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# *Public Hearing*

before

## SENATE JUDICIARY COMMITTEE

*“Review of racial profiling”*

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**LOCATION:** Committee Room 4  
State House Annex  
Trenton, New Jersey

**DATE:** March 28, 2001  
10:00 a.m.

**MEMBERS OF COMMITTEE PRESENT:**

Senator William L. Gormley, Chairman  
Senator James S. Cafiero, Vice-Chairman  
Senator Louis F. Kosco  
Senator Robert J. Martin  
Senator John J. Matheussen  
Senator Norman M. Robertson  
Senator Raymond J. Zane  
Senator Garry J. Furnari  
Senator John A. Girgenti  
Senator John A. Lynch  
Senator Edward T. O’Connor Jr.



**ALSO PRESENT:**

John J. Tumulty  
*Office of Legislative Services  
Committee Aide*

Christine Shipley, Esq.  
*Senate Majority  
Staff Counsel*

Jo Astrid Glading, Esq.  
*Senate Democratic  
Staff Counsel*

Michael Chertoff, Esq.  
*Special Counsel to the Committee*  
Scott L. Weber, Esq.  
*Assistant Special Counsel to the Committee*

***Hearing Recorded and Transcribed by***  
The Office of Legislative Services, Public Information Office,  
Hearing Unit, State House Annex, PO 068, Trenton, New Jersey

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Appendix material, including documents, previous interviews and depositions referenced in the hearing, is available from the Office of Legislative Services, Office of Public Information.

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**SENATOR WILLIAM L. GORMLEY (Chairman):** The Committee will call Justice Peter Verniero.

I ask you to come forward and stand and raise your right hand.

(Oath administered)

Be seated.

Justice Verniero has asked to make an opening statement.

Make sure your red light is on. (referring to PA microphone)

**ASSOCIATE JUSTICE PETER G. VERNIERO:** It's been a while.

Mr. Chairman and members of the Committee, I will get right to the point. I testified truthfully in all prior appearances before this Committee. I directed no person to conceal documents requested by the United States Department of Justice. As Attorney General, I decided all questions on the merits. I'm aware that there are those who have questioned my actions, my judgment, and my motives.

I am here voluntarily, because it is important for members of the Committee, and the public at large, to have a full and accurate understanding of the events that mark my tenure as Attorney General.

Beyond focusing on any one individual or time frame, I hope that we do not lose sight of this essential fact. Racial profiling has existed for many years. I hope we can arrive at the day when this humiliating and illegal practice is stamped out. I continue in my belief that the April 20, 1999 interim report of the State Police Review Team contains a candid assessment of racial profiling that embodies a viable blueprint for reform.

If I sometimes tilted too much in favor of the State Police, it was because I believed that the majority of troopers were acting within legal and regulatory bounds, and deserved our support. I trusted the leadership of the State Police.

I did not begin fully to appreciate the complexity of racial profiling until sometime later in my tenure. At its core, racial profiling is an issue of selective law enforcement. It is the use of law enforcement authority in a way that impermissibly targets a segment of our society.

That selective enforcement can occur in any one of several stages in the law enforcement process. It can occur at the point of a motor vehicle stop, at the point of seeking consent to search, or at the point of arrest. The definition of racial profiling, which seems clear enough today, evolved within the Department over the course of my tenure.

Earlier in my tenure, in 1996 and 1997, my thinking was based on the assumption that statistics alone cannot identify the practice of racial profiling. That assumption was reflected in the State's appeal in *State versus Soto*. *Soto* was based on stop data, and the incidents at issue in that case occurred between 1988 and 1991. The hearing in *Soto* was conducted on various dates between November 1994 and May 1995. And Judge Francis issued his ruling in March 1996. Consent to search numbers were not our focus at that time, because they were not the focus in *Soto*.

In addition, I was assured by the State Police that profiling was not a problem in any significant or systematic way, and that additional steps had already been taken to address the issue after the *Soto* decision. We should have viewed consents to search with a more critical eye.

I began to question my assumptions after the April 1998 Turnpike shooting incident. After the investigation commenced, I learned that troopers may have been falsifying data in order to conceal the number of minority motorists that they were stopping. Those events marked the turning point in my thinking.

During my earlier appearances, I used the term crystallize to describe what I began to realize -- to describe when I began to realize that racial profiling was, indeed, a problem in New Jersey.

Although that term was accurate, it was not very descriptive. And it was open to different interpretations. I meant it simply as a shorthand reference to the evolution of my thought process and the fact that intervening events led me to consider, in a much different light, some of the same information that I may have had prior to 1998. In other words, my perceptions concerning certain law enforcement practices changed following the shooting incident. I viewed the issue in a far more critical fashion, one which led me to believe that not only was the prospect of profiling real, but that it would require a forceful response. That response is contained in the interim report.

The Committee has also focused on certain aspects of the investigation of Troopers Hogan and Kenna, and their subsequent indictments. In particular, there has been testimony concerning my decision to proceed with a false filing indictment while the shooting grand jury was ongoing. In my view, it was appropriate for the public to know the results of this important investigation.

Judge Feinberg, the assignment judge, found that the grand jury was not adversely affected by the publicity surrounding the false filing prosecution. I believed that maintaining public confidence was a legitimate law enforcement function. That belief was endorsed by the Appellate Division, which found nothing fundamentally unfair or improper in the timing of the indictments.

During much of my tenure, the State Police was viewed by many law enforcement professionals, including the Federal government, as a model agency. One of my jobs as the State's chief attorney was to cooperate with Federal authorities, while still maintaining the State's legal interests.

On the record before me in 1996 and 1997, I would not have agreed to enter into a Federal consent order if one had been proposed by the Justice Department. The Federal government, however, did not propose such an order at that time. Insofar as I know, we responded to all information requests in a manner satisfactory to the Justice Department.

To reach the conclusions contained in the interim report, I had to confront the entire culture of the State Police and call into question the assurances I had received that discriminatory practices were not a problem. It was not a conclusion I made lightly. Although the basis for reform may have begun to develop earlier, it did not become sufficiently compelling, in my opinion, until 1999.

I take full responsibility for my actions as Attorney General. Reasonable minds may differ regarding the timeliness of my actions or other aspects of my decisions. I believed at the time, and still do, that the reforms

of the magnitude announced in 1999 required a clear and compelling basis if they were to be viewed with legitimacy and have any hope of succeeding.

I wish that I had done more, but I would like to think that we made significant accomplishments during my 34-month tenure.

As we sit here today, we all know a great deal more about racial profiling than we did four years ago. This Committee is, itself, creating an additional record. I hope that such a record is viewed in a fair light using fair inferences in its proper context.

Ask me the tough questions that need to be asked, but please do not lose this opportunity to consider the adoption of lasting legislative reforms.

That completes my statement, Mr. Chairman.

SENATOR GORMLEY: Mr. Chertoff.

MR. CHERTOFF (Special Counsel to the Committee): Thank you, Mr. Chairman.

Good morning, Justice Verniero.

JUSTICE VERNIERO: Good morning, Mr. Chertoff.

MR. CHERTOFF: You were sworn in as Attorney General in July of 1996.

JUSTICE VERNIERO: Correct.

MR. CHERTOFF: And you held that position through May of 1999.

JUSTICE VERNIERO: May 15th, 1999, I believe, yes.

MR. CHERTOFF: And in that position, under the Constitution of this State, you were the chief law enforcement official in the State of New Jersey.

JUSTICE VERNIERO: I was, yes. Although some folks have said the Governor, as the Chief Executive, is the chief law enforcement official, but the statutes clearly indicated that I was the chief law enforcement official.

MR. CHERTOFF: Now, you also had supervisory authority over the State Police.

JUSTICE VERNIERO: I did.

MR. CHERTOFF: So it's fair to say that your relationship with the State Police was not merely that of a lawyer to a client, but also that of a supervisor to a body of people who were being supervised.

JUSTICE VERNIERO: That is correct. I had many roles as Attorney General, and I wore many hats, one of which was the State's chief lawyer, another which was the State's chief prosecutor, another which was the administrative head of the Department of Law and Public Safety, which included the Division of State Police and many other divisions.

MR. CHERTOFF: Now, in April of 1998, there was a shooting on the Turnpike, correct?

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: And in your capacity as chief prosecutor, you had decisions to make with respect to the investigation of that shooting, correct?

JUSTICE VERNIERO: I did, yes.

MR. CHERTOFF: You came to be aware that there was an investigation of the circumstances of the shooting itself, correct?

JUSTICE VERNIERO: Well, that's almost automatic. Whenever you have police shootings, there's executive directives in place that my

predecessors have put in place that-- It's almost automatic, when you have a shooting of that kind, for there to be an investigation.

MR. CHERTOFF: You took some degree of personal involvement in supervising the investigation.

JUSTICE VERNIERO: Well, what I did in that case, because I thought it required a State grand jury as opposed to a county grand jury, I had made the decision to convert the case to a State grand jury. And that was done for a number of reasons. I also appointed a special prosecutor, which is a little bit unusual, but I thought the facts warranted it in that case.

MR. CHERTOFF: And that prosecutor reported to you, correct?

JUSTICE VERNIERO: I wouldn't say he reported directly to me. There were times when he and I spoke directly at meetings and so forth. But I'm speaking of Prosecutor Gerrow. He was reporting, I would say, directly to either the Division of Criminal Justice's director or the deputy director, Debra Stone. I believe he had reporting requirements rather than a report to me directly.

MR. CHERTOFF: And then that person reported to you, right?

JUSTICE VERNIERO: Director Zoubek reported to me, yes.

MR. CHERTOFF: Now, you also became aware at a point in time that there was an investigation relating to the question of whether the troopers has falsified records, correct?

JUSTICE VERNIERO: That is correct.

MR. CHERTOFF: When did you become aware of that?

JUSTICE VERNIERO: It was sometime after the Turnpike shooting incident. I don't recall the exact date. It was sometime after April 1998.

MR. CHERTOFF: Is it fair to say by the summer of 1998 you were aware of that?

JUSTICE VERNIERO: That sounds about right.

MR. CHERTOFF: Did you also become aware at around the same time, from Mr. Zoubek, that there was something, which we called the Troop D audit, in which the State Police were looking more generally at the question of falsification of records?

JUSTICE VERNIERO: Yes, because we talked about that. When we began to learn of the possibility that some troopers might be falsifying records, we thought it only appropriate that we review the entire Troop D. And that was-- I don't remember the exact point in time that decision was made, but I certainly was aware of that audit.

MR. CHERTOFF: So you understood, again, in mid-1998, that there was not only an investigation of falsification regarding Hogan and Kenna, but there was an investigation of falsification as it might involve other troopers, correct?

JUSTICE VERNIERO: That's correct.

MR. CHERTOFF: Now-- And-- Did you set a deadline for that general investigation?

JUSTICE VERNIERO: I did not.

MR. CHERTOFF: Now, there comes a time in March of 1999 that you asked for a status report relating to the shooting investigation, correct?

JUSTICE VERNIERO: That is correct.

MR. CHERTOFF: You did that because you anticipated that the anniversary of the shooting was coming up.

JUSTICE VERNIERO: I did that because I just wanted a status report. You know, the investigation was moving along, and I just had some questions. I may have asked some questions prior to a formal meeting. I pretty much had a very good and easy relationship with my first assistant and my criminal director. I might have gotten some feedback prior to that time, Mr. Chertoff, but I wanted a formal briefing with Prosecutor Gerrow and others -- the entire team. I thought it was appropriate that I hear directly from them.

MR. CHERTOFF: That was on March 10th, 1999?

JUSTICE VERNIERO: I can't recall the exact date. That sounds right.

MR. CHERTOFF: Was that the first formal meeting you had with the prosecutorial team since the shooting?

JUSTICE VERNIERO: No. When we decided to convert the shooting from a county to a State grand jury, I recall I met with Prosecutor Gerrow. I wanted to meet him. I had not known him, or if I did, I hadn't recalled him. And I wanted to get a sense of him, and I wanted him to hear directly from me that this was an important investigation. I pledged resources -- any resources that he thought he needed. So we had that meeting in my

office sometime after the shooting, before the summer, as I recall. But I don't know the exact date.

MR. CHERTOFF: So is it fair to say that from the time of that meeting, which would have been before the summer of 1998, until early March 1999, you had no formal briefing from the prosecutorial team?

JUSTICE VERNIERO: I don't remember one if I did.

MR. CHERTOFF: And what prompted the formal meeting was your request to have everybody come in and report on the status of the shooting case, correct?

JUSTICE VERNIERO: I don't have an exact recollection of my requesting it. It might have been that I was asking Director Zoubek some questions. And maybe I suggested it. Maybe he suggested -- let's have a meeting. Let's put the team in place. I certainly thought it was a good idea, and it was an appropriate thing to do.

MR. CHERTOFF: Were you conscious of the fact at that point -- at the time of the meeting that the anniversary of the shooting was coming up?

JUSTICE VERNIERO: I'm sure I was conscious of it, but I can't recall me specifically thinking about that.

MR. CHERTOFF: Did you know--

JUSTICE VERNIERO: We all were fairly conscious of the anniversary. It was well publicized. And the shooting itself was well publicized. So I'm sure I was conscious of it.

MR. CHERTOFF: Did you know that on February 10th of 1999 Mr. Zoubek had received a report from people at the State Police concerning the general status of the falsification audit?

JUSTICE VERNIERO: I don't recall that. I'm sure Paul would have mentioned it to me. And he might have. I don't have a specific recollection of receiving a report on that date.

MR. CHERTOFF: Did you ask for a briefing concerning the falsification investigation?

JUSTICE VERNIERO: I may have. And that might have led to the March meeting. I just don't recall.

MR. CHERTOFF: At any point in time, from the time the falsification investigation was initiated in mid-1999 up through the March meeting, did you ever get a meeting or a status conference with the people who were involved in running the falsification investigation?

JUSTICE VERNIERO: I don't recall, other than I might have asked Director Zoubek, "How were things going? Any problems? Do you need any additional help?" And I was always, whenever I asked those general questions, informed that the investigation was ongoing.

MR. CHERTOFF: But you didn't ask for a formal meeting.

JUSTICE VERNIERO: I don't recall. No.

MR. CHERTOFF: Now, at the March meeting, besides yourself, Mr. Zoubek was present?

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: And again, Mr. Zoubek was an experienced former prosecutor, correct?

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: Who else was present?

JUSTICE VERNIERO: I recall it was Prosecutor Gerrow, and I recall Debra Stone.

MR. CHERTOFF: Now, Prosecutor Gerrow, again, had a lot of prosecutorial experience?

JUSTICE VERNIERO: He did. That was one of the reasons we selected him. Not only was he a very well-respected prosecutor, but he had done police shooting investigations before. He had a very good reputation in the various communities. And we thought he was the right person.

MR. CHERTOFF: And Ms. Stone had a lot of experience in law enforcement, correct?

JUSTICE VERNIERO: She did, yes.

MR. CHERTOFF: So you were there with these three experienced prosecutors or law enforcement personnel. And what was the first thing that was discussed?

JUSTICE VERNIERO: I do not recall the first thing that was discussed.

MR. CHERTOFF: Did you ask them-- Was the initial purpose of the meeting to have them report to you on whether the shooting case could be indicted by the anniversary date of the shooting?

JUSTICE VERNIERO: I don't recall if I ever put the question in quite that way. I'm sure I would have asked for an update of both the shooting investigation and the falsification. They were separate investigations in my mind, and I'm sure I might have asked for information on the shooting, even though specifically we were there to talk about the falsification. It was the

same team, so I'm sure it would have been only natural for me to ask about the shooting.

MR. CHERTOFF: I'm sorry. Are you saying that the reason you called the meeting was to talk about the falsification investigation?

JUSTICE VERNIERO: No, I'm saying that I wanted an update. And falsification was always something that was very critical in my thinking, as I mentioned in my opening statement. And I'm sure I asked for a general overview. Falsification was one item. And we were always talking about the shooting, because there were always updates that I was getting on and off throughout that period.

MR. CHERTOFF: At the meeting, did you ask for a general update on the falsification investigation as it related to all the troopers, or only with respect to two troopers?

JUSTICE VERNIERO: I don't recall. I'm sure I would have asked for the so-called Troop D audit results or the progress made. But I don't recall that specifically.

MR. CHERTOFF: Well, we had testimony yesterday, and also in Mr. Zoubek's deposition, that in this meeting, there was initially discussion about when the shooting investigation would be concluded. Is that consistent with your recollection?

JUSTICE VERNIERO: No, that sounds right.

MR. CHERTOFF: And do you remember being told by the prosecutor that there was no way that shooting investigation could be done until sometime after the spring?

JUSTICE VERNIERO: I do. And I remember in -- being unable to put a date to it -- that it would be several months before the shooting investigation were completed.

MR. CHERTOFF: At the very least, though, you were aware at that point that the shooting indictment, if there was going to be a shooting indictment, would not occur as of the end of April of 1999. Is that fair to say?

JUSTICE VERNIERO: That was my impression. Again, no one put a date to it. But I think that's a fair assumption that I made.

MR. CHERTOFF: Did you then ask the assembled prosecutors whether it would be possible to bring a falsification case by the anniversary date?

JUSTICE VERNIERO: I might have. I asked them what the progress was, whether it was complete. And I believe they indicated to me that it was completed. I can't recall the exact date that they said it was completed. But my recollection, is at that meeting, I was informed that pretty much the investigation, with respect to falsification, focused on the two troopers -- that had been completed.

MR. CHERTOFF: Well, had they told you that it was -- had been presented to the grand jury yet?

JUSTICE VERNIERO: No, no. It was ready to be presented.

MR. CHERTOFF: And what was your response when they indicated to you that the falsification investigation had been completed?

JUSTICE VERNIERO: I don't recall my exact response. I'm sure that I thought it was satisfactory that they were completing the investigation. I always felt that the team was quite hardworking. And they were very earnest

in completing their work. And I'm sure I must have said something like, "Thank you for completing it in a timely fashion." I don't recall my exact words.

MR. CHERTOFF: Well, did you then have a discussion about whether it would be possible to bring that falsification immediately because you needed to demonstrate some action?

JUSTICE VERNIERO: I wouldn't say that I phrased it quite like that. I'm sure I said something like, "Well, if it's ready to be presented, we should present it." I mean, to me, that seemed just like a very straightforward thing to do. When you have an investigation that's completed-- I was not in a position where I would have been comfortable holding back or suppressing an investigation. If it was ready to be-- If it was completed and ready to be presented, I would have presented it. That would have been my reaction. I don't recall the exact words that I used.

MR. CHERTOFF: Well, without quoting the exact words, was there-- Did you express the concept that there was criticism of the delay in the shooting investigation, and therefore it would be desirable to demonstrate action?

JUSTICE VERNIERO: I might have said that the Office of the Attorney General and the State Police had come under such public scrutiny that the public's confidence needed to be assured if and when the investigation was complete. I might have said something like that. I don't remember the exact words.

And it was a time in my office where our credibility was at issue. The public had begun to lose faith in law enforcement's ability to police itself

and the ability of my office to conduct the investigation. So I'm sure I would have considered public confidence in my deliberations. I just don't recall the exact words that I might have used.

MR. CHERTOFF: And did the assembled prosecutors-- How did they respond to the suggestion of getting the case out now?

JUSTICE VERNIERO: I remember they explained the risks that might occur by virtue of that decision. The main risk that I recall was possible prejudice to the ongoing shooting grand jury. We talked about how to address those risks, how to remedy them. They explained that process to me. And then I made the decision to go forward with the false filing prosecution.

MR. CHERTOFF: Well, did you express to them any reason why you were prepared to take the risks of prejudicing a shooting investigation in order to move a falsification case with respect to two troopers?

JUSTICE VERNIERO: I don't know if I expressed this at the meeting, but I recall that I was satisfied that we could address those risks, particularly in light of the fact that I had previously been advised that the shooting grand jury would be several months later -- or possibly several months later. So any initial burst of publicity, I thought, could have been ameliorated simply by the passage of time.

I mean, the risk of publicity at that point in time-- You have to kind of go back and view it in context. We were getting publicity on just about every aspect of the Turnpike shooting investigation. It was not a point in time where it was very quiet and all of a sudden there would be a burst of publicity if we went forward with the falsification. This issue was in the paper -- I don't want to say every day, but several times a week, several times a month. So I

factored all of that in my mind, and I thought, you know, the public has a right to know if -- but only if the investigation is ready, and we can take steps not to prejudice the ongoing shooting.

MR. CHERTOFF: I'm sorry. When you say there was a lot of publicity in the press about the shooting, what aspect of the publicity were you focused on in weighing the risks against the advantages in going forward with this indictment?

JUSTICE VERNIERO: Just the whole issue of racial profiling. I mean, the whole-- The issue of racial profiling and these two troopers. Their pictures were in the paper many, many times since the shooting incident. And anytime there was an article about racial profiling -- or many times when there was an article about racial profiling, there would be a -- their picture was there, whether it had to do with policy or whether it was stop data or various public comments from civil rights leaders and so forth. This issue was in the paper many, many times, almost on a weekly basis, if not a daily basis.

MR. CHERTOFF: So you didn't think-- Am I correct in understanding that your view was that since their picture was in the paper a lot about the shooting, there was a lot of discussion of profiling -- that publicity from this indictment would not materially change their position in terms of the grand jury investigation?

JUSTICE VERNIERO: My thinking at the time was, this is a high-profile investigation. Whatever we do, it's going to generate a great deal of publicity. And it had generated a great deal of publicity. But we still had a job to do. We had to bring the investigations to closure in a timely fashion. We had to release the indictments when they were ready to be released. I can't

say that I spent a whole lot of time figuring out all of the various public reactions to it. I was making a decision based on the best information I had at the time.

MR. CHERTOFF: Well, did you understand that the significance of indicting on charges separate and distinct from the issue of the shooting in a way that directly attacked the credibility of the troopers would be a qualitatively different effect on the troopers' position in front of the grand jury than all the newspaper stuff about the shooting itself?

JUSTICE VERNIERO: There was a discussion of the risks. I don't know that the discussion at that meeting went to that kind of detail.

MR. CHERTOFF: But in your own mind, Justice Verniero, did you say to yourself, look, grand jurors considering the issue of a shooting -- there's a credibility issue between the witnesses and the subjects of the grand jury? The grand jury doesn't know anything. There's going to be no presentation at this point concerning falsification -- anything to suggest that the credibility of the troopers is questionable.

If we indict them publicly, with respect to the falsification, essentially branding them as liars, that's going to really affect the way the grand jurors judge the credibility issue if the grand jurors read about that. Did that concept enter into your thinking?

JUSTICE VERNIERO: As I said, I was thinking of the picture as a whole. I was satisfied, and I had confidence in the remedies that would cure any such possible prejudice.

MR. CHERTOFF: I just want to make sure that I was clear in my question. As part of your thinking of the problem as a whole, did you consider

-- from the standpoint of the subjects or the targets of the investigation and their rights -- did you consider the fact that a public falsification indictment of them would brand them as liars at a time in which their fate in a credibility contest was very much in the hands of the grand jury? Did you consider that issue?

JUSTICE VERNIERO: I don't recall if I considered it specifically like that. I might have thought, well, if we don't do it this way, if we present it to the entire grand jury, the entire package, if you will, the shooting and falsification, those same grand jurors would have received evidence of falsification. And so--

MR. CHERTOFF: Well, did you discuss that alternative with the assembled experienced prosecutors?

JUSTICE VERNIERO: As I say, I don't recall specifically. I recall that they laid the options on the table for me, and I chose what I thought was the appropriate option.

MR. CHERTOFF: Well, I just want to make sure we understand the complete menu of options and things that were on the table at that point. First of all, am I correct that there was no urgency about indicting the troopers because of any concern they were going to be fugitives?

JUSTICE VERNIERO: I think that's correct, yes.

MR. CHERTOFF: And nobody said we have to indict quickly because we're concerned that they're going to go out and shoot somebody again, and we have to get them under court supervision?

JUSTICE VERNIERO: No, I believe they were on administrative leave at that point, but I'm not certain of that fact.

MR. CHERTOFF: All right. So those traditional considerations for moving an indictment, namely fear of flight and fear of danger of community, were absent here, correct?

JUSTICE VERNIERO: I think that's correct, yes.

MR. CHERTOFF: Now, in addition to that, there was no question of a statute of limitations running, where if you didn't indict by a certain date you would lose the ability to charge the case?

JUSTICE VERNIERO: I think that's correct, yes.

MR. CHERTOFF: So that was not on the table. Again, there was no issue of, perhaps, losing witnesses who might testify on the grand jury if you didn't complete the indictment or any prejudice to the investigation and falsification. That wasn't presented to you?

JUSTICE VERNIERO: I'd prefer, Mr. Chertoff, not to go into things like what witnesses we might have had or might have presented to the grand jury, since this is a pending criminal matter.

MR. CHERTOFF: I didn't mean to get into the specifics. I'm just asking, in general, did anybody say to you that there is an investigative reason we have to conclude the indictment by this point in time or it's going to prejudice our investigation or prejudice our case?

JUSTICE VERNIERO: I don't recall anyone saying we had to indict at that time. We spent time working within the framework of, if we were to indict, what would be the risks, and importantly, how could those risks be cured.

