't
15 been a communication -- yes, there had been instances
16 of that and that was of great concern and was one of
17 the focuses of the reform efforts at Internal Affairs.

18 MS. GLADING: Were there any attempts to go
19 back to those cases and attempt to right the discovery
20 wrongs?

21 THE WITNESS: It was my understanding that
22 Ms. Stone was examining whether or not there were needs
23 to do that in particular cases. I don't know what
24 ultimately became of that specifically.

25 MS. GLADING: If you could turn now to the

1 April 9th draft that begins at Page OAG2753. And I
2 have a question about OAG2773.

3 THE WITNESS: Okay.

4 MS. GLADING: Which is Page 16 of that draft.

5 THE WITNESS: Right.

6 MS. GLADING: It indicates, "So too we are
7 especially disturbed by the fact," -- I'm at the last
8 paragraph.

9 THE WITNESS: Right.

10 MS. GLADING: "-- especially disturbed by the
11 fact that some troopers have actually falsified data
12 concerning the race of the occupants of stopped
13 vehicles. At least two troopers who engaged in this
14 practice were discovered during the course of an
15 unrelated criminal investigation and will be
16 prosecuted," although "will be" is crossed out and it
17 indicates "have been" prosecuted. "A number of other
18 troopers are currently under investigation for similar
19 misconduct."

20 This passage was edited out of the final
21 version of the interim report. Well, first, can you
22 identify the handwriting on that page?

23 THE WITNESS: This is all my handwriting and,
24 frankly, it was my decision, I didn't think there
25 should be any reference to specific decisions or

1 specific prosecution regarding Hogan and Kenna. I
2 should have caught that the first time, I didn't. And
3 I removed it before the report came out.

4 MS. GLADING: Okay. And the change from
5 "will be prosecuted" to "have been prosecuted," this is
6 dated April 9th. What was that change based on?

7 THE WITNESS: Well, that was a change based
8 upon the expectation that the report was going to be
9 released on or about the time of the anniversary and
10 that's why we eliminated this totally because we didn't
11 have any control over when that was going to occur
12 ultimately. And it also was not appropriate to
13 reference the fact of prosecution in this report at
14 all.

15 MS. GLADING: Okay. But the change to "will
16 be" to "have been" prosecuted, changing it to past
17 tense, was it your anticipation that you would have
18 prosecuted those troopers for falsification? I'm not
19 asking why it was deleted ultimately, but why you
20 changed "will be prosecuted" to "have been prosecuted."

21 THE WITNESS: That was based upon my
22 understanding that the matter was being moved. I
23 determined that it shouldn't appear in the report
24 because it related to a Grand Jury matter.

25 MS. GLADING: Okay. And the dates we

1 established for at this point in time, I guess it's
2 being presented to the Grand Jury, is that correct?
3 It's been presented?

4 THE WITNESS: I think the record reflects
5 that they had met once.

6 MS. GLADING: They had met once. Did they
7 meet again on this matter before they voted?

8 THE WITNESS: I think the record reflects
9 that they met -- Grand Jury indictments were released
10 on the 19th of April.

11 MS. GLADING: So they had met -- they had met
12 once.

13 THE WITNESS: Right.

14 MS. GLADING: And I guess you were pretty
15 confident you were going to get the indictment based on
16 that language?

17 THE WITNESS: I withdrew that from the report
18 because it was inappropriate for that comment to occur
19 publicly, and it's still inappropriate for me to
20 comment on that publicly.

21 MS. GLADING: I understand the final deletion
22 of it, but I'm talking about your handwritten edit,
23 "have been prosecuted." At that point you apparently
24 were not going to withdraw that from the report because
25 you didn't cross it out, you just altered it.

1 THE WITNESS: In that draft and that was
2 something I went back and corrected as it went later.

3 MS. GLADING: So did you change the words
4 because you were pretty confident you were going to get
5 the indictment at that point?

6 THE WITNESS: Again, I'd prefer not to answer
7 that question because it characterizes my view of the
8 case.

9 MS. GLADING: Okay. The April 13th version
10 of the report which begins at OAG2882. It's the next
11 version.

12 THE WITNESS: I have it.

13 MS. GLADING: Looking at OAG2941. It's Page
14 41 of that version of Mr. Susswein's report.

15 THE WITNESS: Yes.

16 MS. GLADING: I'm looking at the middle of
17 the second full paragraph, and I'll just read the
18 passage. "The failure to turn over to" -- let me just
19 put this in context. This is in context of talking
20 about internal investigations revealing a trooper had
21 falsified material information in a report. And it
22 says, "The failure to turn over discoverable material
23 in the course of litigation, has the very real capacity
24 to lead to unjust results and at the very least
25 seriously compromises the State's litigation position."

1 The new language is the beginning part of that
2 sentence. That appears in this report for the first
3 time and it's ultimately deleted. But are you aware of
4 any unjust results that resulted from a failure to turn
5 over discoverable material in litigation?

6 THE WITNESS: Not specifically, but that was
7 a concern that was identified.

8 MS. GLADING: Okay. There were no specific
9 cases in which you found or concluded there had been
10 unjust results?

11 THE WITNESS: No, I think this -- the drafts
12 went back and forth between Debra Stone and then Ron
13 Susswein at some point, and I think this was something
14 that she was focused on.

15 MS. GLADING: Okay. And if you could turn
16 to -- the next version is the April 16th version of the
17 report. It begins at OAG3027. And I have a question
18 about Page OAG3051 in that version.

19 THE WITNESS: Okay. I have it.

20 MS. GLADING: Okay. I'm looking at the
21 second paragraph on that page leading to the -- well,
22 just the second paragraph of that page.

23 THE WITNESS: Um-hmm.

24 MS. GLADING: And I'd like to read it into
25 the record. "As part of our review of allegations of

1 racial profiling, the Review Team sought production of
2 records from the State Police concerning traffic stops
3 on the New Jersey Turnpike, including analyses,
4 compilations and internal audits of the racial
5 characteristics of stopped motorists. In mid-March the
6 Review Team began to receive records from the
7 Superintendent's Office pertaining to audits,
8 compilations of data and analyses about racial
9 profiling. These records contained new, and in some
10 cases, extremely disturbing information that had not
11 previously been shared with the Office of the Attorney
12 General or the Division of Criminal Justice."

13 Is this the passage that we were discussing
14 earlier about language that was put into the interim
15 report that you went in and changed because you went
16 back to double check what maybe was already in-house in
17 the Attorney General's Office?

18 THE WITNESS: Yes.

19 MS. GLADING: Okay. And can you just explain
20 why you changed it?

21 THE WITNESS: Because it would have given the
22 impression that none of the -- the information in that
23 was in the report had ever been seen before. I didn't
24 think that was accurate so I had it changed.

25 MS. GLADING: Okay. The next version of the

1 report is the April -- another April 16th version. It
2 begins at OAG3149. And I have a question about the
3 whole passage running from OAG3189 to 3190.

4 THE WITNESS: Okay.

5 MS. GLADING: Do you see where I am?

6 THE WITNESS: Yes.

7 MS. GLADING: There are specific references
8 in this passage to the 30 sample days and a request
9 made by the Department of Justice.

10 THE WITNESS: Yes.

11 MS. GLADING: And the 30 sample days
12 statistics remain in the final version of the interim
13 report, but any reference to the Department of Justice
14 is deleted. Can you tell me why?

15 THE WITNESS: Well, I think the 30 sample
16 days as it relates to consents remains. I think Table
17 2 did not, upon delivering the document to Attorney
18 General Verniero, he asked me to remove references to
19 the Justice Department investigation because the
20 Justice Department investigation was confidential and
21 asked me to remove that from the report.

22 MS. GLADING: Okay. So references to the
23 Department of Justice investigation with a request for
24 data from the Department of Justice were deleted at the
25 direction of Attorney General Verniero.

1 THE WITNESS: Correct.

2 MS. GLADING: And just one more question.
3 And going back to the very beginning of this -- I
4 missed it my first time around, but this is again --
5 I'm going back to the April 7th version of this draft.