MR. CHERTOFF: Now again, I wanted to just see where -- we'll come to the downside, but I want to talk about the upside part of this -- that

you were considering the advantages. So it's fair to say some -- if there's no traditional law enforcement reason to move the indictment quickly in terms of flight, danger, risk of lost evidence, or risk of statute of limitation problems, those were not advanced to you as issues with respect to the decision, correct?

JUSTICE VERNIERO: That's fair to say.

MR. CHERTOFF: Now, was there any-- You indicated a moment ago one of your thoughts was, "Well, if we were to present the falsification information in the same grand jury as the shooting, the grand jurors would hear about it anyway." You said that sort of occurred to you.

JUSTICE VERNIERO: It might have. I said, just so my testimony is clear, I do not recall exactly what my thinking was or what the dialogue may have been. My concern was, we had an investigation that I was informed was ready, was completed, and we were at a point in the Department's history where there was a great deal of skepticism about whether or not we could police ourselves. There also was a risk in my mind that this investigation might leak out. I mean, that was a possibility.

And my feeling at the time was, if you have an investigation that isn't ready, again, that's a very important if. If it is ready and we can present it in such a fashion so as not to prejudice the defendants in the other grand jury setting, I thought that risk was worth taking.

MR. CHERTOFF: When was it ready?

JUSTICE VERNIERO: As I said, I don't recall exactly when they said it was completed, but at that March meeting I was advised that they were ready to go to grand jury. When I say ready, I don't mean it had gone to the

grand jury. They had done the background work, the investigative work, and they were at a point where they could present it to the grand jury.

MR. CHERTOFF: But at any previous point prior to March 10th, had you asked when is this falsification case going to be ready?

JUSTICE VERNIERO: As I say, I may have in the kind of a give-and-take of the casual conversations I often have with Director Zoubek. I just don't remember if I said it in any particular way or particular date.

MR. CHERTOFF: Well, is it fair to say you never expressed any urgency about whether that investigation was completed until March of 1999?

JUSTICE VERNIERO: I don't know if that's fair to say. I was very concerned about timeliness of both investigations, and I expressed that concern at many points, not in a formal meeting. But I don't think that's safe to say that it was suddenly on March of that year where I wanted to move forward. I was a bit frustrated at the timeliness of the investigation.

MR. CHERTOFF: Did you know that the investigation by the State Police was actually done by early December of 1998, with respect to Hogan and Kenna?

JUSTICE VERNIERO: As I said, I do not recall when it was completed.

MR. CHERTOFF: You certainly relied on Director Zoubek to answer your questions when you asked him, right?

JUSTICE VERNIERO: I did.

MR. CHERTOFF: So it's fair to say, if the investigation was concluded in December of '98 and you had asked them between December

and March for a status update, he would have told you the investigation is done and ready to go to the grand jury.

JUSTICE VERNIERO: I would assume so, yes.

MR. CHERTOFF: So can we infer from that that-- and likely that you didn't ask about the status of the investigation from December of 1998 until March 10th, 1999?

JUSTICE VERNIERO: I don't know. I could have asked him, and he could have said, well, let's get a meeting together, and it could have taken a couple of weeks to put a meeting together. I just don't recall. It's not unusual that I might have asked him every couple of months, and at sometime in January I might have said, how was it going, or early February, and he says, "Well, we're ready. Let's put a meeting together." So I don't want to speculate as to conversations I may have had between December and March.

MR. CHERTOFF: Did you ask Mr. Zoubek, either at the meeting on March 10th or earlier, about whether the other investigations involving the other troopers' falsification allegations were complete?

JUSTICE VERNIERO: No. I had asked for general updates, and I got the sense that they were still quite a ways away from being completed.

MR. CHERTOFF: So your focus on March 10th was Hogan and Kenna, right?

JUSTICE VERNIERO: That's my recollection.

MR. CHERTOFF: Now, I'm going to read you a portion of what Mr. Zoubek told us at his deposition, and tell us whether you disagree with his recollection of this meeting. He indicates at Page 310, Line 7: "Prosecutor Gerrow, I believe, informed the Attorney General that the expectation was that

the shooting grand jury would not be done for a number of months. And the question that the Attorney General asked was, 'Can we move the falsification indictment, because we need to demonstrate action on this, because we were getting subject to criticism of delay in this investigation.'" Is that as you remembered?

JUSTICE VERNIERO: As I said, I don't remember those exact words. That sounds like an accurate description of my sentiments at that time.

MR. CHERTOFF: He goes on to say-- Well, let me ask you this question: You'll agree with me that there was no public pressure as of March 1999 about getting any kind of falsification investigation concluded, correct?

JUSTICE VERNIERO: No. The public, fortunately -- and I say fortunately because I didn't want to prejudice the investigation by any premature release or leak of information -- did not know about the falsification investigation, which was one of the reasons why I thought, if it were ready and we could remedy against prejudice, it was in the public interest to release that indictment as soon as it was ready to be released. I did not want to sit on that indictment.

MR. CHERTOFF: So, in terms of the statement, though, which I take it you agreed in substance you told the people at the meeting, which is that you needed to demonstrate action because of the subject to criticism of delay in the investigation, the only criticism of delay at this point in time was the shooting investigation, right, because that's the only investigation the public knew about? Is that right?

JUSTICE VERNIERO: Well, it was -- the criticism was not just delay. The criticism was broader than that. There was a point in time, late in

my tenure as Attorney General, where the State Police and the Office of Attorney General were under criticism from many quarters on many different fronts. It was not just the timing. It was our whole ability to even conduct the kind of investigations that we were conducting. It was not just discreetly tied to, you know, timing or one particular investigation. It is true that the impetus of that criticism was the April of 1998 Turnpike event, but I felt that the public was yearning for confidence and a sign or signal of confidence on a broad spectrum of issues.

MR. CHERTOFF: At this point in time in March of 1999, were there calls from the public for the Civil Rights Division to step in and take over the case?

JUSTICE VERNIERO: That's my recollection.

MR. CHERTOFF: And you also were aware at that time that there was an ongoing Civil Rights Division review of racial profiling, in general, at the State Police, right?

JUSTICE VERNIERO: Oh, of course, yes.

MR. CHERTOFF: And you were aware as of late February of 1999 that the Department of Justice had indicated they were going to step up their pace of that inquiry, right?

JUSTICE VERNIERO: I don't recall the exact date when they had indicated they might step up the investigation.

MR. CHERTOFF: And would I be correct that it would -- you would have viewed it as undesirable, and frankly embarrassing, if the Federal government had stepped in and either taken over the trooper investigation or

publicly announced that it was investigating the State Police for profiling or both?

JUSTICE VERNIERO: Well, I don't know if would say embarrassing. I would have thought it was unwarranted, because I had great confidence in the review team. And despite the public criticism, I believed we were capable of conducting this investigation. I had confidence in the team. I had confidence, frankly, in the State Police that were helping us conduct the falsification investigation. I had gotten a report. I don't recall whether it was at the March meeting or sometime prior to that. The State Police were being very cooperative and helpful in connection with the Troop D audit. So I don't know if I would use the word embarrassment. It was something that I felt my office had a responsibility to do, and I would have wanted the ability to see that through to closure.

MR. CHERTOFF: Well, but in the context of the particular discussion about whether to bring this indictment, this falsification indictment, did you talk about the fact there was the discussion about the fact that there had been calls to have the investigation of the shooting taken over, because it had taken too long, and was it in a response to that that you said, is there anything we can do to show some action?

JUSTICE VERNIERO: I don't recall the exact tenor of the conversation. The calls for a takeover, if you will, the calls for timeliness and so forth, they were in the newspaper. That was sort of part of the discussions that I had. I can't with my senior staff -- I can't peg it directly to that meeting, Mr. Chertoff. It might have occurred at that meeting.

MR. CHERTOFF: Well, let me see if this refreshes your memory from Mr. Zoubek's sworn deposition in Page 311, Line 4: "And there had been recent calls for that investigation to be taken over, because it was taking too long. And the Attorney General asked if we could move. He was told that there was no way that the shooting grand jury could be moved along any quicker than what Mr. Gerrow anticipated. And then there was a discussion of whether or not there could or should be an indictment, separate indictment, on the falsification portion of the case. The Attorney General asked, 'Let's move the falsification portion of the case.'" Is that accurate?

JUSTICE VERNIERO: Well, it's accurate to the extent that I made the decision to move the falsification and the indictment, certainly. Again, I do not recall the exact words I might have used or Director Zoubek might have used. It sounds like a generally accurate description of my sentiments. I cannot swear to every word that he might have said or I have said. I was concerned that we had an investigation that I was advised was completed at a time when there was great public cynicism and skepticism of my office, and I thought it was appropriate to move forward, if and only if we could address the risks to the ongoing grand jury shooting investigation.

MR. CHERTOFF: So you'll agree with me, at least, or you won't-- Let me withdraw the question. You don't dispute Mr. Zoubek's recollection that this discussion took place in the context of somebody saying that the shooting investigation -- people were asking to have the shooting investigation taken over, because it was taking too long. That was part of the discussion, right?

JUSTICE VERNIERO: Well, I can't dispute a recollection that I don't have myself. I just don't recall the exact words. I'm sure we had a discussion of the shooting investigation alongside the falsification. I do recall Director Gerrow -- excuse me, Prosecutor Gerrow -- informing me that the shooting grand jury was several, I want to say, months, but I don't -- again, these exact words, but there would be quite a delay or quite a time left to complete that investigation, and that bore on my thinking. There's no question about that, but I don't remember the exact words that were said.

MR. CHERTOFF: Well again, putting aside the exact words, did you communicate the sentiment, in light of the fact that there were calls to have the shooting investigation taken over, that we have to show some action with respect to before the anniversary of the shooting? Did you communicate that concept?

JUSTICE VERNIERO: I felt it was important that the public be assured that we had a completed investigation and that we move forward on it.

MR. CHERTOFF: Here's my question: Did you indicate, in substance, we have to show some action with respect to before the anniversary of the shooting?

JUSTICE VERNIERO: I might have. Again, I don't recall my exact words. The sentiment was, if the investigation is ready, we ought to proceed. And once we've made the decision to proceed, to me, the issue of releasing it publicly, that was just part and parcel of the decision to proceed.

MR. CHERTOFF: And after you raised the issue of doing something before the anniversary of the shooting, was that when you were told

that there was no way that the shooting investigation could be concluded or indicted for the anniversary? You were told that?

JUSTICE VERNIERO: I believe I heard in the premise of that question, you said once you indicated you wanted to complete it before the anniversary of the shooting, and I believe I testified that I did not recall saying that specifically. It was well known that the anniversary was upcoming and that there had been some degree of delay in that investigation -- the shooting investigation. I do not recall exactly when I was advised in that meeting how much longer it would be for the shooting investigation to be completed.

MR. CHERTOFF: And it was after you were told the shooting investigation couldn't be completed-- Well, let me step back and ask you this. Do you remember, at least, this: Did you ask, at some point, could the shooting investigation be completed by the anniversary of the shooting?

JUSTICE VERNIERO: I don't remember. I doubt whether I did, because I think fairly-- It was fairly certain when that meeting began on March -- this is a little speculation on my part, based on this sort of the give-and-take that I have with Director Zoubek leading up to March -- that there would be quite a ways to go on the shooting Turnpike investigation. So it wouldn't surprise me if we didn't speak very much on that issue, because that was known to us. We knew that was taking time. I knew it was taking time. We had to retain Dr. Lee. There were a lot of preliminaries that had to be done, and it was taking a fairly lengthy period of time to complete.

MR. CHERTOFF: And I'm sorry, perhaps I misunderstood. I thought you said that -- where you agreed that in this meeting on March 10th, you did ask about how quickly the shooting investigation could be completed?

JUSTICE VERNIERO: I asked for a status update of the investigation. I don't know whether I said, which I believe was the very first part of your question, can it be done by the anniversary. I do not recall asking that. I recall asking for a general update. I had a general sense that there was quite some time to go, but this was the meeting in which that could be verified and nailed down, if you will, in the form of a formal status. This was a status meeting about the Hogan and Kenna investigation.

MR. CHERTOFF: And then in that formal status meeting, it was nailed down to your satisfaction that there was no way the shooting could be done by the anniversary date -- shootings?

JUSTICE VERNIERO: That was my impression, yes.

MR. CHERTOFF: And that's when the subject turned to the issue of falsification?

JUSTICE VERNIERO: I don't know whether it was before or after falsification.

MR. CHERTOFF: Well again, if there was testimony by Mr. Zoubek at Page 325, and I quote, "And I said at the beginning, he asked about the status of the shooting, and then he moved off to the other portion of the case," would you be in a position to dispute that recollection?

JUSTICE VERNIERO: I can't dispute it, because I have no recollection of it.

MR. CHERTOFF: Now, in terms of the upside to you bringing out the case with respect to Hogan and Kenna on the falsification, you've indicated that your base for doing so was concern about public confidence?

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: You wanted to show that-- You agree with me that charging Hogan and Kenna with falsification would not establish the outcome of the shooting investigation, correct?

JUSTICE VERNIERO: That's correct.

MR. CHERTOFF: So it wouldn't establish a public confidence about the way the shooting investigation was being conducted, correct?

JUSTICE VERNIERO: Well, I take issues slightly with your characterization that I wanted to show public confidence. I wanted to assure the public that we could complete, once it was completed, an investigation of this level. This was an important investigation, and there is a slight suggestion in your question that I indicted two troopers merely for public relations purposes. And that is not the case, Mr. Chertoff. That was not in my mind-set, and that was not the mind-set of anyone in that room.

MR. CHERTOFF: Well, I only want to ask this question, Justice Verniero. The question is this: Would you agree with me that, to the extent there were concerns about the public confidence and the shooting investigation, an indictment with respect to falsification would not indicate how soon a shooting investigation would be resolved or how it would be resolved, correct?

JUSTICE VERNIERO: Well, but there was-- As I said, it was not just the Turnpike shooting, it was racial profiling as a whole. We, as you know -- we do not have a criminal statute with respect to racial profiling, but we do have official misconduct. We do have statutes relating for falsification. And without going into the details of the indictment, falsification is about the closest thing we have, tied to official misconduct, that can equate to racial

profiling. And I believe that point was actually made at the time of release of the indictment. So I can't separate them out in my mind as finely as we're doing it today.

At that point in time, we were-- I was -- I put the responsibility on myself. I was attempting to bring to completion a very difficult investigation with respect to two troopers at a point in time when -- the State Police and my office -- there were many questions and there was a lack of confidence in the public. And so I felt that once the investigation was completed, not only should we bring it to the grand jury, but I had a duty to release it once it was completed, so long as we would not prejudice the ongoing grand jury.

MR. CHERTOFF: I'm sorry--

JUSTICE VERNIERO: It's not-- It's no more complicated than that.

MR. CHERTOFF: Did anybody in the room say you have a duty to indict the case as soon as you -- or present the case as soon as you completed the investigation?

JUSTICE VERNIERO: I felt I had this duty. There are decisions that only the Attorney General can make.

MR. CHERTOFF: But based on--

JUSTICE VERNIERO: And that was a decision that I made. I felt that once the investigation was completed, rather than concealing it, rather than having it hang over these troopers' heads, rather than try to camouflage it, rather than risk it being leaked prematurely once it was completed, so long as there would be no prejudice to the subsequent grand jury, or we could

manage and hopefully remedy any prejudice, it was an appropriate thing for me to do. And it was my duty. That's how I viewed it at the time.

MR. CHERTOFF: Here's my question, Justice Verniero. It's very simple. In your discussion with your three experienced prosecutors in the room, did any of the members express to you the concept that there is a duty to present a case to a grand jury as soon as the investigation is done?

JUSTICE VERNIERO: No.

MR. CHERTOFF: And so your conception of that duty came based on your own experience?

JUSTICE VERNIERO: That was my understanding of my responsibilities at that point in time in the history of the Department and the Division of State Police.

MR. CHERTOFF: Similarly, you said you expressed the thought that you were concerned that--

JUSTICE VERNIERO: When I say duty, Mr. Chertoff-- Of course, I was not legally obligated to do anything, but I had to -- in the course of my tenure, I had to wear many hats. As I said, one of them is to maintain public confidence in all of law enforcement, and I felt that that was the right thing to do for that reason.

MR. CHERTOFF: You've indicated you were also concerned about not hiding the investigation or not keeping it hidden. Again, did anybody, of those prosecutors in the room with their collective experience in law enforcement, indicate to you that from a legal standpoint there was some problem in terms of hiding an investigation if you don't immediate indict once--

JUSTICE VERNIERO: No.

MR. CHERTOFF: So you didn't get that advice either?

JUSTICE VERNIERO: No. No problem with that. No advice to that. Although if it had leaked out, there could have been, then, greater public cynicism. Peter Verniero is sitting on an indictment, you know, that sort of thing.

MR. CHERTOFF: So you were concerned that--

JUSTICE VERNIERO: The AG's Office, you know, can't handle an indictment, that sort of thing.

MR. CHERTOFF: I see. Well, that wouldn't be public cynicism about the process, that would be public cynicism when you said that there would be public cynicism that Peter Verniero can't handle an indictment. Was that a thought that entered into your mind at that point?

JUSTICE VERNIERO: Well, the Attorney General is a unique public official, and there were a time in my tenure where I sort of became the Office of Attorney General. It was very difficult to separate the two. So it's not that I personalized it, but I felt that once the indictment was ready to go-- As I say, I had a duty to put it forward. That was Peter Verniero's obligation. That's what I felt I had to do.

MR. CHERTOFF: Did you--

JUSTICE VERNIERO: Now, you can disagree with that, and I respect your ability to disagree with that. I made many decisions when I was Attorney General that I was sort of -- it was a lonely place at that point in time. And I made the decisions, and I gave it my best shot.

MR. CHERTOFF: Did you feel this obligation to make sure nothing was hidden with respect to any of the other falsification investigations that were under way as a result of the Troop D audit?

JUSTICE VERNIERO: Could you repeat the question?

MR. CHERTOFF: Did you feel an obligation to get any of the other investigations that were under way regarding falsification, besides Hogan and Kenna, in front of the grand jury promptly?

JUSTICE VERNIERO: I had a general concern about timeliness, but my understanding was, as I indicated to you in an earlier question, they were not far along. At least that was my understanding, so I would not have pushed those into the grand jury if they were not ready.

MR. CHERTOFF: You weren't worried about leaks coming out concerning a wide-ranging audit, suggesting perhaps hundreds of troopers falsified records?

JUSTICE VERNIERO: I was concerned about leaks, but not at the expense of pushing something prematurely. I was concerned that the Hogan and Kenna investigation could leak out, but that was ready. So there was no risk of pushing it forward. I was advised that it was ready or completed.

MR. CHERTOFF: Now, okay, you've explained what you viewed as the positive reason to bring this case out. The prosecutors in the room collectively advised you that there were risks involved, right?

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: And the risks were that publicity would taint the grand jury pool and, worse came to worse, the case would have to be represented, right?

JUSTICE VERNIERO: Potentially taint, yes.

MR. CHERTOFF: That would be a bad thing if the case were represented, right? It would delay.

JUSTICE VERNIERO: It would delay. It happens. It's not irreparable to the process. It's something that, obviously, we wanted to avoid if we could.

MR. CHERTOFF: And you were also told that in any event, no matter what the end result was, it would be necessary to hold a hearing -- "the *Brook-Murphy* hearing" -- if there was a lot of publicity, because it would be necessary to try to see whether the grand jury had been tainted?

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: And I take it you were also aware that at the end of the day the issue is, are the troopers going to get a fair hearing in front of the grand jury?

JUSTICE VERNIERO: Of course.

MR. CHERTOFF: And you understood again, from your knowledge of the case, that of necessity that hearing would involve credibility issues between a version of events told by witnesses and a version of events told by grand jurors -- I'm sorry, by the troopers?

JUSTICE VERNIERO: Well, I don't know if I knew at that point in time whether the troopers would even testify before the grand jury, so I'm

not sure if we would have discussed whether there would have been any credibility calls that the grand jurors would have to make. I don't recall.

MR. CHERTOFF: Did you ask? Did you ask, is there a credibility issue here, such that if we publicly brand the targets as liars and racial profilers, it's going to hurt them? Did you ask whether that was part of the mix in the shooting case?

JUSTICE VERNIERO: I don't recall. My recollection was, it was a bit more general than that -- the discussion.

MR. CHERTOFF: And just to put the shooting case in perspective, I mean, ultimately, when you're talking about shooting, that's very serious charges that are at stake, correct?

JUSTICE VERNIERO: Of course.

MR. CHERTOFF: And did I also understand you to say a little bit earlier that in your mind, when the falsification case was to be presented, you viewed that as kind of the closest you could come to indicting someone for racial profiling?

JUSTICE VERNIERO: Well, my recollection was that of our many criminal statutes, that was one that was similar to racial profiling.

MR. CHERTOFF: So, in your mind, what you were hoping to do by moving the indictment out was to restore public confidence or promote public confidence by showing that, in effect, the State was indicting people for racial profiling.

JUSTICE VERNIERO: I wasn't hoping to indict anyone. I don't think there's an Attorney General alive that would relish indicting a member of law enforcement. It was one of the most difficult decisions that I had to do.

It was thrust upon me. We had information for the first time in 1998 that some troopers were falsifying records. That was a startling revelation as far as I was concerned. And that was basically the reaction of most people that I spoke to.

MR. CHERTOFF: But excuse me--

JUSTICE VERNIERO: We moved aggressively to investigate not only the two troopers who were the focus of the inquiry, but to expand to the entire Troop D to ensure we did not have a wide-scale problem. When the investigation was completed with respect to Troopers Hogan and Kenna, I felt it was important to go forward with the indictment.

MR. CHERTOFF: Here's my question. My question to you is, you told us a couple moments ago, and I want to know if you still stand by it, was it your view that a falsification indictment was the closest you could come to indicting someone for racial profiling?

JUSTICE VERNIERO: I disagree with the way you're phrasing that, because again your implication is, I was looking for somebody to indict for racial profiling. That's not what I said. If I implied that, let me state it more clearly than that. I was concerned that the public was losing confidence on a range of issues in my office and in the State Police.

MR. CHERTOFF: Excuse me, Justice Verniero, I have to stop, because I want to focus on this particular point. I understood you to say here in the last five minutes that when you considered this potential indictment against Hogan and Kenna, in your mind you were looking at these statutes as the closest you could come under the laws of New Jersey as they existed at that time to indicting someone or charging someone for racial profiling.

JUSTICE VERNIERO: I--

MR. CHERTOFF: Do you want to step back from that?

JUSTICE VERNIERO: No. I understood that the falsification -- official misconduct could be seen as tied to racial profiling, because-- And again, I can't go into the specifics. And again, this is a general statement. I'm not making this statement with respect to this indictment. I want to be clear. But it's quite obvious when a trooper is falsifying records, particularly hiding race, that is -- could be symptomatic of a problem of racial profiling.

MR. CHERTOFF: So you'll acknowledge then that in making the decision at the time you made the decision to move the falsification case, you had an understanding that the public might perceive a falsification indictment as really being an indictment for being racial profiling?

JUSTICE VERNIERO: I acknowledge that there was a possibility that someone looked at it in that fashion, but that wasn't my motive. I wasn't casting about for someone to indict on racial profiling.

MR. CHERTOFF: But can you--

JUSTICE VERNIERO: That is my testimony.

MR. CHERTOFF: Can you agree with me that in terms of evaluating the prejudice to your target of an investigation involving the shooting of members of a minority group, you could hardly conceive of something more prejudicial to that target than to have them branded publicly, not only as a liar, but as a racist? I mean, is there anything that you could imagine that could be more prejudicial and more blacken the reputation of that target in the eyes of the public, including the grand jurors, than the perception that someone is being indicted as a liar and a racial profiler?

JUSTICE VERNIERO: I don't want to speculate what additional crimes they could have been charged with that would have branded them worse in the public eye. I mean, that was not what we were discussing back in my office in March of 1999.

MR. CHERTOFF: But were you discussing the--

JUSTICE VERNIERO: We were discussing the ability to bring to closure an investigation that I was informed was completed, and whether or not to release the indictment once completed. It was no more complicated than that.

MR. CHERTOFF: So this was a very straightforward judgment from you?

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: This was not a hard call for you.

JUSTICE VERNIERO: For me, it was a hard call to the extent that anytime you indict a member of law enforcement, it is a painful and difficult thing to do.

MR. CHERTOFF: But--

JUSTICE VERNIERO: Once we made the decision to indict them, releasing it to the public was not a hard call. To me, that was the natural thing to do under the circumstances.

MR. CHERTOFF: You understood you could seal an indictment, by the way?

JUSTICE VERNIERO: I did, but I also understood that it was not often done in my office, and I would not have considered it here. I don't recall if anyone had made that suggestion, but they might have.

But this was not the time in the history of our Department to conceal or seal information from the public. That was my judgment, as I say, and two years later, three years later, reasonable minds can differ. That was my judgment at the time.

MR. CHERTOFF: Well, just so we're clear about it then. The decision you made in March of 1999 was not only to accelerate and conclude the investigation or conclude the presentation with respect to falsification, but to make sure that that was a subject of a public charge -- to make it public. That was your decision.