6 THE WITNESS: OAG what, Ms. Glading?

7 MS. GLADING: OAG -- it's the very first page
8 of what I gave you. Okay. I have a question about
9 OAG2636.

10 THE WITNESS: Okay.

11 MS. GLADING: And this is the April 7th
12 version of this draft and there's a passage in there,
13 and I'll represent to you it's been deleted from the
14 final version of the interim report. But it reads in
15 the middle of that paragraph, "In the circumstances, we
16 need not wait for a court to approve a consent decree
17 before we take those steps we deem to be necessary and
18 appropriate to ensure strict compliance with all
19 constitutional rights and to enhance the
20 professionalism of the New Jersey State Police." And
21 it goes on to say, "While the positions taken in recent
22 years by the Attorney General's Office in the course of
23 litigation may have been misunderstood and
24 misinterpreted as turning a blind eye to the problem of
25 the disparate treatment of minorities, we think it

1 appropriate now to go well beyond the rulings of courts
2 in New Jersey and other jurisdictions."

3 That portion of that paragraph is deleted and
4 I have two questions about that. Why was the second
5 sentence in that paragraph about the concern about
6 positions in recent years --

7 THE WITNESS: Well --

8 MS. GLADING: -- in litigation been deleted?

9 THE WITNESS: -- that was something that Mr.
10 Susswein provided to me originally. I didn't think --
11 I thought the simple statement was we're either doing
12 this because it's the right thing to do and that's
13 enough to say. It would go beyond requirements because
14 it's the right thing to do, and we don't need to
15 include any other explanation about it.

16 MS. GLADING: Okay.

17 THE WITNESS: Because what we were doing was
18 not based on an evaluation of all the litigation, it
19 was based upon what we thought was appropriate.

20 MS. GLADING: Okay. And the first sentence
21 that I read to you concerning, "We need not wait for a
22 court to approve a consent order before we take those
23 steps." Mr. Susswein's testimony was that he wrote
24 that because his understanding at the time was that
25 there were negotiations going on concerning a consent

1 order. Is that accurate?

2 THE WITNESS: That there were negotiations
3 ongoing?

4 MS. GLADING: Um-hmm.

5 THE WITNESS: There was -- I had negotiations
6 with the Justice Department. I had met with them on
7 March 19th. I hadn't discussed specifically with them
8 agreeing to a consent decree at that time, but I
9 communicated to them in a letter dated March 29th our
10 willingness to try to avoid litigation on this issue,
11 but it didn't mean that that meant we were specifically
12 going to agree to a consent decree.

13 MS. GLADING: Where would Mr. Susswein have
14 gotten the idea that a consent decree might be in the
15 works?

16 THE WITNESS: It was something that I would
17 have kept him informed of. We had periodic meetings as
18 to what was happening with the State Police Review
19 Team. I was integrally involved in the discussions
20 with the Justice Department. It would have been from
21 me.

22 MS. GLADING: And so did you review a consent
23 decree as being a very real possibility at that point?

24 THE WITNESS: I certainly did.

25 MS. GLADING: I beg your pardon?

1 THE WITNESS: Yes.

2 MS. GLADING: Did Attorney General Verniero
3 know that a consent decree at this point, and we're
4 talking April 7th -- or before then, was a real
5 possibility?

6 THE WITNESS: I had -- I sent him a copy of
7 the March 29th letter that I forwarded to Justice.
8 Again, that didn't necessarily consent decree. I
9 thought we could do -- put in a series of reforms that
10 might be acceptable to the Justice Department. The
11 question was how they wanted to go forward with that.
12 I didn't know, but certainly I had told him that -- I
13 had reported to him my discussions with Justice.

14 MS. GLADING: Okay.

15 MR. WHEELER: Did you have any conversations
16 with Attorney General Verniero before that March 19th
17 meeting you had with Justice?

18 THE WITNESS: Yes.

19 MR. WHEELER: Did you discuss -- what did you
20 discuss?

21 THE WITNESS: I told him that I was going
22 down to Washington to meet with the Justice Department.
23 That prior to going to the Justice Department I was
24 going to have a two or three-hour meeting with the
25 Police Foundation to review early warning system that

1 they had designed. And I was going down to discuss the
2 status of the investigation and what I was attempting
3 to do with respect to the case.

4 MS. GLADING: Did you have any discussions
5 with him at that point about the possibility of a
6 consent decree?

7 THE WITNESS: As I said, yes. I mean one of
8 the issues was that at some point in time that I
9 thought we needed to resolve this in lieu of litigation
10 and sometimes in lieu of litigation a consent decree.
11 But I didn't have any specific discussion with him in
12 which I gave him, you know, said we have to, you know,
13 you have to decide whether or not we're going to agree
14 to a consent decree. I kept him informed as to my
15 negotiations.

16 MS. GLADING: Did you have any discussions
17 with him in general about the strength or weaknesses of
18 the State's position in terms of its negotiations with
19 the Department of Justice?

20 THE WITNESS: I told him that -- and
21 obviously there was a lot of things happening in the
22 month of March, and one of the things I discussed with
23 him, I was going down to Justice, that I thought we had
24 to -- we had to put in reforms in place and perhaps
25 Justice would be willing to cooperate with us if we did

1 that.

2 MS. GLADING: Okay.

3 MR. CHERTOFF: I just have one question.

4 After you got the blue notebook, G-33, and
5 you saw the Gilbert, undated Gilbert memo regarding the
6 Maryland statistics and the comparison to the New
7 Jersey statistics, did you ever have a conversation
8 with Mr. Rover about whether he had seen that or had
9 been -- had received information about the content of
10 that memo?

11 THE WITNESS: I think I previously testified
12 that I spoke with Rover at some point and I
13 specifically asked him about that memo and he told me
14 that he had never received that memo.

15 MR. CHERTOFF: Did he tell you whether he had
16 learned of the content of the memo?

17 THE WITNESS: At some point in time I
18 connected that together by him telling me that there
19 was some discussion as to numbers, so I connected that
20 back to the fact that he probably was, and that led me
21 to go look at his files again.

22 MR. CHERTOFF: And that discussion or that
23 reference by Mr. Rover about there having been some
24 discussion about these numbers, was it specifically in
25 connection with that meeting with Attorney General

1 Verniero?

2 THE WITNESS: At the time I didn't have the
3 benefit of knowing there was a May 20th meeting. So it
4 was just in conjunction with a meeting at some point --
5 or meetings at some point in time.

6 MR. CHERTOFF: But a meeting or meetings at
7 which the Attorney General was present?

8 THE WITNESS: Yes.

9 MR. CHERTOFF: One last question.

10 Since the commencement of this --

11 MR. MILLER: Is Ms. Glading done?

12 MS. GLADING: I have three questions.

13 MR. CHERTOFF: I'll be done with one.

14 Since the commencement of the investigation,
15 the announcement of this inquiry by the Senate, which I
16 guess was September of last year, have you had any
17 conversations --

18 MS. GLADING: Do you want me to ask my
19 questions before you finish up with this by any chance?
20 I mean this is usually your finishing-up question.

21 MR. CHERTOFF: Well, let me get it out.

22 THE WITNESS: I don't care. Somebody ask a
23 question.

24 MS. GLADING: All right.

25 MR. CHERTOFF: Since September of last year

1 when this inquiry was announced, have you had any
2 conversations with Peter Verniero about the inquiry in
3 any way, shape or form?

4 THE WITNESS: About the inquiry, I have had
5 no conversation. I'm trying to put the time together
6 when this was announced. It was announced after *The*
7 *Times* article came out, so that would have been in
8 September?

9 MR. CHERTOFF: Well, I think it was
10 announced --

11 SENATOR GORMLEY: Around October the 8th or
12 the 9th.

13 THE WITNESS: Okay. I have not spoken to the
14 former Attorney General Verniero about the substance or
15 anything with respect to these hearings at anytime of
16 the last -- I do have -- my office has communications
17 with him because he forwards in lists of cases that
18 there might be potential recusal on, but I have not
19 spoken with him. I did -- the last time I spoke to him
20 was sometime in probably November or thereabouts, but
21 it was not on anything with respect to the substance of
22 this inquiry at all.

23 MR. CHERTOFF: I'm done.

24 MS. GLADING: On the removal -- on the topic
25 of Mr. Verniero's instruction to remove the reference,

1 the Department of Justice reference.

2 THE WITNESS: Yes.

3 MS. GLADING: My understanding from your
4 earlier testimony was that the Department of Justice
5 had made public statements within a month or so before
6 the date of that draft which is April 16th. Maybe as
7 long as two months earlier.