JUSTICE VERNIERO: To-- Well, to -- to complete the process. Completing the process in my mind was to release the indictment in the normal course, which is what my experience was in just about every indictment. I might have sealed indictments prior, I just don't remember. That would have been an extraordinary thing in my -- in my view.

MR. CHERTOFF: And in your mind, in fact, one of the positive values of presenting the case to the grand jury was the public announcement of a public indictment that would, as you've indicated, aid in restored public confidence.

JUSTICE VERNIERO: I thought once the indictment was complete it had to be released as a matter of the public's right to know, at a time when the public had lost confidence in my office.

MR. CHERTOFF: And was it your sense that by making this indictment public, the public would perceive that, in fact, action was being taken against the people who were engaged in racial profiling?

JUSTICE VERNIERO: I don't know if I was that specific that they would focus on the actual persons who were charged. I took a broader view, and perhaps I'm just not articulating it to you.

Once the indictment was ready, once the investigation was complete, I felt that I had no choice but to release it. Now, I know I had choices legally, but in terms of the climate and the atmosphere and the level of public cynicism, I did not want to risk inflaming that cynicism by sitting on an indictment or concealing it. I felt that when it was ready, it had to be released. As I say, it was a very straightforward decision that I was making.

MR. CHERTOFF: Now, in this straightforward decision, the three prosecutors involved indicated to you that there was a risk that the publicity would adversely affect the rights of the targets, correct?

JUSTICE VERNIERO: Would conclusively? No. They explained the risks.

MR. CHERTOFF: There was a risk--

JUSTICE VERNIERO: Yes. Yes.

MR. CHERTOFF: --that the rights of the targets, to have their shooting case evaluated by the grand jury, would be compromised. There was a risk in that.

JUSTICE VERNIERO: There was a risk. As it was described to me, there was a risk that the grand jury would be tainted.

MR. CHERTOFF: There was a risk that the grand jury, therefore, would be dismissed with respect to this case, and the matter would have to be represented to a new grand jury. There was a risk of that.

JUSTICE VERNIERO: There was a risk of that, yes.

MR. CHERTOFF: There was a certainty that there would have to be a proceeding in which the grand jurors would be questioned, and a Superior Court judge would have to get involved in evaluating whether there was some taint, correct?

JUSTICE VERNIERO: That was my understanding, yes.

MR. CHERTOFF: And that would be time consuming, not only with respect to the lawyers for the Department, but with respect to a Superior Court judge as well.

JUSTICE VERNIERO: Presumably, yes.

MR. CHERTOFF: And so the three prosecutors laid that out in front of you, correct?

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: Did any of the prosecutors in the room recommend that you go ahead and present the case and bring the indictment out publicly before the shooting investigation was done?

JUSTICE VERNIERO: I don't recall if anyone said do it or don't do it.

MR. CHERTOFF: Did you ask?

JUSTICE VERNIERO: I might have, I just don't remember.

MR. CHERTOFF: Well, is it fair to say that even as of this point in your career -- having been Attorney General for several years -- your degree of actual criminal law experience was considerably less than those people in the room?

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: And I take it, it was your habit over the years to consult with people who were expert in certain areas to get the benefit of their expertise, right?

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: So again, I have to ask you, did you ask any of the prosecutors in the room, is it a good idea to indict the falsification case now and make it public while there's a grand jury sitting on the shooting case?

JUSTICE VERNIERO: And again I say I don't recall, I may have.

MR. CHERTOFF: And do you recall whether anybody said to you or suggested to you that you wait?

JUSTICE VERNIERO: I don't recall that. I don't recall anyone forcefully saying please don't do this. Whether they had voiced objections, I do not recall. I remember they laid out the risks, the options to deal with the risks, and I made the decisions.

Yes, they were more experienced than I, but I was the Attorney General, and I had to make this call. I was the guardian of public confidence in my office, they were not. This was a decision that I had to make unique to me, and I made it.

Now, having said that, as it turned out it was the correct decision in my judgment, because we did make a public accounting, and there was no taint to the grand jury process. Judge Feinberg indicated that in a fairly strong opinion, as I recall.

MR. CHERTOFF: So you feel it was a good decision to take the risk, because it turned out at the end of the day that the risk didn't come to fruition?

JUSTICE VERNIERO: Well I -- I--

MR. CHERTOFF: Is that basically what you're telling us?

JUSTICE VERNIERO: I'm saying that now in hindsight, yes, I knew then there were risks.

But, Mr. Chertoff, there were risks and downsides to just about every decision I made as Attorney General.

MR. CHERTOFF: Let me ask you this, in your-- Do you know whether, in the period of time that the prosecutors involved in this meeting had been serving in law enforcement, do you know whether they were aware of there had ever been a situation where you had a pending serious felony case being presented to a grand jury, where the Department of Law and Public Safety deliberately indicted the targets of that investigation while it was pending, thereby causing a *Brook-Murphy* hearing to be held?

JUSTICE VERNIERO: I don't recall.

MR. CHERTOFF: Would it surprise you to learn that Mr. Zoubek testified that in his experience, and to his knowledge, this was the only time that there was a situation where a *Brook-Murphy* hearing had to be held in the middle of a presentation to the grand jury not because of some unforeseen event, like someone gets shot, but because the Department of Law and Public Safety had made a deliberate decision to indict the targets with respect to other felony charges?

JUSTICE VERNIERO: I don't know whether I would say I was -- I would be surprised or not, I just don't recall. I do recall it was a unique time in the history of my Department and of State Police.

MR. CHERTOFF: Did you ask anybody, "What's been the past practice in this situation? What has happened in the past where you've got a big investigation going and you discover along the way some other charges against the targets?"

Did you ask anybody that question?

JUSTICE VERNIERO: I don't recall.

MR. CHERTOFF: Well, so as we sit here and in terms of your evaluating or presenting to us what was in your mind and what was discussed, there was no investigative or prosecutorial or statute of limitations or flight or danger reason to bring this indictment out publicly, correct?

JUSTICE VERNIERO: Well, I'm not sure I would agree with that, because you've put prosecutorial in there. I think prosecutors, whether it's the Attorney General or the county prosecutors, have a duty to account to the public, to instill public confidence in law enforcement, and as I said, I saw this as an issue of public confidence and simply bringing to fruition that which I was advised was completed.

MR. CHERTOFF: So the public confidence is what you've identified, at least in your mind, as the advantage or the motive or the reason to get this out quickly.

Is that fair to say?

JUSTICE VERNIERO: I wouldn't use the word motive. That's a fairly charged--

MR. CHERTOFF: I'll strike motive.

JUSTICE VERNIERO: --that's a fairly charged word these days. But my thinking was, if the investigation is ready-- Certainly I didn't want to

indict anyone, whether law enforcement or not, unless the indictment was ready, unless the investigation was appropriate and the indictment was appropriate. Once that decision was made, as difficult as it was, to me, releasing it to the public in the normal course was a fairly straightforward decision.

MR. CHERTOFF: And again, striking the word motive, with the advantage being the public confidence element of your job. Is that right to say?

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: Okay.

On the other side, you also--

JUSTICE VERNIERO: And my office and of State Police, it was not just focused on me.

MR. CHERTOFF: You also understood that the charges themselves were potentially among the most prejudicial charges that can be brought against somebody.

JUSTICE VERNIERO: I don't know if we thought of it in those terms. I knew they were serious charges, and I knew the other charges that were being discussed were serious.

MR. CHERTOFF: I have to ask you this: Is there any doubt in your mind at that time that the issue of racial profiling, with its overtones of bigotry and racism, and the allegation of falsification, which is essentially saying someone lied, that when you combine those two together in an indictment or a charge, it's hard to imagine -- perhaps other than child

molesting -- anything that could be more incendiary with respect to the target of an investigation?

JUSTICE VERNIERO: I knew they were serious charges, and I knew there were risks. And in hindsight, I was pleased that those risks did not materialize.

MR. CHERTOFF: And then you--

JUSTICE VERNIERO: They obviously -- those charges were not so great as to taint the process, because the process continued.

MR. CHERTOFF: And then you were warned by the experienced prosecutors that there were risks of tainting involved, correct?

JUSTICE VERNIERO: I was advised. I don't-- I don't think there was an air of warning in that meeting. As I say, it was a fairly calm meeting, as I recall. No one was pounding the table saying, don't do this, warning me not to do it.

You used the word warn. I think I take exception to that. Words are very important here. I was advised of the risks. I deliberated. I made the decision. The decision was uniquely mine. I stand by that decision, and I'm pleased in hindsight that it turned out there was not a risk to the ongoing grand jury process.

MR. CHERTOFF: You were told, in fact, there were significant risks.

JUSTICE VERNIERO: I don't know whether the word was significant or risks. There were risks.

MR. CHERTOFF: Having made the decision to go ahead, notwithstanding the advice you received, what did you do to minimize the risks of publicity as it might taint the grand jury?

JUSTICE VERNIERO: Oh, I don't think it was possible at that point in time to minimize any publicity. I mean, we did what we often do. It was a-- I think it was a press availability, a press release. It was what we often do with indictments.

MR. CHERTOFF: Was it a press availability or press conference?

JUSTICE VERNIERO: They're the same in my mind. You come before the press, and you release something.

MR. CHERTOFF: Well, I mean, you can have a press release, that's one way you can handle it.

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: You can make yourself available to the press if they're interested, correct?

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: Or you can summon the press into a room--

JUSTICE VERNIERO: Yeah. Yeah. I think we felt at the time that we would get very quickly to a roomful of reporters, so there was no point in trying to slow dance our way to a public release of this information.

MR. CHERTOFF: Well, did any of the experienced law enforcement prosecutors in the room say or suggest to you that we ought to have a press release -- a press conference, rather?

JUSTICE VERNIERO: I don't recall.

MR. CHERTOFF: Do you know how-- Did you direct somebody in your office to send out a notice and get the TV and the radio and the print media assembled so you could make an announcement?

JUSTICE VERNIERO: Well, I'm sure at some point I advised the Public Information Office that this was occurring. I may have gotten their advice. You know, you think there's going to be enough interest here that we should do a press conference or a press release? I just don't remember.

All I know is, at the time, on the issue, there was no way to avoid -- once the decision was made to release the indictment -- a full-scale press conference. I mean, that was just a reality. That was not a decision I had to make, that was reality.

MR. CHERTOFF: So you're telling us, you understood when you made the decision that not only would this be an indictment and not only would there be a risk of taint, but that you would be holding a press conference which would maximize the dissemination of publicity attendant on the indictment?

JUSTICE VERNIERO: I disagree with the way you phrased the question, sir. You suggest that in that March meeting, when we're discussing options, I said, "Oh, we'll do this, and I'll have a full-scale press conference."

It just didn't work that way, Mr. Chertoff. We made the decision for the reasons that I've outlined, and then I turned it over to the press people, and we came up with a press conference.

MR. CHERTOFF: So--

JUSTICE VERNIERO: It was-- It was nothing as incendiary as you're suggesting.

MR. CHERTOFF: I'm just curious, are you telling us, Justice Verniero, that when you were in the meeting talking about taint -- the risk of taint -- and talking about public confidence, that it never crossed your mind you'd be doing a press conference?

JUSTICE VERNIERO: Mr. Chertoff, I was doing press conferences almost at the drop of a hat at that point in time, whether I wanted to or not. Let me put it this way, I saw no reason to find another way to get my name in the paper. I would have been perfectly fine if we could have just slipped this indictment under the doors of reporters, but I knew that was not going to be possible.

MR. CHERTOFF: Do you remember what you said at that press conference?

JUSTICE VERNIERO: Remember what I said?

MR. CHERTOFF: Do you remember what you said at the press conference?

JUSTICE VERNIERO: I don't, but knowing the way I am, I probably would have expressed regret of having to indict two members of law enforcement. In some sense, this was an indictment of my office. These were employees of the Department of Law and Public Safety. I'm sure I regretted it, but I thought it was my duty. I don't remember my exact words.

MR. CHERTOFF: Did you connect up the indictments with the vigor of the investigation that your office was pursuing with respect to racial profiling?

JUSTICE VERNIERO: As I say, I do not recall what I said at that press conference.

MR. CHERTOFF: Now this issue, with respect to racial profiling, obviously didn't burst on the scene in March of 1999, correct?

JUSTICE VERNIERO: Correct.

MR. CHERTOFF: You became aware of it-- Well, I assume you were aware of it even when you were in the Governor's Office, right? Just as a matter of public--

JUSTICE VERNIERO: No, I -- I don't think I was focused on it in the Governor's Office. I recall the first time that I had any real focus to the issue of racial profiling was when the *Soto* decision was released in March of 1996. I was Chief of Staff at that time.

MR. CHERTOFF: And then there comes a point, and you're sworn in as Attorney General in July of 1996, correct?

JUSTICE VERNIERO: Correct.

MR. CHERTOFF: And-- By the way, let me go back to the press conference. When you held the press conference, did you give any thought to-- I mean, your testimony is that you felt it was inevitable that you were going to have to have a press conference, right?

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: Did you give any thought to how to minimize in any way the possibility of tainting that next grand jury?

JUSTICE VERNIERO: I don't recall.

MR. CHERTOFF: Did you have Mr. Gerrow, who was actually presenting the shooting case before the grand jury, get up in front of the press conference?

JUSTICE VERNIERO: I recall he was at the press conference. I don't-- I don't recall what he said. And that would have not been unusual, because he -- he was in a better position, frankly, than I was to respond to the details of the indictment and so forth. So it would have been quite natural for me to have him there.

MR. CHERTOFF: But did it strike you that there's hardly any way to more forcefully make the point that the falsification issue is linked to the shooting than by putting the same prosecutor who's in front of the grand jurors -- talking to them every day and presenting evidence -- in front of a press conference announcing the indictment?

JUSTICE VERNIERO: Well, even Mr. Gerrow was becoming something of a public figure at that point in time. His name was in the paper quite a lot. I don't recall whether this was before or after we closed the stretch of the Turnpike to do a reenactment, and I know that he had gotten a lot of news publicity at that point in time. It was part of the global set of risks that I was fully aware of when I decided to proceed in the manner I proceeded.

MR. CHERTOFF: So you weighed the additional risk of having the grand jury prosecutor in the shooting case get up and be part of the announcement in the falsification? You weighed that risk, and you decided to take that as well.

JUSTICE VERNIERO: No. As I indicated in my prior testimony, I wasn't making a lot of these fine distinctions that you're now making. I was making a global decision based on the information that I had. I knew there would be a risk of publicity, and I cannot say to you that I discussed or knew on any sort of qualitative terms what that level of publicity would be.

MR. CHERTOFF: Now, getting back to July of 1996, there comes a point in time that you transition in as Attorney General, correct?

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: And I take it you received some kind of transition report?

JUSTICE VERNIERO: I did.

MR. CHERTOFF: And that indicated to you and notified to you or reminded you of the fact that there was a decision by Judge Francis in *Soto*, right?

JUSTICE VERNIERO: My recollection is my transition notebook -- I have a recollection of it being like a three-ring binder, a fairly thick notebook. It had many tabs or many chapters to it, and I recall that the *Soto* case was maybe about a half a page in a fairly lengthy, inches-thick notebook.

MR. CHERTOFF: And you had discussions as well with your predecessor, Chief Justice Poritz, correct?

JUSTICE VERNIERO: I had discussions with then Attorney General Poritz, I know for sure, at the time the decision came down in March. I don't recall whether we had a second discussion in transition. We may have, I just don't recall it.

MR. CHERTOFF: Do you recall that she told you in substance that there was a *Soto* case, it was one of the issues she was looking at? There were some questions about the studies, you needed to have to better record keeping, and that there ought to be an internal study done concerning profiling.

JUSTICE VERNIERO: I do not recall that, no.

MR. CHERTOFF: Now, I want to just set the stage for where we were in the State of New Jersey when you came in. Would you agree with me that the issue, in general, of relations between minorities and nonminorities was a significant public issue in 1996 when you became Attorney General?

JUSTICE VERNIERO: I think the issue of race in America has been a significant issue for many, many years.

MR. CHERTOFF: And it was a huge issue for this State in the period of the early '90s, right?

JUSTICE VERNIERO: As I say, I don't know if I had a specific recollection or a focus on the racial profiling issue per se. I can't represent to you that I was fully aware of--

MR. CHERTOFF: I'm not talking--

JUSTICE VERNIERO: --the various lawsuits. No, you asked me

--

MR. CHERTOFF: I'm not asking about profiling. I'm asking in general, the issue of whether it be employment, whether it be with respect to the issues of elections.

JUSTICE VERNIERO: Well you -- you -- you know from our previous time together that, with respect to the Governor's election campaign, that race became an issue after the election, so--

MR. CHERTOFF: And it became one -- and it remained one afterwards.

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: And it was one that the administration, quite properly, focused a lot of attention--

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: --healing and bringing together the various ethnic groups in the State of New Jersey, right?

JUSTICE VERNIERO: That is correct.

MR. CHERTOFF: And I assume-- I assume you were involved in that in the Governor's Office. You were involved in trying to promote the effort to bring together various groups and to make sure everybody felt comfortable that they're all equal citizens of New Jersey.

JUSTICE VERNIERO: Whenever I could, I tried to bring together minority groups, leaders of the minority community.

I recall, as Chief of Staff, I often urged the appointment of minority members of our communities to various positions on boards and positions in State government, and the Governor had a -- I forget the exact name of it now -- I think it was One Family, Many -- One State, Many Families (*sic*). It was her initiative, through the Secretary of State, to create an air of tolerance in this State.

MR. CHERTOFF: So it would be fair to say that at the time that you became aware of the decision by a judge that the State Police were racially profiling, you would have been particularly sensitive to that given your background in trying to work with the administration in promoting diversity and tolerance, right?

JUSTICE VERNIERO: It certainly would have stood out in my mind, of course.

MR. CHERTOFF: What could be more important than making sure that everybody in the State feels that they're getting a fair shake from the State Police, not being oppressed or picked on, right?

JUSTICE VERNIERO: Of course.

MR. CHERTOFF: So I take it then, when you became aware of *Soto*, and both before you came over and when you had the transition, you would have been sensitive to the fact that racial profiling, if it were to exist, would be a very serious blot on the State, and indeed, on the administration.

JUSTICE VERNIERO: Of course, if it were to exist. And that was the big question, of course.

MR. CHERTOFF: So the question is when you first came in did you think, "What do I do to find out whether this is a problem?"

JUSTICE VERNIERO: Well, I really didn't have to do that, because as I recall -- and I say I can't recall the exact time, whether it was in March or during the transition -- when I learned of the *Soto* decision, I also learned at some point -- it could have been at that point or immediately into my term -- that the State Police and the Attorney General's Office under General Poritz had put in place what I call the *Soto* reforms. It's just a shorthand reference to the steps that she took, even though we were appealing the case. She put steps in place to ensure that this practice would not occur. And I--

MR. CHERTOFF: Do you remember-- Do you remember her asking -- suggesting you ought to do an internal study to see -- an audit to see if this was working or not?

JUSTICE VERNIERO: I don't. She might have said, after describing the reforms, to keep an eye on them and make sure that they're working. She did not, as far as I recall, urge me to do the kind of widespread review of State Police that I ultimately came to order. That was not raised in the transition.

MR. CHERTOFF: Did you also understand that even apart from the *Soto* case, there were other motions pending in other counties in the State to suppress or throw out cases based on allegations of selective enforcement?

JUSTICE VERNIERO: I don't think I knew that at that point in time.

MR. CHERTOFF: Well, wasn't it in your transition notebook?

JUSTICE VERNIERO: It might have been, but I just don't recall that.

MR. CHERTOFF: Would you agree with me that it would be important, if the issues of selective enforcement were serious enough to warrant cases being thrown out -- it would be important for that reason as well -- for a law enforcement reason -- to look at the issue?

JUSTICE VERNIERO: Yes, and I would have assumed that we were looking at it.

MR. CHERTOFF: Now, when you came on board, was there somebody that you delegated -- to whom you delegated the responsibility to follow up on the *Soto* issue?

JUSTICE VERNIERO: *Soto*, as I recall, was a criminal case, which made it a little unusual from civil, discriminatory cases. And as I recall, as a criminal case, it was in the Division of Criminal Justice, and Jack Fahy stands

out in my mind as the person that I dealt with, at least early on in my tenure. He may have been the one to brief me, when I became Attorney General, as to the case itself, what the *Soto* reforms were, how they might be working, and so on and so forth. Jack Fahy is one name, there might have been others.

MR. CHERTOFF: Now, you knew *Soto* was a significant case, right?

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: And you knew that a motion for leave to appeal had been filed and that there would be Appellate papers filed in due course, right?

JUSTICE VERNIERO: Correct.

MR. CHERTOFF: I take it you were also familiar with the principle that if the State, in fact, were to discover information or facts that were inconsistent with the positions taken by the State in litigation, there would be an ethical obligation and a continuing discovery obligation to make that known to the court and to the adversary?

JUSTICE VERNIERO: I don't know if I thought about it at the time. I would not have gotten involved with discovery issues as Attorney General.

MR. CHERTOFF: You're saying you didn't get involved with discovery issues as Attorney General?

JUSTICE VERNIERO: By and large. I mean, we had 30,000 cases pending when I became Attorney General. I'm sure many of them had discovery requests, interrogatories, and so forth. It would be fairly unusual,

unless I was a defendant in a case, in my official capacity for me to get involved with discovery obligations.

MR. CHERTOFF: So that would be an extraordinary thing for you to get involved with discovery obligations?

JUSTICE VERNIERO: Well, it would be-- I think it would be unusual for me to sign off on discovery requests, that sort of thing. They were mainly handled by my deputies.

MR. CHERTOFF: But whether you thought about it consciously or not, you'll agree with me that you were aware, certainly, that there was an ethical obligation, if the State becomes aware of facts inconsistent with the litigation position, to either adjust the litigation position or to make those facts known?

JUSTICE VERNIERO: As I say, I don't think I thought about it at that point in time. The cases on appeal, I would have assumed if there were obligations, they were being satisfied.

MR. CHERTOFF: Do you doubt that there was such an obligation back in 1997 and 1996?

JUSTICE VERNIERO: Presumably, there's an obligation in a criminal case whenever you have exculpatory evidence to turn that over. But I just didn't think about it, because I assumed it was being handled.

MR. CHERTOFF: Well, I'm-- We'll come to that in a minute, but I'm not asking you right now whether you thought about it then. But would you agree with me now-- Withdraw that.

JUSTICE VERNIERO: I have to be a little careful, as a sitting member of the Supreme Court, to express any legal--

MR. CHERTOFF: That's why I withdrew.

JUSTICE VERNIERO: --doctrine or any legal philosophy.

MR. CHERTOFF: Let me go back to 1999, when you were Attorney General. There was a point in time Paul Zoubek came to you and told you that an Appellate Division judge had, in some form or fashion, made note of the fact that if the State's position -- if the facts underlying the State's position in *Soto* were different than originally thought, that would have to either be made known or the State would have to adjust its position in the litigation. Do you remember Mr. Zoubek telling you that?

JUSTICE VERNIERO: I vaguely recall that, but I don't -- I don't really remember it specifically.

MR. CHERTOFF: Well, to the extent you vaguely recall it--

JUSTICE VERNIERO: I vaguely recall it, because I seem to recall that Mr. Zoubek filed an affidavit with the court at some point late in the process, or toward late in my tenure, where he may have discussed discovery, but I-- Don't hold me to that, I just don't remember.

MR. CHERTOFF: Well, but to the extent that you vaguely recall this conversation that Mr. Zoubek had with an Appellate Division judge, did you -- was your reaction to disagree with the judge and his view of the State's ethical obligation?

JUSTICE VERNIERO: No, my reaction probably would have been, if we have a discovery obligation, satisfy it. As I say, I was not immersed in discovery discussions as Attorney General.

MR. CHERTOFF: Now, there came a point in time -- and of course, when-- Well, let me back up and say this. Of course, in addition to

dealing with *Soto*, when you came on board in 1996, you had to supervise the State Police. That was another part of your duty, right?

JUSTICE VERNIERO: It was.

MR. CHERTOFF: And then there comes a point in time in November of 1996 when you become informed by Mr. Waugh that the Civil Rights Division is looking to investigate racial profiling in the New Jersey State Police, correct?

JUSTICE VERNIERO: They called, and they wanted to ask us questions, and as I recall, it was keyed mainly to the *Soto* case.

What was the date you gave me?

MR. CHERTOFF: November of 1996.

JUSTICE VERNIERO: That sounds about right, yes.

MR. CHERTOFF: And you learned from Mr. Waugh that there was going to be an investigation, or the Civil Rights Division wanted to start an investigation of the New Jersey State Police.

JUSTICE VERNIERO: I don't know if he used the word investigation. He said that they had expressed an interest. The call came over, and my reaction, as I recall, was perhaps we ought to sit down and speak face-to-face and see what this is all about.

MR. CHERTOFF: So this was just a casual thing, not a big deal to you?

JUSTICE VERNIERO: Well it was-- It was-- It was very much a big deal to me in the sense that it was the Department of Justice. It's just not every day you get a call from the Department of Justice, at least I didn't. But it was informal, I guess, is the better word than casual. It was a call that came

in from -- to one of my deputies from, presumably, his analogue at the DOJ. He brought it to my attention, and I thought enough of it, certainly, to go down to Washington and speak face-to-face with the Civil Rights Division.

MR. CHERTOFF: Well, did you-- Were you concerned, for example, to make sure that the Civil Rights Division didn't send a letter formally notifying you of an investigation, because you didn't want to have a letter to that effect?

JUSTICE VERNIERO: I might have expressed that concern. I thought at the time that since we were appealing *Soto*, and particularly if their focus was *Soto*, that New Jersey had to be treated fairly. We did not want to become a sort of an unfair target of the Federal government, so I might have asked the Justice Department to extend that courtesy to a sister state, and as I recall, they had no problems extending that courtesy.

MR. CHERTOFF: So you were concerned about having a document that would label this as an investigation?

JUSTICE VERNIERO: I wouldn't say I was concerned with the document, per se. I was concerned, and felt as the State's lawyer, I had an obligation to ensure that New Jersey was being treated fairly by the Federal government.

MR. CHERTOFF: Well, whether or not you got a letter saying there's an investigation doesn't go to the question of how fair the investigation is, does it?

JUSTICE VERNIERO: Well, it sets us up, instantly, in an adversarial relationship -- or potentially, and I wanted to see what this was all about before we got into letters and calling it an investigation or an inquiry.

I thought I would go down to Washington and just speak face-to-face with the folks involved. I just thought that was a courteous, if not the right thing to do.

MR. CHERTOFF: You didn't want anything in writing, did you?

JUSTICE VERNIERO: If I could avoid having New Jersey being, you know, stigmatized by a premature investigation, I'm sure I would have tried to do that. I don't recall exactly what my sentiments were. That's not -- I would not be surprised if that were my reaction.

MR. CHERTOFF: And again, that's again from a public appearance standpoint. You wouldn't want to have a public stigma--

JUSTICE VERNIERO: From a fairness perspective, Mr. Chertoff.

MR. CHERTOFF: But the concern you had, in terms of a document or a formal notification of an investigation, is the public perception that would stigmatize New Jersey.

JUSTICE VERNIERO: Well, presumably, I didn't have to worry about public perception, because DOJ doesn't leak information about investigations. I was concerned about fairness.

MR. CHERTOFF: And I take it, by the way, from the standpoint that you were sitting in when the State was the subject of an investigation, the concern about avoiding being publicly branded before an investigation is completed seemed particularly acute.

JUSTICE VERNIERO: I don't understand your question.

MR. CHERTOFF: Well, when you were looking at a Civil Rights Division investigation of the State of New Jersey, you were sensitive to the

desire to avoid anything that would publicly indicate that the State was being investigated, or might publicly make the State look bad, right?

JUSTICE VERNIERO: I did not think it would have been fair, at that point in time, based on the record as I understood it, which essentially was the *Soto* record. I mean, that's what prompted the call that it warranted an investigation, public or no, by the Justice Department. So I went down to Washington. They extended me the courtesy and the invitation, and I accepted it. And frankly, we had a very nice dialogue, and I, to this day, consider our relationship with the DOJ to have been a good one.

MR. CHERTOFF: All right. Here's my question: Given your indication you thought it would be unfair, in 1996, to have the label investigation attached, at a time the investigation wasn't completed, because it would make the State stigmatized, did that consideration enter into your mind three years later, with Hogan and Kenna, when the issue arose about public branding of them while there was still an investigation under way?

JUSTICE VERNIERO: No, because I was balancing issues, and they evolved. Those issues evolved over my tenure. And it was not so much the State to be stigmatized, but the State Police. There was a keen awareness of the last time the DOJ had put the State Police in a consent decree situation, or under investigation. And that was in the '70s. I believe it was about personnel issues. I don't recall.

That was fresh in a lot of people's minds, as if it happened yesterday, and I felt that I owed it to the State, and I owed it for the morale of the State Police to ensure that the Division of State Police and the State as a whole be treated fairly. My only objective was to ensure fairness.

MR. CHERTOFF: Did you ask the Department of Justice to defer sending a letter, confirming they're investigating, in order to meet with you first?

JUSTICE VERNIERO: I may have.

MR. CHERTOFF: Well, so there's no doubt about it, let's put W-12 up on the Elmo. (referring to projection device) We're going to give you a copy to look at.

JUSTICE VERNIERO: Okay. My eyesight is not what it used to be.

MR. CHERTOFF: This is a copy of an E-mail from Alexander Waugh to, I believe, your secretary.

JUSTICE VERNIERO: Right.

MR. CHERTOFF: And it says, "Please tell Peter that the U.S. Department of Justice is willing to defer sending a letter confirming that they are investigating profiling by State Police, in order to meet with Peter to discuss the investigation."

Does that refresh your memory?

JUSTICE VERNIERO: Well, as I say, I may have, and this is accurate.

MR. CHERTOFF: Now, in preparation -- now, for the first time, you're dealing not only with *Soto* as a litigation before the Appellate Division, but you're dealing with a Civil Rights Division potential investigation. And let me step back. You'll agree with me that at least in November, you were aware that, from the standpoint of the Civil Rights Division, they were considering this an investigation, right?

JUSTICE VERNIERO: Let me just go back to this document, W-12. I think it is important the record is clear that part of the message from Alexander Waugh to me was that the U.S. Department of Justice is willing to defer. I take it from that that they were comfortable with -- if I made the request, they were comfortable with it, and certainly they didn't think it was inappropriate to defer sending a letter. So I see this exhibit as underlying proof of what I said earlier, that our relationship with DOJ began, and as far as I know, remained a fairly civil one, in a sense of cooperation and so forth.

MR. CHERTOFF: I'm just asking you this question: Is it clear to you from the E-mail that you had an awareness at this time that there was an actual investigation of profiling under way?

JUSTICE VERNIERO: I don't think they called it an investigation at that time.

MR. CHERTOFF: Well, if it says here, "willing to defer sending a letter, confirming that they are investigating profiling," how could there be a doubt in your mind that they were investigating profiling?

JUSTICE VERNIERO: Well, I take that to mean that they were deferring the confirmation, might mean that they were deferring the investigation. I recall, when we went down to Washington, we talked a little bit about, "Hey, you know, what's happening here? Are you investigating us? Is this an inquiry? Is this an investigation?" And at the end of the day it really doesn't matter what we call this, whether we call it an investigation or an inquiry. But at that point, it was the start of our relationship--

MR. CHERTOFF: But, but--

JUSTICE VERNIERO: --and we sort of -- we were getting to know one another.

MR. CHERTOFF: But it did matter to you, because if we look at the E-mail here, my question to you is this: First of all, isn't it entirely clear that what you were seeking to defer was a written confirmation of investigation?

JUSTICE VERNIERO: I did not want New Jersey to be unfairly designated as under investigation, or the State Police, by the Department of Justice, because I didn't think it was warranted. So I did what any good lawyer does, hopefully, on behalf of his client. I went down and I talked to these folks. And they agreed, it's premature. "We're not going to send you a letter. We'll talk about this first."

I thought it was a good meeting, and I see nothing wrong with this exhibit.

MR. CHERTOFF: Now, you need to prepare for the meeting by familiarizing yourself a little bit more with the facts, right?

JUSTICE VERNIERO: Of course.

MR. CHERTOFF: And you agree with me that this was the first time, to your knowledge, that in all the prior years of dealing with racial profiling, the Civil Rights Division itself had gotten involved out of Washington in investigating profiling in the State of New Jersey?

JUSTICE VERNIERO: Could you repeat the question.

MR. CHERTOFF: You'll agree with me that, to your knowledge, in all the years that profiling has been discussed in New Jersey, this was the first time the Civil Rights Division from Washington inserted itself into this?

JUSTICE VERNIERO: I don't know if I knew that at the time. I had a vague recollection myself of the 1970s consent decree. That could have been Civil Rights. I just don't recall.

MR. CHERTOFF: Was there, to your knowledge, during your tenure or the tenure of your predecessor, any investigation by the Department of Justice of any organ at the Department of Law and Public Safety?

JUSTICE VERNIERO: Other than this one?

MR. CHERTOFF: Other than this.

JUSTICE VERNIERO: Not to my knowledge.

MR. CHERTOFF: So this is a pretty big deal.

JUSTICE VERNIERO: As I said, it was significant whenever the Department of Justice expresses an interest in the State, certainly, or a department.

MR. CHERTOFF: You'll agree with me, at this point, as of November we're dealing with a Department of Justice inquiry, right?

JUSTICE VERNIERO: Correct.

MR. CHERTOFF: We're dealing with an Appellate Division review of an adverse decision by a Superior Court judge, right?

JUSTICE VERNIERO: Well, we're dealing with the State appealing a case that we believe, at the time, was wrongly decided.

MR. CHERTOFF: But you had a Superior Court judge who ruled against you, right?

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: And we're dealing, again, with one of the most significant issues to the administration, which was the issue of relations among the races, correct?

JUSTICE VERNIERO: It was an important issue.

MR. CHERTOFF: So this would have commanded your attention?

JUSTICE VERNIERO: It got my attention.

MR. CHERTOFF: Now, did you--

JUSTICE VERNIERO: I went down to Washington.

MR. CHERTOFF: Did you get a memo, or did you ask for a memo from Mr. Fahy, explaining the history of the profiling issue, in preparation for the meeting?

JUSTICE VERNIERO: I don't recall, but I have a feeling it's going to come up on the TV screen.

MR. CHERTOFF: You're probably right. (laughter)

So we're going to put up F-13.

JUSTICE VERNIERO: Thank you.

MR. CHERTOFF: This is a memo to you -- I'm sorry, to Mr. Waugh from Mr. Fahy, re: profiling issue.

JUSTICE VERNIERO: Uh-huh.

MR. CHERTOFF: I'm going to ask you if you'd seen this.

JUSTICE VERNIERO: I don't recall seeing it. I may have.

MR. CHERTOFF: You--

JUSTICE VERNIERO: I don't see -- my name is not on it. At least, I don't see my name on it.

MR. CHERTOFF: Were you made aware at this point that there were cases in other states, including the State of Maryland, that dealt with the issue of racial profiling?

JUSTICE VERNIERO: I don't recall.

MR. CHERTOFF: And you don't know whether you saw this memo?

JUSTICE VERNIERO: I don't. As I say, it doesn't have my name on it, but I might have seen it, I just -- I don't think so. I don't recall it.

MR. CHERTOFF: Let me see if I can help you out. We're going to give you F-14 now. Let's leave F-13 up, but I want to give you F-14, which is a briefing summary from meetings with the Attorney General.

JUSTICE VERNIERO: Uh-huh.

MR. CHERTOFF: Do you recognize this document?

JUSTICE VERNIERO: No.

MR. CHERTOFF: Did you get this kind of document typically in your position as Attorney General?

JUSTICE VERNIERO: I did.

MR. CHERTOFF: You used to get briefing summaries?

JUSTICE VERNIERO: I used to have summaries, or at least a brief description, of meetings that I was about to have as the Attorney General.

MR. CHERTOFF: And--

JUSTICE VERNIERO: This looks like a fairly typical summary.

MR. CHERTOFF: So you would get a copy of this?

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: And it says here, "attached is background copies of the decision in the Gloucester County profiling matter and related memos." I take it you would typically get the background material, as well?

JUSTICE VERNIERO: If it were attached, yes.

MR. CHERTOFF: Well, if it says it's attached, you would presume it would be attached.

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: And you'd read that, right?

JUSTICE VERNIERO: Sometimes I would read it more carefully than other times. Sometimes I just had it as background, in case a document was going to be discussed in the meeting. Typically I would pay more attention to the cover sheet than I would the attachments, unless someone focused my attention to the attachments.

MR. CHERTOFF: And as of this point in time, you were not that conversant with *Soto*, correct?

JUSTICE VERNIERO: That is correct.

MR. CHERTOFF: But you knew you were going to go down and meet with high ranking members of the Civil Rights Division in Washington to talk about *Soto*?

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: So you wanted to prepare yourself, right?

JUSTICE VERNIERO: Of course.

MR. CHERTOFF: Because you were going to handle this meeting personally?

JUSTICE VERNIERO: Well, I was going to be personally there, yes, and as the ranking member of the State, I didn't see it as my meeting to handle. It was really their meeting, but certainly I would be prominent in the meeting, yes.

MR. CHERTOFF: So we have evidence in the record that F-13, which is up, was one of the attachments to this memo. Does that help you to recall that you reviewed F-13?

JUSTICE VERNIERO: It doesn't. I just don't recall reviewing it. I may have.

MR. CHERTOFF: Now, the last sentence on F-13, from Mr. Fahy, says, "The audit system now undertakes a review of the subject troopers' overall enforcement pattern, rather than concentrating solely on the facts of a particular case."

JUSTICE VERNIERO: I'm sorry. Where are you, Mr. Chertoff?

MR. CHERTOFF: The very last page of that memo -- December 5th.

JUSTICE VERNIERO: Page 5, uh-huh.

MR. CHERTOFF: Says, the last sentence--

JUSTICE VERNIERO: The audit system, yes.

MR. CHERTOFF: "The audit system now undertakes a review of the subject troopers' overall enforcement pattern, rather than concentrating solely on the facts of a particular case." Is it your testimony you had no awareness of this in early December?

JUSTICE VERNIERO: My testimony is I don't recall reading this document. I may have.

MR. CHERTOFF: Now, you went down to the meeting, correct?

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: And you met with the, I guess at that time, the senior ranking person in the Civil Rights Division, Loretta King?

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: As well as Mr. Rosenbaum and Mr. Posner, right?

JUSTICE VERNIERO: I don't recall who else was at the meeting from their side.

MR. CHERTOFF: And what was the discussion?

JUSTICE VERNIERO: As I indicated in my earlier testimony, in part it was a sort of get to know one another meeting, try to put a face behind the name. They indicated that *Soto* was essentially what brought their attention to New Jersey. I expressed the view that *Soto* would be appealed, and I expressed the reasons for the appeal. I indicated that I would keep the DOJ updated as to various stages in the appeal. I believe, at that meeting, although I might have to have my memory refreshed, but I believe we spoke a little bit about how the inquiry would go forward from that point, but I don't recall in detail if they had made any particular requests of New Jersey at that meeting. They may have.

MR. CHERTOFF: Did you repeat your request not to have a letter confirming that it was an investigation?

JUSTICE VERNIERO: I might have. I don't recall.

MR. CHERTOFF: And did they agree not to send you a letter to that effect?

JUSTICE VERNIERO: Well, to my knowledge, they didn't send a letter, so they -- if I had agreed -- or asked, they would have agreed to it. I don't recall getting a letter from the Department of Justice.

MR. CHERTOFF: Did they tell you that they were going to send you or give you a document that would lay out the kind of information that they wanted for this inquiry?

JUSTICE VERNIERO: No, I -- as I recall, they gave us, or they were going to send us the typical type of information that they would sometimes ask of a state or a jurisdiction. But it was not specific to New Jersey. It was just sort of a general overview of the kinds of things we would be talking about. And that was consistent with the purpose of the meeting. It was, as I say, a sort of laying out the ground rules, for lack of a better word, of how we were going to proceed.

MR. CHERTOFF: Now, in preparation for the meeting, I assume you had discussion about what *Soto* was about, right?

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: And I take it you knew as of the time you went down that the focus in *Soto* was on stops on the Turnpike, right?

JUSTICE VERNIERO: On the southern portion of the Turnpike.

MR. CHERTOFF: And that would be the Moorestown and Cranbury barracks, right?

JUSTICE VERNIERO: That is correct.

MR. CHERTOFF: And you also understood that the State's position was that the stop statistics were not meaningful because there was no baseline violator or user study that was accurate?

JUSTICE VERNIERO: That was a concern we always had, yes.

MR. CHERTOFF: So you understood -- you were sufficiently versed in this -- in these concepts, when you went down, so you could have a meeting with the Civil Rights Division and talk about it, right?

JUSTICE VERNIERO: I understood the concepts, yes.

MR. CHERTOFF: And then in this meeting, you came to learn that there would be requests for information, correct?

JUSTICE VERNIERO: Understanding the concept of a violator survey is different than understanding exactly how to construct a violator survey, just so my testimony is clear.

MR. CHERTOFF: My question is: In the meeting you became aware that there would be a request for information, right?

JUSTICE VERNIERO: That there could be requests, and they gave us a general overview of the kinds of things that they would ask for. And as I recall, it was either at that meeting or shortly after that meeting -- they gave us a sort of generic form of the kinds of things that they might be asking for.

MR. CHERTOFF: And did you talk to anybody afterwards about the types of things that the form seemed to be calling for?

JUSTICE VERNIERO: I might have. I don't recall.

MR. CHERTOFF: Did you have an interest in that?

JUSTICE VERNIERO: I would have had an interest, generally, in, you know, where we go from here, that sort of thing. I don't recall specifically going through that form. I have a vague recollection of the form itself. It was, as I say, three or four pages. It was sort of a general overview.

I recall it being blank. There's a place where you put the jurisdiction name in, and that -- or the party name. That was blank. It was a guide of things that they might be requesting in the future. I don't recall sitting down with anyone and going through that, line by line, if that's your question.

MR. CHERTOFF: Now, you told us you didn't normally get involved in discovery matters, with respect to the Department of Law and Public Safety, right?

JUSTICE VERNIERO: That's correct.

MR. CHERTOFF: With respect to the issue of the discovery to be provided to the -- or the information to be provided to the Department of Justice in Washington, did you get involved in that?

JUSTICE VERNIERO: I don't know if I would even characterize this as discovery, since there wasn't a lawsuit filed. This was all prelitigation.

MR. CHERTOFF: In connection with the information--

JUSTICE VERNIERO: Yeah.

MR. CHERTOFF: --that was being asked for, did you get personally involved in that?

JUSTICE VERNIERO: I was involved to the extent that I would have been briefed as to the progress, the kinds of things that were being asked, and so forth. I was not, day-to-day, involved in information that was being sent.

MR. CHERTOFF: You didn't want to review the positions being taken with respect to the information requested -- things like that?

JUSTICE VERNIERO: I might have, as I say, from time to time. In preparing for this hearing, I'm aware, of course, of documents where I might

have been asked, or at least told, that certain requests were coming in. But I do not recall being involved at the day-to-day level of looking at a piece of paper and deciding whether or not that should be sent.

I just don't recall that level of detail.

MR. CHERTOFF: Well, did you, first of all -- let me ask you this. With respect to any discovery case or any litigation that was ongoing in the Department in your tenure, do you ever remember getting involved at all in reviewing or discussing specific responses to discovery?

JUSTICE VERNIERO: Anywhere? Civil, criminal?

MR. CHERTOFF: Yeah.

JUSTICE VERNIERO: As I say, I might have. I just don't -- I don't recall it. If there were a particular report that might have been at issue, maybe the Division of Law Director would comment to my attention. I just don't remember. I think it was -- it would have been unusual, as I recall, for me to sit down and review interrogatories or review requests for depositions, unless I were centrally involved in the case. I just don't remember.

MR. CHERTOFF: So it would be unusual for you to get involved at a high level of detail.

JUSTICE VERNIERO: In your garden-variety discovery requests, yes.

MR. CHERTOFF: Now, did you have a meeting Christmas Eve with respect to the discovery, or the information requests, by the Civil Rights Division?

JUSTICE VERNIERO: I may have, yes.

MR. CHERTOFF: Well, is there a doubt in your mind that you had it?

JUSTICE VERNIERO: Well, I know I had it because I've reviewed my schedule, but if you were to ask me do I have an independent recollection, I would have to say no. One of the -- one of the difficulties in preparing for today is separating out in my mind what I knew then, and what I know now, given my level of preparation. And it's not always clear. I'm trying to be as clear as I can be.

I understand that I had a meeting on December 24th to discuss some aspect of this inquiry.

MR. CHERTOFF: Was Colonel Williams at the meeting?

JUSTICE VERNIERO: I believe so.

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

JUSTICE VERNIERO: I don't recall. He may have. I would have assumed he would have been there, since he was a fairly significant person involved in this inquiry.

MR. CHERTOFF: And was Sergeant Gilbert there?

JUSTICE VERNIERO: I don't recall.

MR. CHERTOFF: Now, what did you discuss in this meeting?

JUSTICE VERNIERO: I don't remember.

MR. CHERTOFF: Do you know why you would have had a meeting Christmas Eve with the State Police about a matter to do with the Civil Rights Division?

JUSTICE VERNIERO: It might have been as a follow-up to my meeting down in Washington. I don't recall. Do you know the date? When did I go down to Washington?

MR. CHERTOFF: December 12th.

JUSTICE VERNIERO: December 12th? That sounds about right, a week -- week-and-a-half later. I brought the Colonel up to date on the meeting. He was not with me in Washington. I don't remember.

MR. CHERTOFF: Was it a meeting to talk about, in part, the discovery requests?

JUSTICE VERNIERO: It might have been. That would make sense, that, you know, we wanted to begin the process of responding to any information requests that were being made. That makes sense to me.

SENATOR ROBERTSON: Mr. Chairman?

JUSTICE VERNIERO: I just don't have an independent recollection of what we were saying.

SENATOR GORMLEY: Excuse me.

SENATOR ROBERTSON: Mr. Chairman, just for ease of our following this, discovery normally attends a litigation, and there was one in this case, in the *Soto* case.

MR. CHERTOFF: That's correct.

SENATOR ROBERTSON: A request for information is generally what was happening with the DOJ. So I would just ask, for clarity, not to use those as if they were interchangeable.

MR. CHERTOFF: Well, actually my question -- I appreciate it -- my question was actually: You never had another situation during your tenure

where there was a request for information from the Department of Justice with regard to the Department of Law and Public Safety, right?

JUSTICE VERNIERO: That's right.

MR. CHERTOFF: So there's no precedent for your dealing with requests for information in any other setting but this particular case?

JUSTICE VERNIERO: No. These were -- if your question is were these garden-variety discovery requests, no, because they came from the Department of Justice.

But I still was not involved, to my recollection, to anything approaching a day-to-day turnover of documents. I would have been informed as to particular requests that might have come in and who may have discussed it. But I don't recall actually sifting through information, document by document, to decide what should be turned over or what needed to be turned over. I would have relied on deputies for that purpose.

MR. CHERTOFF: Did you get involved in drafting correspondence with respect to this investigation?

JUSTICE VERNIERO: I remember sending a letter to Ms. King shortly after I went down. I believe it was January '97. I could have the date wrong.

MR. CHERTOFF: Now, let's focus on January '97, because I want to see -- you understand, again, this is one of the important matters you have to deal with, right?

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: And I want to talk a little bit about how you set up your staff, in terms of dealing with this issue.

Mr. Fahy, there came a point in very early '97, went back, essentially to resume his duties at the Division of Criminal Justice and became -- and was not involved in this, correct?

JUSTICE VERNIERO: There was a point in time where Jack resumed his normal function, but he was always sort of involved. I mean, he attended various meetings, as I recall. I don't know the level of conversation he might have had with Alex Waugh. But Jack was a resource who we would draw upon from time to time, because he tried the *Soto* case.

MR. CHERTOFF: Who reported to you directly, with respect to this Civil Rights Division?

JUSTICE VERNIERO: Alex Waugh.

MR. CHERTOFF: And then who was the point person that was working for Alex Waugh on that?

JUSTICE VERNIERO: George Rover, as I recall.

MR. CHERTOFF: Now, did Mr. Waugh have experience in criminal law?

JUSTICE VERNIERO: Not that I recall.

MR. CHERTOFF: Do you know if Mr. Rover did?

JUSTICE VERNIERO: I don't recall if he did.

MR. CHERTOFF: Do you know what Mr. Rover's experience was, in general, as it relates to racial profiling, or similar types of legal issues?

JUSTICE VERNIERO: I believe, if I'm not mistaken, he was at the ABC, Alcoholic Beverage Control. I could be wrong on that, but I think he was there, but had prior experience working with Alex, and Alex felt comfortable with him.

MR. CHERTOFF: So Mr. Waugh discussed with you how he was going to staff up dealing with this case?

JUSTICE VERNIERO: I don't know if we had a formal discussion on staffing. It was clear that we would need some help in dealing with the Justice Department. I'm not sure exactly how George Rover got selected.

MR. CHERTOFF: Well, in terms of the team that dealt with the Department of Justice on this matter, there was Mr. Rover, correct?

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: And he reported to Mr. Waugh?

JUSTICE VERNIERO: Correct.

MR. CHERTOFF: And Mr. Waugh reported to you?

JUSTICE VERNIERO: Correct. And as I say, Jack Fahy was a resource that we would draw on from time to time, as I recall.

MR. CHERTOFF: Who is the head of the Division of Criminal Justice at this point in time?

JUSTICE VERNIERO: What point in time are you asking about?

MR. CHERTOFF: '97.

JUSTICE VERNIERO: 1997, I believe it was Terrence Farley. I don't recall the exact date that Mr. Farley left.

MR. CHERTOFF: Did you get Mr. Farley involved on a regular basis in discussing issues as they related to the Department of Justice investigation?

JUSTICE VERNIERO: Not that I recall.

MR. CHERTOFF: Who was the head of the Division of Law at that time, '97?

JUSTICE VERNIERO: I believe it was Jaynee LaVecchia. I could be mistaken.