8 THE WITNESS: Yes, but I believe at that time
9 the Justice Department had not agreed to make public
10 the substance of -- and the correspondence and the rest
11 of the investigation.

12 MS. GLADING: Okay. So the interest in
13 confidentiality was in confidentiality concerning what
14 exactly Justice was looking at?

15 THE WITNESS: I believe that was the focus of
16 the Attorney General's instruction.

17 MS. GLADING: Okay. That was question 1A and
18 B.

19 MR. MILLER: I'm counting.
20 (Laughter)

21 MS. GLADING: Can you explain why the
22 decision to release the interim report was made? -- I'm
23 trying to get this all in the one question, it's going
24 to be long, after you saw the Serrao Power Point
25 presentation without asking them to fix the numbers for

1 the lack of Hispanics in those number and come back to
2 you with more complete numbers since those numbers were
3 more recent and much more comprehensive than what you
4 had looked at?

5 THE WITNESS: That's an awful large subject
6 for the last question.

7 MS. GLADING: It's the second to last.

8 THE WITNESS: Because I received that
9 presentation that day after I was advised that
10 information was available and I made a determination
11 that it did not change, nor does it change today having
12 reviewed that subsequently, the conclusions of the
13 interim report that I reached. There was a
14 presentation that sounded very, very familiar to me
15 because it sounded very much like the presentation that
16 was presented in 1989 that became part of the Soto
17 case. So if I had thought that it warranted and
18 impacted the substance of the interim report, I would
19 not have -- I would have not allowed the interim report
20 to be issued. I did include references to some of the
21 information, but in essence the message I was receiving
22 that morning was is because there's 30 percent find
23 rate, it's okay to have this consent problem.

24 MS. GLADING: Okay. And this last question,
25 it has two parts. What is your -- what was you

1 relationship with Mr.(sic) Mintz and Mr. Verniero prior
2 to taking office as Director of Criminal Justice and
3 did you --

4 MR. MILLER: Mr. Mintz?

5 MR. WHEELER: Ms.

6 THE WITNESS: We served in the U.S.
7 Attorney's Office together.

8 MS. GLADING: Right, Ms. Mintz.

9 MR. MILLER: Janice Mintz.

10 MS. GLADING: Thank you.

11 THE WITNESS: I served in the U.S. Attorney's
12 Office with Robert Mintz.

13 MS. GLADING: And Kim Guadagno as well?

14 THE WITNESS: Yes. And the relevance of that
15 question is?

16 MS. GLADING: Did you offer a job to Mr.
17 Dunlop upon his retirement from the State Police? It's
18 the second part of the question. Or have any
19 discussions with him about a position?

20 THE WITNESS: I talked to Mr. Dunlop and told
21 him that -- yes, as a matter of fact, when he
22 interviewed for Superintendent of the New Jersey State
23 Police. That was a job that he was seeking and so he
24 was therefore applicant for a job. Later at some point
25 in time we talked about his retirement. Asked if he

1 had any interest -- what he was planning on doing and
2 he told me he wanted to go retire to Idaho. So that's
3 the limit of my discussion with Mr. Dunlop on jobs.

4 MS. GLADING: Thank you.

5 THE WITNESS: Thanks.

6 MS. GLADING: I'm done.

7 SENATOR GORMLEY: I want to make a brief
8 statement, just for the record, and this is reflective
9 of many of the witnesses, and those who I've not been
10 present for I've reviewed the transcripts. In terms of
11 witnesses such as Mr. Zoubek and Judge Waugh and
12 Sergeant Gilbert and Mr. Sachetti, New Jersey is a very
13 lucky place to have public officials of that caliber.
14 Put that on the record.

15 Thank you.

16 * * * * *

C E R T I F I C A T I O N

I, JAMES V. BOWEN, OF J&J COURT TRANSCRIBERS, INC., a Notary Public and Electronic Sound Recording operator, do hereby certify that prior to the commencement of the examination, PAUL ZOUBEK 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 electric 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.

Date: March 14, 2001

JAMES V. BOWEN
Notary Public of the State of New Jersey
My Commission expires October 19, 2005

PATRICIA A. KONTURA, AOC #234