MR. CHERTOFF: Did you get her involved on a regular basis in discussing the issues involved with the Department of Justice investigation?

JUSTICE VERNIERO: On a regular basis, no. We may have occasionally spoke about information requests. She had more experience than I had on dealing with information requests, particularly in complex matters, in her capacity as a Division of Law director. I might have consulted her, but it was nothing like a regular basis.

MR. CHERTOFF: She wasn't in the chain -- in terms of the chain of command in terms of dealing and supervising with the back-and-forth in Washington. Is it fair to say the chain of command was Rover to Waugh to you?

JUSTICE VERNIERO: That sounds right.

MR. CHERTOFF: You didn't put anybody either experienced in Criminal Justice or experienced in the Division of Law in that chain of command, did you?

JUSTICE VERNIERO: Well, with the exception of Jack Fahy. Now, was he in -- you're giving us a little bit more credit than we deserve in terms of formal structure. You know, we didn't really sit down in a meeting and say, "Here is the chain of command." As I say, the Justice Department, it sort of begun somewhat informally. It was civil in nature, as I remember. And it was clear that there might be some information we would have to retrieve and send over. I was confident that Alex, through George, and anyone else that he needed -- because Alex was fairly senior, he could draw on just

about anybody in the Department -- that they would get the job done. I don't think I was thinking in terms of a chain of command.

MR. CHERTOFF: Well, let's move forward with this for a minute to complete the picture, because there comes a point where Mr. Farley leaves.

JUSTICE VERNIERO: That is correct.

MR. CHERTOFF: And who replaces him?

JUSTICE VERNIERO: Paul Zoubek.

MR. CHERTOFF: And again, as you indicated, Mr. Zoubek was very experienced as a prosecutor, right?

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: You didn't bring him into the issue of the profiling investigation by the Department of Justice either, until February 1999, right?

JUSTICE VERNIERO: I'm sorry, the DOJ investigation?

MR. CHERTOFF: Yeah.

JUSTICE VERNIERO: I don't recall when I began to consult with Paul.

MR. CHERTOFF: Well, let's take 1998, for example. In 1998 you had the Hogan and Kenna investigation, right?

JUSTICE VERNIERO: Correct.

MR. CHERTOFF: That was being supervised by Mr. Zoubek, ultimately?

JUSTICE VERNIERO: Through the Division of Criminal Justice, yes.

MR. CHERTOFF: You had the Troop D audit, right?

JUSTICE VERNIERO: Correct.

MR. CHERTOFF: Mr. Zoubek was involved in that, right?

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: Both of -- certainly the Troop D audit touched on the issue of racial profiling, right?

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: At the same time you had an ongoing back-and-forth with the Department of Justice in Washington, about racial profiling, right?

JUSTICE VERNIERO: Correct.

MR. CHERTOFF: Mr. Zoubek was not called in to work on that, right?

JUSTICE VERNIERO: At that stage, no.

MR. CHERTOFF: And Mr. Rover, who was dealing with Washington, wasn't helping Mr. Zoubek with respect to what he was doing in Troop D, right?

JUSTICE VERNIERO: Not to my knowledge. He may have. I don't know.

MR. CHERTOFF: And Mr. Fahy and the people in Appellate were working on the *Soto* appeal, right?

JUSTICE VERNIERO: Correct.

MR. CHERTOFF: And they--

JUSTICE VERNIERO: That's my understanding. There could have been others. I think Jack Fahy was in Grand Jury at that time, but

because he had -- he had tried the *Soto* case, as I said, he was -- he was a resource not only in the *Soto* appeal, but in our DOJ inquiry, as well.

MR. CHERTOFF: So in 1998, was there any one person in the Department of Law and Public Safety in whose hands all the threads relating to racial profiling were gathered -- the trooper investigation, the *Soto* appeal, and the Department of Justice inquiry?

JUSTICE VERNIERO: Well, I guess in the purest sense, I held all those threads as the Attorney General.

MR. CHERTOFF: Because, as far as the audit was concerned and the Hogan and Kenna material, that was Zoubek, correct?

JUSTICE VERNIERO: Principally, yes.

MR. CHERTOFF: And as far as the Department of Justice inquiry?

JUSTICE VERNIERO: That was Waugh.

MR. CHERTOFF: That was Waugh and Hesper and Rover, right?

JUSTICE VERNIERO: And anyone else that they -- and Fahy. You keep -- you keep missing Jack Fahy. As I say, he was a resource. We drew on his expertise from time to time. If I'm not mistaken, he may have come down to Washington with me. The record would indicate that. I don't recall that, but it would not surprise me, because he was a resource that we drew on.

MR. CHERTOFF: But he--

JUSTICE VERNIERO: I wouldn't leave him out of the equation.

MR. CHERTOFF: But in terms of the one person who actually had -- the only person who had the overview of all of these disparate events, that was you?

JUSTICE VERNIERO: Of course.

MR. CHERTOFF: And you didn't bring anybody else--

JUSTICE VERNIERO: I didn't bring in anyone over me, no.

MR. CHERTOFF: No. Here's my question: You didn't bring in anybody, before February 1999, who was experienced either in Criminal Justice or in the Division of Law to sit and gather all those threads and supervise all that underneath you, right?

JUSTICE VERNIERO: I didn't feel it was necessary, because we had Alex Waugh, in whom I reposed great trust and confidence -- a bright individual, a person of total integrity. He was drawing on Jack Fahy's expertise from time to time, and George Rover's. And as far as I knew, the Justice Department was quite satisfied with the team -- and that's your word -- that I had in place, and I saw no reason to bring in any additional persons.

MR. CHERTOFF: But here's my question: There was really only one person at the Department of Law and Public Safety, in 1998, who was in a position to have an overview about the material being gathered in the Troop D audit and the material that was being turned over to the Department of Justice by Mr. Rover and Mr. Waugh and Mr. Hespe, and that person was you.

JUSTICE VERNIERO: Well, I don't know if I knew the full extent of what was being gathered in the Troop D audit. I was the head of the Department. And your question was, who held all the reins? I held the reins. It doesn't necessarily mean I knew all the information.

MR. CHERTOFF: But here's my question: You knew information was being gathered in the Troop D audit, right?

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: You knew it related to profiling, right?

JUSTICE VERNIERO: Possibly.

MR. CHERTOFF: You knew profiling was the subject of the Department of Justice inquiry, right?

JUSTICE VERNIERO: Well, I knew the *Soto* case was the focus of the Department of Justice inquiry.

MR. CHERTOFF: Did you know racial profiling was the subject of the Department of Justice inquiry?

JUSTICE VERNIERO: It was racial profiling through the lens of *Soto*. That's how I understood it. And I think that's an accurate assessment, at least in the early tenure. Now, DOJ may have changed their focus, but in the -- my early tenure, the focus was *Soto* -- racial profiling as it related to *Soto*.

MR. CHERTOFF: And they asked for information relating to racial profiling on the Turnpike, right -- involving the Moorestown and Cranbury barracks, right?

JUSTICE VERNIERO: I don't know the specific information requests that they may have made, or at least I don't recall.

MR. CHERTOFF: Well, here's my question: What steps did you take in 1998 to assure that potentially relevant information gathered by Mr. Zoubek in the Troop D audit was communicated to Mr. Rover, who was dealing with the Department of Justice in satisfying their request for information?

JUSTICE VERNIERO: I would have assumed that Alex Waugh, who was the point person, would have ensured that we were complying with the Justice Department request.

MR. CHERTOFF: Alex Waugh wasn't there in 1998.

JUSTICE VERNIERO: Oh, 1998 -- then it would have been whoever the first assistant was. I think Dave Hesse took over, or Janice Mintz. I'm not sure.

MR. CHERTOFF: Well, were-- Did you direct any of them to be involved, in any way, to making sure that the information being gathered by the Troop D audit was getting over to Mr. Rover so it could comply with what Department of Justice wanted?

JUSTICE VERNIERO: I don't remember issuing a directive in that to that respect. I might have suggested that they consult with folks at CJ. I just don't remember.

MR. CHERTOFF: Well, did you-- I mean, this is the-- In any way, shape, or form did you tell anybody to act to make sure that the material being gathered by the Troop D audit, which had to do with falsification of data in Moorestown and Cranbury, was somehow being made known to the person who you had assigned to pass that stuff to the Department of Justice?

JUSTICE VERNIERO: Well, implicit in the question is that there was a question that that be passed along to Justice from Justice. I don't recall that. I recall that my standing instructions, if it were -- if you will, was to turn over information that the Department of Justice requested. And I assumed that was -- that was happening.

MR. CHERTOFF: But what steps did you take to make sure--

Let me step back. You decided on the assignments, with respect to Mr. Zoubek handling Troop D, right? That was your decision, right?

JUSTICE VERNIERO: That was the decision that was self-executing. He was the head of CJ. He handled the audit. I didn't consciously make that decision.

MR. CHERTOFF: You knew he was doing it.

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: You knew Mr. Rover was handling the civil rights matter, right?

JUSTICE VERNIERO: I knew Alex Waugh was handling it. Alex was drawing on whoever in the Department that he needed to draw on, including Jack Fahy.

MR. CHERTOFF: I have to stop you, Justice Verniero. There wasn't a shooting in 1997.

JUSTICE VERNIERO: That's correct.

MR. CHERTOFF: The Troop D audit began in 1998, right?

JUSTICE VERNIERO: That's right.

MR. CHERTOFF: Mr. Waugh's way off.

JUSTICE VERNIERO: I see. Pardon me.

MR. CHERTOFF: So now you--

The Troop D audit is a serious matter, right?

JUSTICE VERNIERO: It is.

MR. CHERTOFF: I mean, you had a shooting, correct?

JUSTICE VERNIERO: Yes. We--

MR. CHERTOFF: Let me--

JUSTICE VERNIERO: We considered Troop D, at least as I recall-- That was separate from DOJ. I don't recall--

MR. CHERTOFF: When did you make the decision that was separate from DOJ?

JUSTICE VERNIERO: I made no decision. It was--

MR. CHERTOFF: Well, who made the decision that it was separate?

JUSTICE VERNIERO: We were responding to DOJ requests for information. Had they requested information that touched on the Troop D audit, and had I been aware of that, I'm sure I would have directed someone to consult with the individuals who were handling the Troop D audit. My testimony--

MR. CHERTOFF: Were they asking--

JUSTICE VERNIERO: My testimony is, I do not recall any information requests from the Department of Justice which would have implicated or touched upon the Troop D audit. We were not in the mind-set, at that point, Mr. Chertoff, of simply turning over information that we were finding in any one of a given number of pending investigations. We were responding to DOJ requests. And I think we were responding to them faithfully.

MR. CHERTOFF: Wasn't there a specific request by the Department of Justice for record information from Moorestown and Cranbury on certain dates in connection with their investigation?

JUSTICE VERNIERO: I don't recall.

MR. CHERTOFF: Let me put up W-26, April 7th, 1997.

Do you see this memo?

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: It's addressed to you.

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: It's from Mr. Waugh.

JUSTICE VERNIERO: Mr. Waugh, that's correct.

MR. CHERTOFF: You received it.

JUSTICE VERNIERO: Presumably.

MR. CHERTOFF: It says, "Attached is a copy of the Justice Department's request for specific information with respect to dates chosen by the -- over a two-year period, correct?"

JUSTICE VERNIERO: That's what it says, yes.

MR. CHERTOFF: And it had to do, as you understood, with information and records at Moorestown and Cranbury, correct?

JUSTICE VERNIERO: Well, I don't see that listed in the memo. Presumably, since they were focusing on Moorestown and Cranbury, I would have assumed that. I don't have an independent recollection of that.

MR. CHERTOFF: Now, you knew the Troop D investigation was focused on whether records at that location -- or those locations were falsified, right? Correct? That's the whole point of the audit.

JUSTICE VERNIERO: Well, again, this is April 1997.

MR. CHERTOFF: Here's my question: Was the Troop D audit focused on whether records at these barracks were falsified?

JUSTICE VERNIERO: My understanding was, the Troop D Barracks audit extended up the entire Turnpike.

MR. CHERTOFF: And did the Turnpike include Moorestown and Cranbury?

JUSTICE VERNIERO: Yes, of course.

MR. CHERTOFF: So it stood to reason that if you asked for an investigation of falsification of records on the Turnpike, that would include an investigation of whether records at the barracks being looked at by the Department of Justice had been falsified, right?

JUSTICE VERNIERO: Well, no. The Department of Justice was asking for specific information. This says specific information with respect to dates chosen.

MR. CHERTOFF: Here's my question.

JUSTICE VERNIERO: Now, I don't know as I sit here what that "specific information" was. If they were asking for specific information as to whether records were being falsified, I assume we would have turned that over. But that's not indicated on this memo.

MR. CHERTOFF: We will go through the genesis of all this discovery shortly. But I just want to make clear we understand this point. Did you understand that the Troop D audit was looking at whether records at barracks on the Turnpike were false?

JUSTICE VERNIERO: Whether troopers were falsifying records, yes.

MR. CHERTOFF: Would you agree with me, therefore, that that would be arguably relevant if the Department of Justice was pulling or asking to get those very records from the State of New Jersey? Right?

JUSTICE VERNIERO: Well, my understanding was they were focused on the *Soto* case and reconstructing a record, or furthering a record, that dealt with the number of minority stops. I never married the two

concepts in my mind, falsification versus stops. I might have. I just don't recall.

MR. CHERTOFF: Did you--

JUSTICE VERNIERO: I mean, this is three or four years ago.

MR. CHERTOFF: You never married-- In 1998, you never married in your mind, or connected up, the falsification issue with the general issue of racial profiling?

JUSTICE VERNIERO: I did. But your question was in connection with DOJ discovery requests. And the reason I didn't address it in the perspective of DOJ discovery requests is, I wasn't handling those requests on a day-to-day basis.

MR. CHERTOFF: Well--

JUSTICE VERNIERO: And on April 7th, 1997, the date of this memo, there was no Troop D audit, as far as I knew.

MR. CHERTOFF: I want to-- Again, I want to try to fix us on this 1998 period. In 1998, you're aware that the Department of Justice has been requesting, and the State of New Jersey has been furnishing, documents relating to stops and other activity on the Turnpike, right?

JUSTICE VERNIERO: I was aware that they were making information requests, yes.

MR. CHERTOFF: And that was being provided by Mr. Rover at your direction, right?

JUSTICE VERNIERO: Well, that was being handled by Mr. Waugh, and he was supervising Mr. Rover.

MR. CHERTOFF: And you were dealing with Mr. Rover yourself, right?

JUSTICE VERNIERO: Directly, occasionally. My main point of contact was Alex Waugh.

MR. CHERTOFF: And Mr. Waugh wasn't there in 1998, so-- He was gone, right?

JUSTICE VERNIERO: That's correct.

MR. CHERTOFF: But Mr. Rover was still there.

JUSTICE VERNIERO: He was.

MR. CHERTOFF: So-- And obviously you understood it was important that Mr. Rover not furnish misleading or false information to the Department of Justice, right?

JUSTICE VERNIERO: Presumably.

MR. CHERTOFF: I mean, that would be a serious matter if material were provided to the Department of Justice that turned out to be false records, right?

JUSTICE VERNIERO: I would think so.

MR. CHERTOFF: And therefore, if one came to learn that there was a possibility that records being furnished were false, that would be a matter that you would have to look at, right?

JUSTICE VERNIERO: If I was informed of that possibility, yes.

MR. CHERTOFF: So there came a time in 1998 you were informed that there was an audit directed at the issue of whether troopers on the Turnpike were lying and falsifying their records, right?

JUSTICE VERNIERO: Well, we didn't have absolute proof at that time. There was a possibility.

MR. CHERTOFF: Right. So there was--

JUSTICE VERNIERO: And that's an important point, because-- Look, I know where you're going on this, and you're missing a big point. The big point is this, we were representing-- I was representing the State of New Jersey in connection with the DOJ. We were looking at a Troop D audit situation, which may or may not have materialized our worst fears -- our worst fears that there was widespread falsification.

I have no specific recollection of deciding yes or no to send information, but I would not have sent information to the DOJ that was premature, that was unverified, that was untested, information that we ourselves did not have the ability to analyze. And to my knowledge, they never requested it.

MR. CHERTOFF: I'm really asking--

JUSTICE VERNIERO: Now, when Alex Waugh left the Department, as I recall, the Department -- that function -- that supervisory function over George Rover was discharged by Dave Hesse. I don't recall whether Dave Hesse was involved or had knowledge of the Troop D audit. He may have.

MR. CHERTOFF: Well, Hesse didn't do criminal stuff. Mr. Zoubek testified yesterday that his chain of command on this was to you, right?

JUSTICE VERNIERO: I understand that, but nor did Alex Waugh do criminal stuff.

MR. CHERTOFF: But Mr. Zoubek's indicated, and I take it you don't disagree with him, that his chain of command on Troop D was to you, right?

JUSTICE VERNIERO: Correct.

MR. CHERTOFF: So you'd agree with me, even if the Troop D audit is inconclusive, it's under way, it's certainly relevant and certainly has to be considered in terms of whether the documents are false, right?

JUSTICE VERNIERO: I don't know if we went through that analysis at that time. So I-- Without seeing exactly what is being requested and seeing exactly what is being yielded in the Troop D audit, I'm not in a position to label anything as relevant. It might have been, but I can't make a determination on that.

MR. CHERTOFF: Let's go to W-24. It's a memo to Alexander Waugh from George Rover, March 3rd, 1997.

Do you see that?

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: And there's a little handwritten notation, Mr. Waugh told us, was his writing to PV, FYI, Alex Waugh.

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: Did you get this?

JUSTICE VERNIERO: Presumably. I don't recall it, but I must have. It has my name on it.

MR. CHERTOFF: And doesn't this lay out issues, for example, of the Department of Justice requesting samples of forms records, requesting

radio logs, and records of traffic stops, and other kinds of information with respect to Cranbury and Moorestown stations? Right?

JUSTICE VERNIERO: It does, yes.

MR. CHERTOFF: And it talks about here, the Attorney General had already sent copies of consent to search traffic and summonses and warnings, but that he wanted to see radio logs, patrol logs, arrest reports, and consent to search reports, right?

JUSTICE VERNIERO: What page are you reading?

MR. CHERTOFF: Page 2, Paragraph 2.

JUSTICE VERNIERO: That's what the paragraph says, yes.

MR. CHERTOFF: So you had, in your possession in 1997, an understanding that the Department of Justice was looking precisely at the kind of documentation which was the subject of an investigation for falsification in 1998, right?

JUSTICE VERNIERO: I don't know if I can make that determination by reading this letter, precisely. You used the word precisely. I would disagree with that.

MR. CHERTOFF: All right. Generally, you knew that the Department of Justice was requesting, and your office was providing, information of the kind that in 1998 became the subject of an investigation for falsification, right?

JUSTICE VERNIERO: Well, you say information of the kind. I'm not sure what that means. Are you saying patrol logs, arrest reports, consent to search?

MR. CHERTOFF: Right.

JUSTICE VERNIERO: I mean, that conceivably could mean scraps of paper in the Division of State Police. And that's not what the Department of Justice was looking for. In fact, I--

MR. CHERTOFF: They wanted samples.

JUSTICE VERNIERO: They wanted samples, and I recall they were very narrow in their requests. So I would not have-- Even if I had remembered, in June of 1998, and that's a big if, that there was this letter that was FYI'd to me a year earlier-- Even if I had remembered that, I don't think I would have thought, well this unverified work in progress known as the Troop D audit ought to be turned over to DOJ.

MR. CHERTOFF: I'm not asking you whether it should have been.

JUSTICE VERNIERO: Well, that's what you're suggesting--

MR. CHERTOFF: No, I'm asking--

JUSTICE VERNIERO: --I failed to do.

Let's be candid. I mean, that's exactly what you're suggesting I failed to do. And I'm saying my testimony is, the DOJ's requests were very narrow. They were specific. I was satisfied in the people that I had put in charge in dealing with the DOJ. And it is my testimony, and it was my belief, that they acted appropriately.

MR. CHERTOFF: But that's my very point. I'm not asking you why you didn't turn it over, I'm asking you why you set up a system in which the people who were dealing with DOJ, and the people who were doing the investigation of whether the underlying material was false, were kept totally separate, with only you in the middle bridging the gap?

JUSTICE VERNIERO: I don't know if I thought about it in those terms. I just-- This was an informal inquiry. We satisfied the Justice Department, as far as I know. And as far as I know, they have never complained to the contrary.

MR. CHERTOFF: This was the most-- Well, as a matter of fact, in February of 1999, they talked about going public and accelerating the investigation, right?

JUSTICE VERNIERO: As I testified earlier, I'm not sure when they reached that conclusion.

MR. CHERTOFF: Now again-- So my question is, did you take any steps at all to give anybody responsibility for coordinating between the Department of Justice document production issues and what was being uncovered in the Troop D audit? And I guess the answer to that is you really didn't give anybody that responsibility.

JUSTICE VERNIERO: I don't recall giving an express direction.

MR. CHERTOFF: You held that responsibility unto yourself, right?

JUSTICE VERNIERO: I take full responsibility, yes.

MR. CHERTOFF: Now, just to go back and-- As we go back-- Now, let's see where we are in January 1997. I'm sorry. I want to make sure we're all in the right year here, back in '97. Now, Mr. Waugh is still there, right?

JUSTICE VERNIERO: I believe so, yes.

MR. CHERTOFF: And Mr. Rover gets involved, right?

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: And Mr. Fahy's still sometimes involved, right?

JUSTICE VERNIERO: Correct.

MR. CHERTOFF: And at this point, you are getting somewhat familiar with the underlying facts, with respect to this civil rights profiling issue, correct?

JUSTICE VERNIERO: I don't know what you mean by underlying facts.

MR. CHERTOFF: Well, you asked questions, didn't you, in the period of December when you knew there was an investigation about what the underlying facts were? You asked Mr. Fahy. You asked Mr. Waugh.

JUSTICE VERNIERO: The underlying facts as they related to *Soto*, yes.

MR. CHERTOFF: As related to profiling.

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: And I'm going to show you-- Now, you understood, first of all, that in *Soto* itself, the data was collected from '88 to '91, right?

JUSTICE VERNIERO: I referenced that in my opening statement, yes.

MR. CHERTOFF: And so therefore, it was old, even as of 1997.

JUSTICE VERNIERO: Correct.

MR. CHERTOFF: You also understood it would be quite significant if it turned out that more recent reviews of stop data at Moorestown and Cranbury showed a same, consistent pattern of stops, right?

JUSTICE VERNIERO: I don't know if I would agree that it would be quite significant.

MR. CHERTOFF: You don't agree with that?

JUSTICE VERNIERO: I don't know if that's how we viewed statistics at that time. And I don't think we did. I mean, there was a general feeling, because of *Soto* and the reasons for appealing *Soto*-- I remember junk science was the term that then Attorney General Poritz used to describe how she felt about the data in *Soto*. Statistics were seen in a different light prior to 1998, 1999, when these issues really became accelerated. So I don't accept your characterization.

MR. CHERTOFF: Well, let me stop you. In 1998 and 1999, are you saying you had a different view about the validity of stop data?

JUSTICE VERNIERO: 1978, did you say?

MR. CHERTOFF: I'm sorry, 1998 and 1999. Did you say you had a different view of the validity of stop data than you had in 1996 and 1997?

JUSTICE VERNIERO: Data that was post-*Soto* was seen in a different light than data that was pre-*Soto*. And the reason for that was that after the *Soto* case was decided, there were a set of reforms put in place that presumably would deal with the problem of racial profiling. And so-- And obviously, there would need to be a period of time when there had to be some implementation for the reforms to actually kick in, so to speak.

So yes, there was a distinction. I don't recall if we ever put it on paper and said, you know, we're making this distinction. But there is a distinction between the pre-*Soto* numbers and the pre-*Soto* reform numbers and

the post-*Soto* numbers, and post-*Soto* is, you know, obviously information from '97, '98, and forward.

MR. CHERTOFF: Did you ask anybody, again in this time frame of December 1996, whether the numbers that were the subject of *Soto* were being analyzed and reviewed in more recent periods of time to see if they continued?

JUSTICE VERNIERO: I don't recall asking that specific question.

MR. CHERTOFF: Well, let's go to F-26, which is a letter -- typed letter -- January 3rd, 1997. And in the handwritten section, it looks like it's either January 7 or January 17th.

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: Now, at the top of the page, above where it's typed on the first page, is that your handwriting?

JUSTICE VERNIERO: It appears so, yes.

MR. CHERTOFF: You edited this, right?

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: It was originally drafted by Mr. Fahy?

JUSTICE VERNIERO: I don't know that. I don't know who drafted this letter.

MR. CHERTOFF: It was transmitted to you by Mr. Waugh.

JUSTICE VERNIERO: Yes, that's his language there under the word padding.

MR. CHERTOFF: Now, let's go to Page 8.

I take it you understood the content of the letter. When you got the letter -- the draft letter, the content was familiar to you. It wasn't a surprise.

JUSTICE VERNIERO: Well, when you say the content--

MR. CHERTOFF: In other words, the letter discusses--

JUSTICE VERNIERO: I understood the words, if that's what you're asking.

MR. CHERTOFF: No, the letter discusses certain issues and takes certain positions. And I take it this wasn't unfamiliar to you. You understood it.

JUSTICE VERNIERO: Yeah. I understood what-- I understood the terms, yes.

MR. CHERTOFF: All right. So now you have, in type form--

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: --the paragraph: "I believe the time has come to spend sufficient resources to develop and conduct a trustworthy violators' survey. The State Police report to me that the number of stops involving black motorists on the southern portion of the Turnpike patrolled by troopers assigned to the Moorestown Station remains near the level reported in the *Soto* case. This figure is also higher than that recorded at other State Police stations in this state, including those along the Turnpike."

Now, at the time you received this draft from Mr. Waugh, that was what was typed in the draft, correct?

JUSTICE VERNIERO: Correct.

MR. CHERTOFF: You struck it out.

JUSTICE VERNIERO: I did.

MR. CHERTOFF: You were aware at the time you got this that the State Police were reporting that the number of stops involving black motorists on the southern portion of the Turnpike remains near the level reported in the *Soto* case.

JUSTICE VERNIERO: Well, I don't recall if I saw the numbers that went behind that sentence, or just the sentence itself. The sentence says what it says. I don't recall reviewing any statistics to verify that sentence.

MR. CHERTOFF: Were you surprised by this sentence?

JUSTICE VERNIERO: I wasn't, because again we're in this period of time where we're very close to that *Soto* line -- pre-post *Soto*. And the fact that the statistics might have been the same as the level reported in *Soto* made some sense to the extent that the post-*Soto* reforms had not yet had a chance to really develop or mature. And I'm not sure, even as I read this letter now, what the time frame is for these number of stops. It's a very vague reference in the letter.

MR. CHERTOFF: So did you ask-- Did you ask someone to explain what does this mean, what is the significance of this?

JUSTICE VERNIERO: Well, I knew at that time that we wanted to conduct a trustworthy violators' survey, which we felt was very important. So the number, as I recall from my previous discussions on the *Soto* case-- I used the word discounted. I don't mean that in a pejorative phrase, but we were not viewing as meaningful, the pre-*Soto* data. Why is that?

MR. CHERTOFF: But this is post-*Soto* data.

JUSTICE VERNIERO: Well, it doesn't say that. It says--

MR. CHERTOFF: Did you ask?

JUSTICE VERNIERO: It says the data remains near the level, but it doesn't say what the data is.

MR. CHERTOFF: Did you ask?

JUSTICE VERNIERO: And even if it was immediately prior to *Soto*, the *Soto* reforms had not yet really taken hold. So--

MR. CHERTOFF: I have to ask you this. Did you -- because you speculated about a lot of things-- Did you ask?

JUSTICE VERNIERO: I didn't have to ask. I knew what the *Soto* numbers were, and I knew why we discounted them. So the fact that this was pre, or immediately post, either way--

Look, the date is only January '97, so at best, this data could have been from March '96 to '97.

MR. CHERTOFF: So you consciously went through this thought process of thinking this through when you read this sentence.

JUSTICE VERNIERO: I don't recall what I consciously went through. I'm trying to recollect and give you my best guess as to what went through my mind when I deleted this paragraph. What-- I don't recall exactly why I did it. But my best recollection, at this point, is it was unverified information.

Look at this-- The first sentence says, the number of stops involving black motorists remains near the level of *Soto*. But we're discounting *Soto*. We're discounting *Soto* data.

The next sentence says, this figure is higher than what is reported at State Police stations in the state, including those along the Turnpike. So built in, there are some inconsistencies.

And the third sentence, which probably is the most important from my perspective, is that we can't believe-- We have a difficulty believing that the State Police would intentionally racially profile. And that was very much our mind-set in 1997.

MR. CHERTOFF: I mean, you could--

JUSTICE VERNIERO: So I deleted the paragraph, I think -- again I don't have any independent recollection -- because it just was too inconclusive. It was contradictory and inconclusive. And it was not-- It did not suit this letter, as far as I was concerned.

MR. CHERTOFF: Well, one can draw the conclusion from the paragraph that whatever the policy prohibiting profiling was, it wasn't being effective, at least with respect to one station, right? That would be a pretty serious thing, right?

JUSTICE VERNIERO: Well, I don't know that as I read this letter--

MR. CHERTOFF: Well, it says here--

JUSTICE VERNIERO: --because I don't know what the time frame is. I mean, we might have discussed statistics in '97, or even '98, that dealt with pre-*Soto* time frames. And so it's hard for me to tell, by reading this letter, exactly what the time frame is for the so-called number of stops. That's my only point.

MR. CHERTOFF: But here's my question. As he indicated just a moment ago, it's arguably inconsistent and troubling to say to you've put in these reforms, you have a clear policy against profiling, and there seems to be one station where the numbers aren't changing. That could reflect a statistical problem, but it could also reflect a problem with the station, right?

JUSTICE VERNIERO: Or it could also reflect the same problem or concern we had with the trustworthiness of this data. Remember, we are in a *Soto* sort of frame of mind, where we are discounting this data.

Now, of course, we know down the road that we shouldn't have discounted this data. I mean, that's clear. But you're asking me, at this moment in January 1997, what was running through my mind.

MR. CHERTOFF: I'm asking--

JUSTICE VERNIERO: My testimony is twofold. One, I don't recall exactly what was going through my mind four years ago in this one letter, but I am trying to reconstruct what I probably was thinking at that point in time. And what I probably was thinking is that we're appealing *Soto*. We don't have a violators' survey by which we can measure any pre- or post-*Soto* data to determine whether it's meaningful. We're getting repeated assurances from the State Police that profiling is not a systemic problem. That, in my mind, was sufficient to delete this paragraph.

MR. CHERTOFF: But my question, before we even get to why you deleted it, is that you've indicated a moment ago that this anomaly between the reforms on the one hand and the one station with continued high numbers could be due to a number of causes, right?

JUSTICE VERNIERO: I don't believe I testified to that.

MR. CHERTOFF: Well, did you say it could possibly be because there's a problem with the violators' survey? Right?

JUSTICE VERNIERO: No, we didn't have a violators' survey. So it's not that there was a problem with the-- We didn't--

We weren't sure what these numbers meant, because we didn't have a violators' survey. What we knew was -- at least there was the thought that *Soto* was based on "junk science." So anything coming out of *Soto* would have been discounted.

MR. CHERTOFF: But this wasn't coming out of *Soto*, was it? This was not figures assembled by public defenders.

JUSTICE VERNIERO: No, but it says right-- It says--

MR. CHERTOFF: Well, let me finish.

JUSTICE VERNIERO: It says, at the level reported in *Soto* from the same barracks tied to *Soto*. So the same infirmity of the information would have pertained in this time frame.

MR. CHERTOFF: But wasn't the problem--

Now again, as of this point you've indicated you were conversant with *Soto*, right?

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: You've read the decision, right?

JUSTICE VERNIERO: I'm sure I had.

MR. CHERTOFF: You knew what the basis of appeal for the State was, right?

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: You knew that one of the criticisms was that the way that the public defenders assembled the baseline data was flawed, right?

JUSTICE VERNIERO: Correct.

MR. CHERTOFF: Basically, the State was saying, this data came from the public defenders. It's junk science, right?

JUSTICE VERNIERO: That's basically what we were saying.

MR. CHERTOFF: But this letter talks not about information -- current information from the public defenders, it talks about current information from the State Police. That's a big difference, isn't it?

JUSTICE VERNIERO: Well, it talks about current stops, yes.

MR. CHERTOFF: It says, the State Police report to me.

JUSTICE VERNIERO: Or number of stops.

MR. CHERTOFF: It says the State Police report to me, correct?

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: It doesn't say the public defenders are alleging in court, right.

JUSTICE VERNIERO: No, that's correct.

MR. CHERTOFF: That's a big difference, right?

JUSTICE VERNIERO: Well, but we were appealing *Soto* for other reasons.

MR. CHERTOFF: But--

JUSTICE VERNIERO: Mr. Chertoff, please let me finish my answer before you go on to your next question.

We were appealing *Soto* not only because it was based, in part, on junk science, it was because the numbers at that time, without a case-by-case analysis, were not conclusive proof of profiling. And Judge Francis changed the burden of proof in that case, which is another thing that we were appealing -- that he dispensed with a case-by-case analysis.

So when you have stops that show, at a *Soto* level, without a case-by-case analysis, with assurances from State Police that they're not profiling, and in the absence of a violator survey, against which to add meaning and content to these numbers, the numbers were discounted. That's my testimony.

Now, if you ask me should we have discounted the information, absolutely not.

MR. CHERTOFF: I'm asking you this--

JUSTICE VERNIERO: But that's an issue that I can say, in retrospect, at the time frame of 1997, that was not our thinking.

MR. CHERTOFF: I'm asking--

JUSTICE VERNIERO: It is my testimony that it was appropriate the way we were approaching it, given the time frame.

MR. CHERTOFF: I'm asking you this: Do you agree with me that this is material -- this is information coming from the State Police, not from the public defenders, right?

JUSTICE VERNIERO: Well, the sentence says that. As I say, I don't know where -- what the information actually was.

MR. CHERTOFF: So, if you don't know what the information is, if you don't know what the numbers are, if you don't know what the basis is,

I still have to come to this question. Did you ask anybody to find out? Did you make any inquiry at all and say, "What does this mean?"

JUSTICE VERNIERO: I may have. I don't recall. What I recall at that time was that we were trying to obtain a violators' survey to add meaning to these numbers. I might have asked for a progress report, at that point, on the survey, but it's fairly early on, so I don't think there was much progress at that point. I don't remember what I may have said four years ago in connection with this letter. I've given you my testimony on why we discounted the information, and I've described why I deleted the paragraph -- or why I think I deleted the--

MR. CHERTOFF: This didn't raise a red flag to you? And you saw no reason to pursue this with anybody.

JUSTICE VERNIERO: I may have asked some questions. I don't recall. It was not a red flag because of all the reasons that I've just described.

MR. CHERTOFF: Would you tell us-- Justice Verniero, was there a single thing you did after getting this letter to follow up -- to ask questions about the information in this paragraph, one single thing?

JUSTICE VERNIERO: I do not recall.

MR. CHERTOFF: And you understood, when you deleted this, this would mean the Department of Justice would be unaware that the State Police were accumulating information more recently than *Soto*, right?

JUSTICE VERNIERO: Presumably, if this was the only way that they would have been aware, yes.

MR. CHERTOFF: Certainly, you knew from this letter-- You knew from this letter that the State Police was accumulating data in 1996.

JUSTICE VERNIERO: I don't know if I knew they were accumulating data. I mean, this letter indicates that they had some snapshot in time, perhaps -- some data, but I do not recall what that data was. I do not recall if anyone ever disclosed that data to me. And I see nothing in this paragraph that indicates that they're in the process of collecting data on a regular basis.

MR. CHERTOFF: Forget regular basis.

JUSTICE VERNIERO: Well, I think that's what your question implied.

MR. CHERTOFF: Does it indicate that they have collected or gathered data in 1996?

JUSTICE VERNIERO: It indicates what it indicates, Mr. Chertoff, that they report to me the number of stops. It remains the level reported in *Soto*. I don't want to add any gloss to what it says. It says what it says.

MR. CHERTOFF: Is it clear from the letter that the State Police had collected, and was capable of collecting, data about the number of stops involving minorities and nonminorities? Is that clear on the face of the letter?

JUSTICE VERNIERO: Well, capable of collecting-- They had an obligation to collect and maintain data.

MR. CHERTOFF: Does it indicate that the State Police had, in fact, collected and were reporting data on the number of stops involving minorities on the southern portion of the Turnpike? It says that.

JUSTICE VERNIERO: For an uncertain time frame, yes, it says that.

MR. CHERTOFF: Now, is your concern about my asking you this question relating to the fact that on May 5th, 1999, you were asked the following question, on Page 65, during your confirmation hearings by Senator Matheussen: "What time period, to get to the point of where you are, which you announced just two weeks ago with regard to the ultimate decision--"

JUSTICE VERNIERO: Excuse me, can I have the page number, please?

MR. CHERTOFF: It's Page 65.

JUSTICE VERNIERO: Sixty-four?

MR. CHERTOFF: Sixty-five.

JUSTICE VERNIERO: Sixty-five. Yes.

MR. CHERTOFF: May 5th.

Where Senator Matheussen says, "Why that time period to get to the point of where you are, which you announced just two weeks ago, with regard to the ultimate decision that profiling was taking place and that you were taking proactive steps? Why that amount of time, some two years -- two-and-one-half years."

And you answer, "Well, the underlying data that was used to support the report we had actually begun collecting a year ago, thereabouts, as a result of the Turnpike incident that occurred in April of last year."

Now, my question to you is, is your concern about this passage in the letter -- that it's inconsistent with the answer that you gave to Senator Matheussen on May 5th, indicating that, in fact, the process of data collection had only begun a year ago?

JUSTICE VERNIERO: I don't have any concern on this paragraph. I'm just trying to explain to you why I deleted it. I don't think it's inconsistent at all with my prior testimony.

MR. CHERTOFF: You'll agree with me, at least, though, that you focused on, and made decision with respect to, this passage of the letter, which told you, in no uncertain terms, that the State Police were recording the number of stops involving motorists on the southern portion of the Turnpike. You were unambiguously aware that the State Police was reporting statistical data relating to racial composition involving stops on the Turnpike.

JUSTICE VERNIERO: Well again, I disagree with your characterization, because you have-- The way you've described it-- You've described to me an unambiguous awareness of some sort of continual comprehensive audit. And that's not what that sentence says.

MR. CHERTOFF: I didn't say continual comprehensive or internal audit.

JUSTICE VERNIERO: Well, you said, are you aware that the State Police continues? I thought I heard the word continue.

MR. CHERTOFF: Did the sentence make it clear to you that at some point after *Soto* the State Police were reporting on the number of stops involving minorities--

JUSTICE VERNIERO: No, were reporting, that's where you and I have a disagreement.

MR. CHERTOFF: Had reported.

JUSTICE VERNIERO: Had reported. One report, Mr. Chertoff. That's all this letter says to me. The State Police report. One. One report.

An uncertain time frame. This doesn't say is reporting. Were reporting. One report. That's all it says.

MR. CHERTOFF: So it's the difference between whether they were reporting or are reporting. That was significant to you.

JUSTICE VERNIERO: Well, it's significant to your question.

MR. CHERTOFF: Did you ever make an effort, after getting this letter, to ask to see these reports or find out what the report said?

JUSTICE VERNIERO: I may have, but again, given our mind-set with respect to the meaningfulness of these statistics, it would not surprise me if I had not.

SENATOR GORMLEY: We'll take a half-hour break.

JUSTICE VERNIERO: Thank you, Mr. Chairman.

**(RECESS)**

**AFTER RECESS:**

SENATOR GORMLEY: Okay.

Mr. Chertoff.

MR. CHERTOFF: Thank you, Mr. Chairman. Good afternoon.

Justice Verniero, now, we talked about this letter of January 3rd where you deleted the language on Page 8. And you then continued to work with respect to the letter, even afterwards, correct?

JUSTICE VERNIERO: I'm sorry, I continued to-- I didn't hear you.

MR. CHERTOFF: You have to hit the button on your mike.  
(referring to PA microphone)

JUSTICE VERNIERO: I didn't hear you. I'm sorry.

MR. CHERTOFF: You continued to work with the letter, even after you had made this change, right?

JUSTICE VERNIERO: I'm not sure I know what you mean. Work with the letter? Continued to revise the letter?

MR. CHERTOFF: Yeah, you made further revisions.

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: For example, I'm going to show you W-15, which is a letter of -- which is a memo, dated January 9th, to you from Alexander Waugh. It's another draft of the letter. And if you look, you'll see that the letter drops -- not surprisingly drops the language which you had deleted, correct?

JUSTICE VERNIERO: Let me-- I'll accept your representation of that. Sure.

MR. CHERTOFF: It's on Page 5.

JUSTICE VERNIERO: Sure. Yes.

MR. CHERTOFF: Okay. And then at the bottom of the coverage page-- The cover page says that-- Mr. Waugh says, "My sense is, they will not go away if they do not get a lot of the documents they have listed." I take it you read this cover memo, right?

JUSTICE VERNIERO: I must have. I assume I have, yes.

MR. CHERTOFF: And then you say at the bottom, "Alex, let's discuss. P." That's your handwriting, right?

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: And do you remember what you discussed with him about this letter?

JUSTICE VERNIERO: I honestly do not know.

MR. CHERTOFF: Now, then the next day, on January 10th, you have another meeting with respect to the Department of Justice data request with Mr. Waugh and with Colonel Williams, correct?

JUSTICE VERNIERO: If you make that representation, I'll accept it. I don't recall specifically.

MR. CHERTOFF: Well, I'll show you G-12, which is a New Jersey State Police interoffice communication. And it indicates in the corner there, Colonel Williams says, "Spoke to AG Verniero and AAG Waugh, reference: the data requested by the Justice Department. At this time, same will be restricted to the Turnpike stations in Cranbury and Moorestown."

Do you remember that meeting?

JUSTICE VERNIERO: I don't remember if we had a meeting. It might have been over the phone. I really don't recall. I understand what it says here. I'll trust that the Colonel's notation was accurate. I don't recall it.

MR. CHERTOFF: But you'll agree with me that, again, you are-- In addition to working on the letter to Ms. King, you're also working with Colonel Williams in personally making a decision about the scope of what's going to be turned over, correct?

JUSTICE VERNIERO: I don't know if we were making a scope decision, as much as we were relaying to Colonel Williams the requests that were coming in and how we were going to address those requests.

As I recall, the request had come in from the Department of Justice for a certain universe of information. And I don't know whether it was myself, Alex Waugh, or somebody else suggested that there be a discussion with the Justice Department to make sure that we understood exactly what they needed, what they wanted, and to narrow the requests in accordance with what they were actually asking for.

I think that's the proper context for the word restricted. Now, that's Colonel Williams's word. I don't recall using that word. But it was a sense that we should narrow the request, obviously respond, give them what they think is relevant and so forth. I recall, generally, that conversation, but I don't recall much beyond that in terms of detail.

MR. CHERTOFF: It's clear to you, though, at this point, first of all, that you are personally involved in the process of responding to the request by the Civil Rights Division, correct?

JUSTICE VERNIERO: I got involved in certain points. I was not-- To my recollection, I was not a person involved with the day-to-day turnover of information. I do recall occasions where either Alex Waugh, or perhaps others, had conversations with me regarding document production requests, but I wouldn't say I was involved on a day-to-day basis.

MR. CHERTOFF: Well, Judge Waugh testified yesterday that, with respect to any significant or material information or decisions, he generally informed you or consulted with you. Do you disagree with that?

JUSTICE VERNIERO: No, I don't disagree with that.

MR. CHERTOFF: And you'd also agree with me that this -- based on this conversation you had on January 10th, you were clearly aware that the

Justice Department was looking at data from the Turnpike stations of Cranbury and Moorestown, right?

JUSTICE VERNIERO: Well, that would have been consistent to what I thought the focus was, which was *Soto*.

MR. CHERTOFF: And as we said before the lunch break, it was those very stations which were the focus of the Troop D audit in 1998, correct?

JUSTICE VERNIERO: That was authorized sometime later in 1998, correct.

MR. CHERTOFF: Same stations.

JUSTICE VERNIERO: Well, it was those two stations, plus the additional station. I believe Troop D was the entire Turnpike.

MR. CHERTOFF: Including those two stations.

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: Now then, let's go on January 9th-- I'm going to show you G-11. You also were sent a copy of a memo from John Fahy to Mr. Waugh. It says, "To PV, FYI, 1/9/97." And then your handwriting is in the left-hand corner, correct?

JUSTICE VERNIERO: That appears to be my handwriting. It's fairly faded on this copy.

MR. CHERTOFF: Does it say, "Alex, let's bring this up at our 10 a.m. meeting today?"

JUSTICE VERNIERO: I'm not sure of the time, but yes, "Let's bring this up at our meeting today."

MR. CHERTOFF: Does that help tell you that the reference we saw in the document we just looked at was, in fact, a meeting that you had with Colonel Williams, and that's the meeting that's referred to here?

JUSTICE VERNIERO: It might be.

MR. CHERTOFF: Now, this is a document having to do with the options for conducting a violators' survey.

JUSTICE VERNIERO: It appears so, yes.

MR. CHERTOFF: Did you discuss that at the meeting with Colonel Williams?

JUSTICE VERNIERO: I don't recall.

MR. CHERTOFF: Did you ever order a violators' survey?

JUSTICE VERNIERO: I had approved that we should take steps to see if we could come up with a violators' survey, yes.

MR. CHERTOFF: Did you ever get a response indicating whether there was going to be one?

JUSTICE VERNIERO: I recall getting some updates. It turned out to be a much more complicated project than we had originally intended. It was something that I thought was important. The deputies that -- who had advised me on the *Soto* case -- and in fact, the Department of Justice thought, or at least agreed, that it was something that we should have in the State. And I recall, at one point, we may have asked the Department of Justice for any assistance in helping us to construct the project.

So yes, I clearly had indicated the decision that we should go forward with it. I don't recall at what point in time I may have been advised on its progress, but I have some progress on it.

MR. CHERTOFF: Did it ever get done?

JUSTICE VERNIERO: To my knowledge, it was not completed, no.

MR. CHERTOFF: During the two years, or two and a half years that remained in your term as Attorney General from January 9th, 1997, did you ever get a final statement as to what was going to happen with the violators' survey?

JUSTICE VERNIERO: No, I never got a final statement. As I said, I had gotten some updates. I believe I was aware, at some point in time, that it was fairly complicated. I believe my office had consulted with some statisticians or some consultants at one or more of the universities or colleges in the state or elsewhere. It turned out to be, as I say, difficult. I don't think there was a jurisdiction that had completed one. And so it was not anything that-- It was not a cookie-cutter type of project. We really had to work to put the project together. And we were not successful.

MR. CHERTOFF: Then you continue, after this, to--

First of all, you-- Obviously this memo indicates that you were interested in being informed about this violators' survey issue, correct?

JUSTICE VERNIERO: That I was interested in-- I wanted to be informed in terms of progress, yes.

MR. CHERTOFF: And you also kept on top of the various interactions between New Jersey and the Department of Justice in Washington, correct?

JUSTICE VERNIERO: Well, I kept receiving updates, yes.

MR. CHERTOFF: So let me show you W-17, which is a memo to Alex Waugh from George Rover, February 5, 1997. And it says in the corner, in Mr. Waugh's handwriting, "To PV, FYI, I have asked DAG Rover to prepare an options memo for our review and discussion."

Do you remember getting this document?

JUSTICE VERNIERO: I don't recall, no.

MR. CHERTOFF: Do you remember in general getting information that indicated the various issues with respect to production of documents that the Department of Justice wanted to pursue?

JUSTICE VERNIERO: As I said, I recall getting updates from time to time. Any decision or matter that was significant enough in Mr. Waugh's judgement-- He would have come to me and given me a briefing on it. But I don't recall anything that would, in my mind, represent a day-to-day kind of turnover of information. I got updates.

MR. CHERTOFF: Is there any reason that you wouldn't have gotten a document like this if Mr. Waugh directed it to you, that you can think of?

JUSTICE VERNIERO: None that I can think of.

MR. CHERTOFF: And then the next day, Mr. Rover writes a response -- or drafts a response to that letter from Mr. Posner which is the subject of the previous memo, and that's W-21, which I'll put before you.

JUSTICE VERNIERO: Okay.

MR. CHERTOFF: And you see there, it's "To PV, FYI" from Alex Waugh.

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: And then it says, "Alex, please see me."

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: So you'd agree you would have seen this, right?

JUSTICE VERNIERO: It has my handwriting on it. Yes, I would have seen this.

MR. CHERTOFF: And you discussed the content of this with Mr. Waugh.

JUSTICE VERNIERO: You know, I don't recall what I -- what my conversation was with Mr. Waugh.

MR. CHERTOFF: Well, your normal practice, if you wrote please see me with respect to a document, would be to see the person with respect to that document. You wouldn't have written this because you wanted to see him about something else.

JUSTICE VERNIERO: That's correct. I would have had either a question, maybe there was something I didn't understand about the document, or maybe I just wanted him to go further than what was on the document.

MR. CHERTOFF: And then obviously this letter includes an indication that there was going to be a preservation of radio transmission tapes at certain troop stations, including Cranbury Station, right?

JUSTICE VERNIERO: That's what the document says. As I said, I don't recall this letter. Looking at it now, this letter seems unremarkable. It shows progress and cooperation between Mr. Rover and Mr. Posner.

MR. CHERTOFF: And you followed up with this.

JUSTICE VERNIERO: It's not the kind of letter I would have dwelled on.

MR. CHERTOFF: But you followed up with a notation, "Alex, please see me."

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: And then on the very same day, 2/6/97, there's a fax from the Department of Justice to Mr. Rover, W-22, regarding a request to get certain information upon traffic volume from the Turnpike -- directly from the Turnpike.

JUSTICE VERNIERO: Right.

MR. CHERTOFF: Do you recognize this?

JUSTICE VERNIERO: I don't, no.

MR. CHERTOFF: But you see, again, you have your handwriting at the top, "Alex, please see me," right?

JUSTICE VERNIERO: I do, yes.

MR. CHERTOFF: So again, that would confirm that you would have seen the letter and wanted to discuss the content of this letter, as well, with Mr. Waugh.

JUSTICE VERNIERO: I would have seen, obviously, the cover memo here. I said, "Alex, please see me." I might have flipped through the attachments. I don't recall what specific conversation I may have had with Mr. Waugh.

MR. CHERTOFF: And again, this letter is one in which the Department of Justice indicated they were looking to get data about vehicle use on the New Jersey Turnpike, right?

JUSTICE VERNIERO: This letter was not directed to my office. It was directed to the Turnpike Authority.

MR. CHERTOFF: But you got a copy of it, via Mr. Waugh, right?

JUSTICE VERNIERO: It appears to be attached to the memo that was given to me, yes.

MR. CHERTOFF: And in fact, the memo says -- comments -- letter dated February 6th, 1997, Jerry Craft, (phonetic spelling) and what's attached is a letter of February 6th, 1997 to Jerry Craft?

JUSTICE VERNIERO: It appears so, yes.

MR. CHERTOFF: So again, can we conclude from the fact that you wrote, "Alex, please see me," that you must have read this document and wanted to discuss it with him, as well?

JUSTICE VERNIERO: Well, I don't know if you can conclude I read it from start to finish. I mean, it's a fairly brief document, but many times when I got a cover memo with attachments, I would try to get a sense of what the document was about by flipping through the attachments, or sometimes I just keyed in on the cover memo and would say, please see me. Sometimes, particularly if it was a lengthy document, the please see me was a shortcut, if you will. I was receiving a lot of material, a lot of paper, and a lot of reading. And sometimes -- my management style, I was better listening rather than reading. I would bring someone in and say, "All right, you've given me this thick document, what's in it? What's important? What should I focus on?"

Again, with a two-page letter, I would have read it, I'm assuming. But generally, if I said please see me on a cover note, it didn't always mean that I had studied the attachments. That's my testimony.

MR. CHERTOFF: Well, Mr. Waugh was your executive assistant attorney general, right? You worked with him on a daily basis.

JUSTICE VERNIERO: Yes, nearly a daily basis.

MR. CHERTOFF: I mean, presumably you communicated with him on the management communication style you wanted from him, right?

JUSTICE VERNIERO: He presumably knew my style, I would think, yes.

MR. CHERTOFF: So is it fair to say that he -- when he generally transmitted things to you, it was with an understanding of the kinds of things you like to read and tend to read and the kinds of things you don't want to read.

JUSTICE VERNIERO: I don't know. You'll have to ask Mr. Waugh if he had that understanding.

MR. CHERTOFF: Did you ever complain to him and say, "You know, Alex, you're sending me a lot of paper. Can you just talk to me about it instead?"

JUSTICE VERNIERO: I used to make jokes at my morning staff meeting sometimes about the volume of paper. I don't know if I ever directed it specifically to Mr. Waugh. There was a point in time in my tenure where I was carrying a fairly heavy load of paper -- homework, as I used to call it.

MR. CHERTOFF: How often did you have your morning staff meetings.

JUSTICE VERNIERO: We tried to do it once a day, every morning.

MR. CHERTOFF: And in these morning staff meetings, who would attend?

JUSTICE VERNIERO: My senior executive staff, which changed over time, but principally, it was Mr. Waugh when he was in that position, my first assistant, the-- We had several liaisons of the various divisions on my senior executive staff, Nancy Kaplen, Alfred Ramey. There were about six or seven people in total -- Roger Shatzkin, the public information office-- He was normally in my morning meetings.

MR. CHERTOFF: And in these morning meetings, did you ever discuss the Civil Rights Division inquiry?

JUSTICE VERNIERO: I don't recall. They were usually very brief. Sometimes they were all of five minutes, ten minutes. The purpose was to just sort of get a snapshot of what we thought the day ahead would be, see if there were any quick decisions I needed to make, anything that I needed to have on the radar screen as I began the day.

MR. CHERTOFF: Did you ever, in one of these meetings, get a snapshot of something you had to do with respect to the racial profiling investigation by the Department of Justice?

JUSTICE VERNIERO: Not that I recall, no. It's possible. I just don't recall it.

MR. CHERTOFF: Then we have W-24, which is a memo to Alex Waugh from George Rover -- I think we've looked at this earlier -- again to PV, FYI.

JUSTICE VERNIERO: I'm sorry, what number is that?

MR. CHERTOFF: It's W-24 -- exhibit W-24.

JUSTICE VERNIERO: I don't think I have that here.

MR. CHERTOFF: We'll get it to you and put it up.

Do you have that?

JUSTICE VERNIERO: She says I have it, so I must have it.

W-24?

MR. CHERTOFF: Right. It's a memo dated March 3rd, 1997.

JUSTICE VERNIERO: Oh, here it is. I'm sorry. I have it.

MR. CHERTOFF: Again, that was to your -- for your information,  
as well.

JUSTICE VERNIERO: Yes, FYI.

MR. CHERTOFF: And again, the normal practice would be you'd  
look at that if you got it, right?

JUSTICE VERNIERO: I would at least skim it, yes.

MR. CHERTOFF: It's a short letter.

JUSTICE VERNIERO: It is. This is short.

MR. CHERTOFF: And then let me show you W-23A, which is a  
memo dated February 28th, 1997, which is a draft letter, again to the Justice  
Department, relating to specific questions about summonses and warning data.

Do you have that?

JUSTICE VERNIERO: Yes, I do.

MR. CHERTOFF: And it says, "Attached" -- on the cover memo --  
"Attached for your review and approval is a proposed letter responding to

several questions asked by DOJ.” Again, you would have approved and reviewed letters of this type, with respect to this investigation?

JUSTICE VERNIERO: Well, Alex asked for my approval, so presumably I must have read it and approved it. I just don’t recall.

MR. CHERTOFF: And then on the next page, which is the actual attachment, it says, “PV Will be reformatted. APW.”

JUSTICE VERNIERO: I see that, yes.

MR. CHERTOFF: Did that indicate that you had made a request about format and asked it to be reformatted?

JUSTICE VERNIERO: I can’t recall. That could have been something that Alex thought up himself, prior to even attaching it to me -- to the memo. I just don’t know.

MR. CHERTOFF: Is it fair to say from the documents we’ve reviewed that in the period of January and February you were intimately involved in decision making about the back-and-forth with the Department of Justice in Washington regarding this investigation?

JUSTICE VERNIERO: Again, I wouldn’t say it was intimate. I mean, they were keeping me informed. I wanted to be kept informed. I say it wasn’t intimate, for example, when I look at this letter with these various dates and indications -- S-1347, W-1427. I might have just read it, gotten a general sense of what’s being produced, what’s being requested, but I don’t recall going behind this letter, actually looking at these attachments and looking at the data. That’s what I mean when I say I wasn’t involved with the day-to-day turnover of information.

MR. CHERTOFF: But you were--

JUSTICE VERNIERO: Big issues, yes. Big decisions, absolutely. Sort of the ebb and flow of conversation and dialogue, yes. But not the physical inspection of each individual document that, you know, went over to the Department of Justice. When I say document, I mean the actual data and the attachments.

MR. CHERTOFF: I don't mean to suggest you actually poured through the material that we sent over. My suggestion to you is, if you agree or disagree, that with respect to the back-and-forth negotiations and discussions with the Department of Justice, you were kept informed step by step?

JUSTICE VERNIERO: I recall, particularly early on-- I had gone down to Washington in early '97, and these represented-- These exhibits, as I recall, represented sort of the early follow-up to our visit. And yes, I was informed, and I wanted to be informed. As I recall, later on in the process, there were fewer of these kinds of briefings or letters that came in to me.

MR. CHERTOFF: And in fact, not only do you want to be kept informed, but you yourself made suggestions about things that ought to be communicated to the Department of Justice in Washington with respect to their investigation, correct?

JUSTICE VERNIERO: Well, I certainly made changes to the letters, as we indicated -- at least one letter -- as we indicated before lunch.

MR. CHERTOFF: And you, for example, suggested that when the *Soto* appeal brief was completed, it should be sent to the Department of Justice in Washington for them to have a copy, right?

JUSTICE VERNIERO: As I recall, that was a promise I made when I went down to speak with Ms. King. I said that we would keep her up to date on the appeal, and I followed up by sending her a copy of the brief, as I recall.

MR. CHERTOFF: And you reviewed the appellate brief in *Soto*, right?

JUSTICE VERNIERO: I did.

MR. CHERTOFF: So you were certainly familiar, at that point, with the arguments that were made on behalf of the State in that brief, right?

JUSTICE VERNIERO: I was generally familiar, yes.

MR. CHERTOFF: And your suggestion to Mr. Fahy-- Well, let me put it up. It's F-22. That's your writing at the bottom.

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: It says, "John Fahy looks okay to me. After we file, we may want to send a copy to DOJ in Washington." That was your suggestion?

JUSTICE VERNIERO: Yes. And this underscores the recollection I had earlier that Mr. Fahy was-- He was a resource that we called upon from time to time.

MR. CHERTOFF: Well, he was involved in writing that brief. That was his responsibility, right?

JUSTICE VERNIERO: He was. Yes.

MR. CHERTOFF: As of this point in time, you weren't using him to deal with the Department of Justice, right?

JUSTICE VERNIERO: No. Just, as I say, sort of an informal advisor.

MR. CHERTOFF: And then on March 17th -- if we put up OAG-1062 -- on March 17th, you actually personally wrote to Ms. King of the Civil Rights Division enclosing *State v. Soto*, right?

JUSTICE VERNIERO: Yeah. As I said, I-- As I recall, this was a promise I made that we would keep that office in Washington advised of the appeal and see to it that they got any briefs and so forth, and I was just following through on my commitment.

MR. CHERTOFF: And is it fair to say that afterwards you continued to keep tabs upon what the Department of Justice was looking for in terms of specific information regarding racial profiling in New Jersey?

JUSTICE VERNIERO: I was advised, as appropriate, by Mr. Waugh.

MR. CHERTOFF: So, for example, I'm going to-- I mean, you participated in decision making about the position that the State ought to take, correct?

JUSTICE VERNIERO: Well, that's a pretty broad question. I would ask that you be more specific. What do you mean by decision making?

MR. CHERTOFF: Well, did Mr. Waugh simply advise you of decisions that he was making about what to turn over or not, or did Mr. Waugh consult with you to get your approval?

JUSTICE VERNIERO: Well, sometimes it was one and not the other. Sometimes it was both. It really depended.

MR. CHERTOFF: Well, let me show you W-26. It's a memo to you of April 7th, 1997, and it says, "Attached is a copy of the Justice Department's request for specific information with respect to dates chosen by -- over a two-year period, DAG Rover's work in the State Police to determine whether there's a pattern to these requests, and if so, whether there's a basis to suggest or choose additional or alternate dates." So again, you're being kept informed of how the State is dealing with the government's ongoing discovery requests, correct?

JUSTICE VERNIERO: I'm being updated, yes.

MR. CHERTOFF: Now--

JUSTICE VERNIERO: But again, this is one of those situations where I don't recall being informed as to what the data or information would have shown on these randomly selected dates.

MR. CHERTOFF: We heard yesterday, though, there was at least one instance in which Mr. Waugh believed this documentation relating to Moorestown and the Moorestown Station was relevant and should be turned over to the Department of Justice, and Mr. Rover did, too, and that he approached you to ask for your approval in turning it over. Remember that occasion in mid-1997?

JUSTICE VERNIERO: I don't remember it other than what I've read in the papers, and I assume you're referring to the July 1997 memo.

MR. CHERTOFF: Let me show you W-30, which is a July 29, 1997 memo. Do you remember seeing this?

JUSTICE VERNIERO: I don't, but I recall that in preparation for today's hearings.

MR. CHERTOFF: Do you remember Mr.-- Let me withdraw the question. Did Mr. Waugh give this to you and ask you for your approval as to whether it should be turned over or not?

JUSTICE VERNIERO: I don't recall.

MR. CHERTOFF: In connection with this Civil Rights investigation, did Mr. Waugh consult with you about whether or not certain documents ought to be turned over to the Department of Justice?

JUSTICE VERNIERO: We may have spoken generally about our approach. He knew, for example, that anything that was relevant material that they had requested, of course, would have to be turned over. I do not recall, as I have said, any detailed discussion on a document-by-document basis. One of the things that strikes me, in preparing for today's hearing about this cover memo, is that built right into the text of the memorandum are the steps that Mr. Waugh is taking in connection with the request -- in connection with the possible production of this to DOJ.

For example, he says that DAG Rover is looking into the issue. He also says that DAG Rover will explore this issue. So, although I don't have an independent recollection of this memo, as I read it now and as I did in preparation of today, this is not the kind of memo that I would have to take any action on or make any decisions on, because it's all self-executing on the cover memo.

MR. CHERTOFF: Well, Mr. Waugh testified, and I don't know that he remembered everything, but one thing he did remember yesterday was not only speaking to you once, but speaking to you twice and coming in and asking you about whether you had made a decision about this, and your having

said, "I haven't focused on it yet, I'll get back to you." Is it your testimony that didn't happen?

JUSTICE VERNIERO: No. I just don't recall it happening. It might have.

MR. CHERTOFF: Well, have you seen this document in preparation for the hearing?

JUSTICE VERNIERO: Yes, I have, as I've said.

MR. CHERTOFF: You understood that the document contains a great -- a significant amount of detail, specific statistical information regarding the Moorestown Station.

JUSTICE VERNIERO: I understand that now, yes.

MR. CHERTOFF: That is the station which was the subject of the *Soto* case, correct?

JUSTICE VERNIERO: Correct.

MR. CHERTOFF: This is also a document that was in the -- well, parts of which were in the blue binder that was shown to you by Mr. Zoubek in March of 1999, right?

JUSTICE VERNIERO: I know that only because I have reviewed the blue binder, and it was not the entire memo. I believe in the blue binder there were just two of the attachments, not the Waugh cover memo.

MR. CHERTOFF: This was produced from the file of the Office of the Attorney General. Do you know that?

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: You have a doubt that you received it?

JUSTICE VERNIERO: Pardon me?

MR. CHERTOFF: You have a doubt that you received it?

JUSTICE VERNIERO: No. I don't have a doubt that I received it. I mean, generally when Alex wanted to send me information, it generally got to me.

MR. CHERTOFF: All right. So you don't remember being asked whether it should be produced, right?

JUSTICE VERNIERO: I don't. I don't recall.

MR. CHERTOFF: But you can't-- You're not in a position to dispute Mr. Waugh saying that he, in fact, did bring it to you and asked you twice whether this should be produced?

JUSTICE VERNIERO: No, I don't dispute that.

MR. CHERTOFF: Now, when you look at the-- When you got this memo, did you look at it?

JUSTICE VERNIERO: Well, I'm sure I would have looked at the cover memo. I'm not as sure that I would have read every single page of the attachments. This is-- I'm surprised I didn't put a "please see me" on this, because this is a pretty good example of how I would have wanted to learn and hear a little bit more about this document before, you know, spending the time to go through it page by page.

MR. CHERTOFF: Well, let's explore just the first page. First of all, we've just seen a series of documents involving fairly routine correspondence with Washington, where you had noted, please see me, or indicated some desire to follow up, correct?

JUSTICE VERNIERO: Yes. That's correct.

MR. CHERTOFF: We have seen that you edited a document to Loretta King in January fairly closely, correct?

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: Now, this is -- the very first sentence of this says, "This is in connection with an allegation from minority troopers at the Moorestown Station that there was racial profiling by majority troopers." And you knew, at this point, certainly because you had just finished reading the brief in *Soto*, that Moorestown Station was the very station which was the subject of the *Soto* litigation, right?

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: I take it that -- and you knew that the State was taking the position that the statistics by themselves were not sufficiently meaningful to warrant action by the court in *Soto*, correct?

JUSTICE VERNIERO: That's right.

MR. CHERTOFF: And here you have a document that says not simply a matter of statistics, but talks about actual troopers--

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: --actual troopers saying there's racial profiling. Did this capture your attention as someone who is now involved both in dealing with the *Soto* litigation and the Civil Rights Division investigation?

JUSTICE VERNIERO: Well, as I said, I don't recall my reaction. What I might have said to myself, as I indicated, is that the follow-up that I would have authorized, Mr. Waugh was already doing. I mean, I would have turned to Alex and say, look into this. And that, in fact, is what the cover memo says he is doing through DAG Rover. So this was not the kind of

memorandum that would signal any action on my part that wasn't already being taken by the person who gave me the memo itself.

MR. CHERTOFF: Well, would it signal at some point in time on or after July 29, 1997, for you to contact Mr. Waugh and say what the heck is going on with these allegations by troopers that other troopers are profiling?

JUSTICE VERNIERO: Well, as I say, I don't recall this specifically. But in preparing for today's hearing, I do note that there is a conclusion in one of the records themselves that as a result of this audit, there appears to be no validity to the perception that nonminority troopers assigned to the Moorestown Station are profiling minorities on motor vehicle stops. It's speculation on my part, but I might have gotten that far into the attachment, seeing that conclusion, believed the conclusion. That, coupled with the fact Mr. Waugh was looking into it, I would have concluded that no further action was required. The other thing I might have thought about -- again, I'm trying to reconstruct my thought process -- is that the data that's being collected, that's attached, is for the most part pre-*Soto* data. And as I indicated, the pre-*Soto* data was being discounted for various reasons.

MR. CHERTOFF: Well, let me ask you about it. Pre-*Soto* data--*Soto* was decided on March 4, 1996, right?

JUSTICE VERNIERO: Correct.

MR. CHERTOFF: If the audit occurred from May 1996 to July 1996, in what world would that be pre-*Soto* data?

JUSTICE VERNIERO: Well, it was pre-*Soto* reforms. That's what I mean by pre-*Soto* data. *Soto* was decided in March 1996. There were a series of reforms that were put in place by then Attorney General Poritz in the

aftermath of that decision. I knew that those were in place and they were being implemented. I assume that there had to be a period of implementation before we would expect there to be any material change in any data or any effect of those reforms. That's when I'm referring to pre-*Soto*, or post-*Soto* reforms, I'm referring to that period in the aftermath of *Soto*.

MR. CHERTOFF: So are you telling us you had a conscious view that you really weren't-- You thought any data about stops in 1996 was really not worth paying attention to, because the *Soto* reforms hadn't come into effect yet?

JUSTICE VERNIERO: I'm not saying I have any conscious recollection of this one document. I'm saying that it was the thought in my office at the time, and I shared that thought -- that information data that was pre-*Soto*, pre-*Soto* reform, should be discounted. We didn't have the violator survey on which to compare it. We had the *Soto* reforms that were being implemented. In retrospect, that was something that we should have paid more attention to.

MR. CHERTOFF: By the way--

JUSTICE VERNIERO: I don't think there's any question about that now, but the frame of mind at the time was, we're appealing *Soto*, we've got these reforms. This data to some extent is old data, and the cover memo says that Mr. Rover is looking into it, and that would have been sufficient from my perspective.

MR. CHERTOFF: You keep talking about the post-*Soto* reforms. You mean reforms that occurred after the decision on March 4th?

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: What were they?

JUSTICE VERNIERO: As I recall, the Attorney General had reinforced the existing SOP-- I think it was SOP-55.

MR. CHERTOFF: How was that reinforced?

JUSTICE VERNIERO: I believe that she put a committee in place to make sure that all the troopers understood-- I think there was-- She sent it out, or the Colonel sent it out, and every trooper had to read it, or at least their supervisors had to be informed that they understood it. There was a committee put in place. I think it had Deputy Attorneys General and members of the State Police that reviewed the training and practice manuals. And also, I believe Colonel Williams had put a telex out or his own -- whatever the appropriate word is for it -- his own direct communication to all the barracks or the supervisors that racial profiling was not to be tolerated.

MR. CHERTOFF: Is that the reforms you referred to?

JUSTICE VERNIERO: Those are the reforms that I believe she put in place, and maybe there were some others. But I was informed that there were a set of reforms -- my shorthand reference is post-*Soto* reforms, and those generally describe them.

MR. CHERTOFF: But to boil it down, what you're basically telling us then is that based on the fact that there was a Teletype after *Soto* and instruction to the troopers to reread and really study this preexisting SOP-55, you thought those reforms meant that any statistics generated in 1996 were really not worth looking at because the reforms didn't take effect?

JUSTICE VERNIERO: No. Not that they weren't worth looking at -- they did not urge immediate attention.

MR. CHERTOFF: Wasn't one of the reforms to have better record keeping?

JUSTICE VERNIERO: One of the deficiencies I believe Judge Francis found was that the records themselves were deficient--

MR. CHERTOFF: So--

JUSTICE VERNIERO: --that the troopers were not phoning in or recording race as was the regulation. So there was a record keeping function, that's correct.

MR. CHERTOFF: And the purpose of having record keeping is so someone can look at the records and see how things are going, right?

JUSTICE VERNIERO: Presumably.

MR. CHERTOFF: And then the question is, therefore, did you feel that it was worth looking at the records of what was going on after the *Soto* decision was made?

JUSTICE VERNIERO: No. I had confidence in the State Police that they understood what the records were there for, that they were doing their job in reviewing those records, and if there were problems, they would have passed them along.

MR. CHERTOFF: And so would you agree with me that this document, which was transmitted to you, does indicate that, in fact, the State Police were keeping records and analyzing data concerned with stops at the Moorestown Station in 1996?

JUSTICE VERNIERO: Well, as I say, I don't recall whether I actually reviewed or studied the attachments.

MR. CHERTOFF: But you know as you look at it, that it does, in fact, indicate-- In fact, if one turns the page, one sees statistics for total stops, White, Black, other, and total minority, right? In that first page, attached to the cover memo, right? It's unmistakable.

JUSTICE VERNIERO: I'm sorry. OAG-976.

MR. CHERTOFF: Right.

JUSTICE VERNIERO: I'm sorry. What is your question?

MR. CHERTOFF: Is it not plain on the face of this page that someone is keeping statistical information concerning the racial distribution of motor vehicle stops in Moorestown back in 1996?

JUSTICE VERNIERO: Well again, I believe that this was in response to a specific complaint.

MR. CHERTOFF: But here's my question.

JUSTICE VERNIERO: That's what it says. So I don't know from just reading the face of this document whether this was a part of an ongoing collection effort by the State Police or whether this was specific to a particular complaint.

MR. CHERTOFF: Does it say in black and white, "below is the racial distribution of motor vehicle stops by nonminority, minority members stationed in Moorestown while on solo patrol during this three-month period?"

JUSTICE VERNIERO: That must-- I'm assuming that that was the period that was tied to the specific complaint.

MR. CHERTOFF: It does indicate that at the Moorestown Station there were -- was a review of approximately 5500 stops over a three-month period with a racial breakdown, correct?

JUSTICE VERNIERO: In connection with this complaint, yes.

MR. CHERTOFF: In 1996, right.

JUSTICE VERNIERO: Well, that's the reporting date on the memorandum.

MR. CHERTOFF: And then, if one goes to the last couple of pages, is it fair to say that there is statistical information concerning searches, motor vehicle stops, and arrests of minority, nonminority drivers -- continued in the last two pages, again, dated 4/15/1996?

JUSTICE VERNIERO: I can't dispute what's on the written page, Mr. Chertoff. I'm saying to you that I don't recall specifically wading through this document page by page. Had I done so at the time, I might have been drawn to the conclusions contained that -- in the document that there was not validity to the complaint, and I might have recalled that the data was by and large pre-*Soto*.

MR. CHERTOFF: And might you have seen that, for example, with consent searches in 1995, 62 percent of those were of minority drivers and 30 were nonminority? Might you have seen that, too, if you had read the document?

JUSTICE VERNIERO: I don't recall looking at it at the time. It's there. It's in black and white. I can't dispute it, but I've given you my testimony with respect to that.

MR. CHERTOFF: And again, the fact that this was a document talking specifically about allegations from troopers about other troopers, that did not cause you to ask any questions or ask to have Colonel Williams or anybody else come in to talk to you about this?

JUSTICE VERNIERO: Well, I relied, again, on the cover memo from Mr. Waugh, who was my senior person, saying, in effect, he was looking into it. I would not have turned to Colonel Williams to say look into it. I would have turned to the memo writer, to Mr. Waugh, saying, okay, look into this.

MR. CHERTOFF: Now, as of July 1997, you were aware by then that consent searches, as distinct from stops, was a separate issue, a separate issue with respect to racial profiling, right?

JUSTICE VERNIERO: I'm not sure that our thinking had evolved at that point. I mean, as I mentioned in my opening statement, the whole definition of racial profiling evolved during my tenure. In the early part of my tenure, it was focused mainly on stops, because that's the point in the law enforcement process where there is the most discretion on the part of law enforcement, and therefore, we have to guard against abuse in that connection. That was the focus of the *Soto* case, and that was the focus, as I recall, of the Department of Justice. Over time, our thinking evolved, and it's one of those areas, and I've mentioned it now a couple of times and I will mention it again, where we should have looked at the issue more searching and more critically with respect to consent to searches than we did at the time, but--

MR. CHERTOFF: Excuse me, sir, wasn't your attention actually specifically directed to this issue in 1997?

JUSTICE VERNIERO: I do not recall, as I say, being specifically focused on that last page of this attachment.

MR. CHERTOFF: First of all, if your testimony is that you would have talked to Mr. Waugh about this memo, again, are you prepared to

disagree with his testimony that he remembers asking you whether it should be turned over?

JUSTICE VERNIERO: I don't disagree with that testimony, because I don't recall it.

MR. CHERTOFF: Now, let me show you a letter -- a memo dated -- it's W-27 -- dated 4/22/97, with a cover page, 4/23/97, to you. We've seen this before. This is a memo from Mr. Rover.

JUSTICE VERNIERO: Yeah, okay.

MR. CHERTOFF: You see it's addressed to you, and Mr. Waugh says he wants to discuss it with you, correct?

JUSTICE VERNIERO: We've seen it before. This-- You've asked me about this document before.

MR. CHERTOFF: No. I would have seen it in the hearing before.

JUSTICE VERNIERO: Oh, I see.

MR. CHERTOFF: Okay. You see where it says I'd like to discuss this issue with you? That's Mr. Waugh, right?

JUSTICE VERNIERO: That's correct, yes.

MR. CHERTOFF: And you say, "Alex, do we need another meeting in D.C.? It appears so," okay, right?

JUSTICE VERNIERO: That's my handwriting, yes.

MR. CHERTOFF: So we would conclude from that that you would have looked at this memo, right?

JUSTICE VERNIERO: Again, I would have flipped through it. You know, do we need another meeting at D.C. I don't recall exactly what I had in mind when I said that three-and-half-plus years ago. It might have been

that we needed to go down to Washington to discuss any problem issues, any areas that warranted my attention. As I recall, we never did go back down to Washington, so I would imagine that whatever concerns we might have had or any issues were resolved by Mr. Waugh.

MR. CHERTOFF: Well, is it your testimony that you didn't look at this memo?

JUSTICE VERNIERO: No, I don't recall wading through it. I might have. I just don't recall.

MR. CHERTOFF: Well, let's go to Page 6.

JUSTICE VERNIERO: Page 6 of the document or the attachment?

MR. CHERTOFF: Of the document -- of the attachment.

JUSTICE VERNIERO: So Page 5 of the attachment?

MR. CHERTOFF: No, it's Page 6. It says Page 6 at the top of the memo.

JUSTICE VERNIERO: Okay. I see.

MR. CHERTOFF: It talks about "A second unrelated issue -- involves NJSP consent to search data. I'm anticipating that U.S. DOJ, while expressing interest in State Police traffic stop data, is more interested in the consent to search data." Now, let me back up. We've already seen, as you'll agree, a series of draft letters and memos from Mr. Rover concerning all kinds of questions about DOJ's interest in looking at certain data, where you write, "Please see me, Alex, and let's discuss, Alex." We've seen that in the last half hour, right?

JUSTICE VERNIERO: We've seen documents that -- which I've said please see me. I don't-- Without reviewing them all again, I don't know if I could accept your characterizations of those documents.

MR. CHERTOFF: Now, do you remember reading this memo and having your attention drawn to the fact that there was -- and now we're going to be interested in the consent to search data?

JUSTICE VERNIERO: I don't recall specifically reviewing this document.

MR. CHERTOFF: And then it goes on to say, at the end of the page: "Why then do I believe U.S. DOJ's interest in this data? I anticipate that U.S. DOJ will attempt to follow the same course of action pursued by plaintiffs in the Maryland case. The use of consent to search statistics is evidence of selective prosecution. In the Maryland action, the plaintiff successfully argued that the percentage of minorities subjected to consent searches supported a finding that the Maryland State Police engaged in selective prosecution. As a result of this finding, the MSP and a group of plaintiffs are entering into a consent order." Does that ring a bell?

JUSTICE VERNIERO: I'm sorry, what page are you on?

MR. CHERTOFF: Page 7.

JUSTICE VERNIERO: Yes, okay.

MR. CHERTOFF: Does that passage ring a bell with you?

JUSTICE VERNIERO: It doesn't. I mean, I'm familiar with the passage, because I've reviewed this document in advance of this hearing.

MR. CHERTOFF: Well, you say at the top, “Do we need another meeting in D.C.? It appears so.” What did you need another meeting in D.C. about?

JUSTICE VERNIERO: Well, as I testified, again, I don’t recall exactly what was going through my mind, but let’s assume I had read this document or flipped through it. There seems to be a little tension in this document between Mr. Rover’s understanding on what the Department of Justice wants. He references the DEA, I believe, in this letter. And, you know, you make some comments in here that suggest to me that perhaps we need to go down to Washington and resolve some outstanding issues. That’s-- My guess is that’s what I was referring to when I said do we need another meeting.

MR. CHERTOFF: So this is kind of a pay-it-no-attention issue as far as you’re concerned at this point?

JUSTICE VERNIERO: No, it’s not a pay no attention. It’s, do we have to go down to Washington to resolve any issues? That was a question that I asked. Now, I assume because we didn’t go down to Washington that the issues were resolved.

MR. CHERTOFF: So--

JUSTICE VERNIERO: The other thing I note from-- Again, the other thing I note from this document is that I believe this is the document which Mr. Rover himself says that consent to search is not relevant or should not be within the scope of the DOJ. I think this is that same document--

MR. CHERTOFF: Well--

JUSTICE VERNIERO: --if I’m not mistaken.

MR. CHERTOFF: --when you got the-- It wasn't your habit to read portions of documents selectively, was it?

JUSTICE VERNIERO: Sometimes. Sometimes I got documents, and there was a little yellow sticky on a particular page, and I would just read that page. You have to appreciate, my reading file at any given point in time was fairly thick.

MR. CHERTOFF: Do you think, though, as things go, a memo that Mr. Waugh sent, I'd like to discuss with you, that talks about a Federal investigation of your Department, do you think that's something that you would have treated as, you know, something to be skimmed through, or you would have read with greater care?

JUSTICE VERNIERO: Well, it depends. Again, do we need another meeting in Washington, that means that Alex would have come to me and maybe we would have discussed the contents of the attachment rather than go through it page by page or line by line.

MR. CHERTOFF: Well--

JUSTICE VERNIERO: In looking at this document in retrospect, it seems like I put the appropriate amount of time and attention to it. I conferred or at least talked to the senior person. I asked him whether we needed another meeting, and I don't know what the follow-up was, other than I don't recall going back to Washington. I'm pretty certain I only had one meeting.

MR. CHERTOFF: Well, putting aside whether you went to Washington or not, my question is this: Either by reading the memo or by having the discussion with Mr. Waugh, did you become aware of the fact that

the Department of Justice was looking for consent to search data, and that the consent to search data happened to be the data that led the Maryland State Police to have to enter into court supervision?

JUSTICE VERNIERO: Well, I'm not sure that this document says that they were requesting consent to search data, does it?

MR. CHERTOFF: Well, it says, "I anticipate the U.S. DOJ will attempt--" Well, let's go on and let's read the document. "I am anticipating the U.S. DOJ, while expressing interest in State Police traffic stop data, is more interested in the consent to search data." Do you know whether that had been requested?

JUSTICE VERNIERO: I don't recall, no.

MR. CHERTOFF: Well, did you ask?

JUSTICE VERNIERO: I might have.

MR. CHERTOFF: And did you know that the forms relating to the consent to search had been requested?

JUSTICE VERNIERO: I don't recall.

MR. CHERTOFF: Well, did you ask?

JUSTICE VERNIERO: I may have.

MR. CHERTOFF: In your conversation with Mr. Waugh, or in reading the memo, did you become familiar with the fact that consent to search data was the basis under which the Maryland State Police basically lost their case?

JUSTICE VERNIERO: I'm sure at some point I was advised of that. I don't know whether it was in connection with this document or elsewhere. Again, coming back to sort of the global view, or at least my global

perspective as the head of the Department, I was satisfied that my Department was responding appropriately to the DOJ. I had not heard otherwise, and I had no reason to think that documents that were being requested were not being turned over. I mean, that was my focus, to make sure that the relationship was working, that the level of cooperation that I had set out at the outset was continuing.

MR. CHERTOFF: But my question is, do you remember a focus at some point regarding consent to search?

JUSTICE VERNIERO: A focus--

MR. CHERTOFF: In that -- either in this memo or in a conversation with Mr. Waugh?

JUSTICE VERNIERO: --in what connection?

MR. CHERTOFF: In connection with this memo that you got in April.

JUSTICE VERNIERO: I don't recall Mr. Waugh coming into me saying, "We have to turn over consent to search," or anything like that. If that's your question, I don't recall that.

MR. CHERTOFF: I'd like to-- Perhaps you can help us. We've been through a series of documents. They're all in front of you. I'm not going to put them up in the Elmo.

JUSTICE VERNIERO: Yes. Okay.

MR. CHERTOFF: But there's a January 9th document on a meeting concerning profiling -- that's G-11. And you write, "Alex, let's bring this up at the meeting today."

JUSTICE VERNIERO: Right.

MR. CHERTOFF: There's a February 5th letter, which summarizes a telephone call with the Department of Justice, which is sent to you specifically by Mr. Waugh. There's a February 6th transmittal letter.

JUSTICE VERNIERO: Do I have all these documents?

MR. CHERTOFF: They're all in front of you.

JUSTICE VERNIERO: Okay.

MR. CHERTOFF: W-21, February 6th--

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: --transmittal letter, in which you write, "Alex, please see me," on.

JUSTICE VERNIERO: Right.

MR. CHERTOFF: There's a February 6th letter to the Turnpike asking for traffic data, which you get a copy of and you say, "Please see me," on.

And yet, this document, which is an options paper discussing the status of the case -- the merits of the status of what the DOJ is looking at -- which is accompanied by a memo saying that Alex wants to talk with you -- talk about it with you -- you have no recollection of actually even reading the document or any of your conversation as it followed from the document?

JUSTICE VERNIERO: I don't, Mr. Chertoff.

Now, if you ask me what do I -- what do I recall as opposed to what I don't recall, I recall that we had standing under -- a standing philosophy in my Department that whatever the DOJ requested, if it was within the parameters of their inquiry, it should be turned over. There were occasions when we went down and the requests were narrowed for any particular reason.

The consent to search, I've given you my explanation on what our thinking was at that period of time in mid-1997.

I do not have a specific recollection of my various conversations with Alex Waugh. It was an important investigation. It was the Department of Justice, but it was one of many, many issues that I had on the plate, so to speak, and one of many issues that even Alex Waugh was dealing with.

MR. CHERTOFF: Did you know what consent to search data was in mid-1997?

JUSTICE VERNIERO: Well, I understood what a consent to search was, and I assume -- maybe I assumed what it was. I don't know if I actually ever saw a consent to search form in that year.

MR. CHERTOFF: Did you ask anybody what it was?

JUSTICE VERNIERO: I'm sure we would have discussed what it was in terms of a definition, because we were discussing *Soto*. We were discussing the appeal in *Soto*. I'm sure we would have discussed it in the context of whether or not it fits within the definition of racial profiling, and at that time, it wasn't our focus.

MR. CHERTOFF: Did you have an interest in knowing whether there was racial profiling going on?

JUSTICE VERNIERO: Of course I had an interest, and whenever I asked the superintendent or others in the State Police whether racial profiling was an issue, I was told in very adamant terms that it was not an issue.

MR. CHERTOFF: Did you ever wonder why, if the State Police kept saying it was not an issue, you had a judge saying it was an issue, you had the Department of Justice looking at it, it kept coming up again and again?

JUSTICE VERNIERO: Well, it's an interesting point that you make that the Department of Justice was looking into it, but they hadn't drawn any conclusions either. I mean, they were seeing information and data. Some of it was of the same-- I know now, I don't recall it at the time, but I know now in retrospect that some of the same high statistics that were in my April 20th report, the Justice Department actually had in '97 and possibly '98, and yet, they had not drawn a conclusion that there was racial profiling.

MR. CHERTOFF: Did you know that some of the--

JUSTICE VERNIERO: So racial profiling was an issue that was terribly complicated. It turned on a lot of different elements, and you know, we were grappling with the issue as best we could within the context of a pending appeal and in the context of our discussions with DOJ.

MR. CHERTOFF: Did you know that some of the information you relied upon in your -- in the April 20th report was in the possession of your office in 1997?

JUSTICE VERNIERO: I found that out afterward.

MR. CHERTOFF: Now, after you got this memorandum, did you have follow-up with Mr. Waugh concerning this issue with respect to consent to search?

JUSTICE VERNIERO: As I say, I don't recall. I might have.

MR. CHERTOFF: Let's put up W-28.

This is an E-mail from Mr. Waugh to your secretary?

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: It says, "I need some time to talk to PV about the Justice Department and State Police, re: profiling."

JUSTICE VERNIERO: Correct.

MR. CHERTOFF: You write, "Alex, let's discuss. Maybe time today, maybe." Correct?

JUSTICE VERNIERO: Right.

MR. CHERTOFF: So that indicates that, again, there was some further discussion about this, correct?

JUSTICE VERNIERO: It does.

MR. CHERTOFF: Let's go to the next one, F-18, May 15th, 1997. This is an E-mail to you, "Please let PV--" Again, this is to your secretary from Alex Waugh, "Please let PV know I recommend a meeting with Colonel Williams, SDAG Fahy, DAG Rover, and me to talk about the Justice Department and profiling." And in your handwriting it says, "Alex, should we also go back to D.C.? P."

Is that your handwriting?

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: And then it says, "3 p.m., 5/20." Right?

JUSTICE VERNIERO: That is not my handwriting, but that's what it says, yes.

MR. CHERTOFF: Would you agree with me that this sequence of E-mails suggests that Mr. Waugh was focusing your attention on the fact that there was something of importance that required what you would call a formal meeting in connection with racial profiling?

JUSTICE VERNIERO: Well, it seems to me that he was trying to put a meeting together to give us an update, a sort of a status meeting.

MR. CHERTOFF: And this is in the wake of that memo, which had been sent to you by Mr. Waugh, saying he wanted to meet with you on April 23rd, right?

JUSTICE VERNIERO: I'm sorry, what memorandum is that?

MR. CHERTOFF: It's the one we spent--

JUSTICE VERNIERO: Oh, the 4/20 -- I would like to discuss-- Well, it's-- I don't know whether it's in the wake of. Yes, it occurred after -- a point in time after the 4/23/97 memo.

MR. CHERTOFF: Like within a couple of weeks?

JUSTICE VERNIERO: Thereabouts. A couple of days, actually.

MR. CHERTOFF: And then, as you keep going on this 5/15 E-mail, Mr. Waugh writes back, "Perhaps, I think we should meet first." And you say, okay let's meet, right, in the handwriting on the bottom?

JUSTICE VERNIERO: I don't see, "okay we should meet first." Where is that?

MR. CHERTOFF: "To PV, per--

JUSTICE VERNIERO: Oh, perhaps, I think -- yes -- okay, let's meet. Yes.

MR. CHERTOFF: All right.

And then you did have a meeting on May 20th, right?

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: Did you ever get a copy of the agenda of that meeting?

JUSTICE VERNIERO: I don't recall, but I'm sure I would have.

MR. CHERTOFF: And do you remember that the meeting was, in fact, attended as Mr. Fahy requested-- I'm sorry, as Mr. Waugh requested -- by himself, Mr. Fahy, Mr. Rover, you, Colonel Williams, and a couple of people from the State Police?

JUSTICE VERNIERO: That sounds correct.

MR. CHERTOFF: One of the subjects of the meeting was production of consent to search documents?

JUSTICE VERNIERO: My recollection-- And again, I don't have a specific recollection of the meeting date, other than how I prepared for this hearing. You're obviously speaking of the May 20th meeting. My recollection was that was a meeting called for the purpose of reviewing the status of the DOJ inquiry.

MR. CHERTOFF: And part of that was production of consent to search documents, right?

JUSTICE VERNIERO: I don't have the agenda in front of me. It might have, I just don't recall.

MR. CHERTOFF: Well, we'll put up W-29, which is the agenda.

JUSTICE VERNIERO: Thank you.

MR. CHERTOFF: You would have had this in the meeting, right? Not the handwritten part, but the typed part.

JUSTICE VERNIERO: I would have-- This looks like a meeting agenda I would have had for a meeting.

MR. CHERTOFF: All right.

So it says, "Production of consent to search documents, Maryland case, proper characterization of documents." Do you see that?

JUSTICE VERNIERO: I do.

MR. CHERTOFF: There's a point in the meeting that that's discussed?

JUSTICE VERNIERO: I don't recall.

MR. CHERTOFF: Was there a discussion in the meeting where anybody said that the State Police have numbers, with respect to consent to search in New Jersey, and they are about on a par or in the same ballpark as or similar to numbers in Maryland that led to a consent decree?

JUSTICE VERNIERO: I do not recall any specific discussion of statistics. I have a vague recollection of the in-the-ballpark comment, but I don't have any specific recollection of it.

MR. CHERTOFF: Well, how about a general recollection that the State Police indicated they have statistics about consent to searches in New Jersey and that they were in the ballpark with the numbers in Maryland that had led to a consent decree?

JUSTICE VERNIERO: Again, I don't recall a specific conversation of statistics or a conversation of what the State Police had or didn't have or the date of that information was. I just don't recall.

MR. CHERTOFF: I'm going to make the question even simpler. Did the State Police make reference in any way, shape, or form in the meeting to the fact that they had some numbers relating to consent to search in New Jersey?

JUSTICE VERNIERO: I don't recall. As I say, I have a vague recollection of the in-the-ballpark comment, but I don't recall anything beyond that.

MR. CHERTOFF: Was there discussion in the meeting concerning a Maryland case in which the Maryland State Police had to enter into a consent decree because of their consent to search numbers?

JUSTICE VERNIERO: Well, I see that the Maryland case is listed on the agenda. I don't recall a specific discussion of Maryland at that meeting.

MR. CHERTOFF: Well, when you get an agenda, if something's not discussed, do you ask a question about it?

JUSTICE VERNIERO: If something is not discussed?

MR. CHERTOFF: Yes. If there is something on an agenda and it doesn't come up, do you say to somebody, "There's a reference here. There's something on the agenda. What's that about?"

JUSTICE VERNIERO: Well normally, if it's-- Normally, when it's someone else's meeting, and in this case it was Alex's meeting -- he was the primary person that put the meeting together -- I would leave it up to the person who organized the meeting to decide whether to drop something on the agenda, to highlight something, put something on. When I call a meeting and put an agenda, then we talk about every item on the agenda.

MR. CHERTOFF: So this wasn't your meeting?

JUSTICE VERNIERO: Well, it was my meeting. I'm the Attorney General. I was there. They had it to purpose of briefing me. But in terms of questioning what might be on the agenda -- which is your question as I understand it -- or what was omitted from the agenda, I would not have had that discussion.

MR. CHERTOFF: So you're just a passive observer at this meeting?

JUSTICE VERNIERO: Did I say I was a passive observer, sir? No. I was the Attorney General in a meeting being briefed on an agenda written by my senior deputy.

MR. CHERTOFF: Would you have considered it, at that period of time, a matter of significance if you had been told that the State Police were very concerned about the numbers and statistics as it related to consent to searches?

JUSTICE VERNIERO: Well, the State Police, as I recall, particularly Colonel Williams, was very concerned about one thing, and that was the possibility that the Department of Justice would enter into a consent decree in New Jersey. Whether that was tied to Maryland or Maryland numbers, I don't recall, but I do recall at this meeting, as well as other meetings and other conversations that I had with Colonel Williams, that he was most concerned about this issue.

And the reason he was concerned -- because I asked him, you know, why he was so concerned -- was that he recalled the earlier tenure of DOJ jurisdiction over the State Police in the 1970s, and he felt that that was a humiliating process. And that's my word, but that was the expression, that was his sentiment. It was humiliating. It was uncalled for. It was unfair. And he was looking to me at this time frame -- as I say, I think it was at this meeting, but I know it was even on more than one occasion -- of an assurance that I would support the State Police, that I would not allow the DOJ to assert jurisdiction unfairly, and I gave him that assurance at this meeting and at least on one other occasion, as I recall.

MR. CHERTOFF: So this meeting of May 20th was just a status meeting to kind of update you on what's going on?

JUSTICE VERNIERO: That was my recollection.

MR. CHERTOFF: And those E-mails we saw and those notes where -- accompanying the memo on April 22nd and following that memo, where Alex Waugh says, "We need to have a meeting. We need to have a discussion," and you say, "Do we need to go to Washington?" -- that's all a prelude to a status meeting?

JUSTICE VERNIERO: I don't know if that was the prelude to this meeting or not. I assume it was. I know from the prior testimony that this meeting has attained almost a legendary significance in these proceedings, but I assure you, at the time, for me, it was essentially a status meeting. That's how I recall it.

MR. CHERTOFF: Now if the-- I want to make sure we're clear on this. Your recollection is that the Superintendent of the State Police told you he was concerned about the possibility of a consent decree, because he was thinking back to a consent decree that had been entered into in the 1970s, and that's what worried him?

JUSTICE VERNIERO: He did not want New Jersey State Police to come under a DOJ consent decree. He felt that that would unfairly tarnish the image of the Division, that it was not warranted. Why isn't it warranted, Colonel Williams? Because we're not engaged in profiling. It's unjustified. I mean, that was the context of his concern.

MR. CHERTOFF: You needed to have a meeting to discuss that with him?

JUSTICE VERNIERO: Pardon me?

MR. CHERTOFF: You needed to have a meeting to have that back-and-forth?

JUSTICE VERNIERO: No. I'm-- I'm not suggesting that this was the purpose of the meeting. I'm suggesting that because it was an item on the agenda, the DOJ broadly speaking, it probably came up. As I recall, it did come up at this meeting.

MR. CHERTOFF: At this time, would it have been a noteworthy thing for you to be told that the State Police had consent to search numbers that they believed were a problem -- a potential problem -- in terms of the Department of Justice?

JUSTICE VERNIERO: Would it have been noteworthy?

MR. CHERTOFF: Yes, would you have taken note of that?

JUSTICE VERNIERO: I would have recalled if there was any expression of alarm at this meeting, if persons had turned to me and said, you know, "We really have a problem. We have a significant issue." But I don't recall anyone expressing that alarm.

What I recall is a general update of the kinds of requests that were coming in, and I recall the superintendent, again, urging my support in connection with a consent decree.

Now the point that I made in my opening statement is -- is relevant to underscore here. There was no--

MR. CHERTOFF: No, I want to-- Excuse me. We're getting a little beyond the question, because I want to make sure that we have a crystal-clear understanding of what your recollection is of the meeting.

Would it have been a matter that you would remember if someone had said at the meeting that, “Our numbers are similar to numbers that led the Maryland State Police to have to get into a consent decree?”

JUSTICE VERNIERO: Again, I don’t know how much we would have focused on that, given our belief at the time that consents to search were not the focus of racial profiling. We were still in the *Soto* mentality, so to speak, of focusing on stops, of focusing on the *Soto* record, and consent to searches, particularly consent to searches from another state-- It’s private litigation. It’s a private matter between the state and the plaintiffs.

I was not aware at the time of what the circumstances were by which Maryland may have entered into that agreement. States enter into consent agreements for all sorts of reasons. I was focused on New Jersey, and I just don’t remember anyone in that meeting expressing alarm, expressing concern. You know, stop what we’re doing. This is something new. We’ve got to really focus on this. It was not that kind of meeting.

MR. CHERTOFF: So this was just a status meeting where you’re talking about -- where the Attorney General, the Executive Assistant Attorney General, two Deputy Attorneys General, and the Superintendent of the State Police come together to discuss the routine status of the document production in a case?

JUSTICE VERNIERO: Well, as you have pointed out, when you’re dealing with the Department of Justice, it’s not necessarily routine. This was an opportunity for those who would have been involved with the document production to gather in one place, to get updated.

That’s how I recall this meeting.

MR. CHERTOFF: And there was no expression of concern by anybody concerning consent to search statistics and the possibility that they would compare unfavorably to those in the Maryland case. You would remember that if it happened.

JUSTICE VERNIERO: I would remember if someone said, "We have a serious problem with these numbers. We've got to take action." If someone had said, "Our numbers are in the ballpark with Maryland, but consent to search is not really part of racial profiling, and in any event, it's not occurring at State Police," that was the context of the meeting, no, I wouldn't have been alarmed.

MR. CHERTOFF: I'm sorry, are you telling us you do remember now someone saying, "Well, our numbers are in the ballpark with Maryland?"

JUSTICE VERNIERO: I-- No, I said I don't recall. I have a vague recollection. If there was any mention of Maryland, it was as I have indicated. It's "we're roughly in the ballpark."

MR. CHERTOFF: And you wouldn't-- You didn't follow-up or say, "Why are we talking about Maryland or ballparks?"

JUSTICE VERNIERO: Well, again, you were in the 1997 time frame. I'm assured by State Police that there's not a problem with racial profiling. We're still in that time frame where we're trying to put a violator survey in place, so we have a benchmark to measure the meaning of these statistics, and consent to searches were not the focal point.

So all of those things added together and the -- the -- the tone of the meeting, as I say, was nonalarming, there would not be any follow-up to be taken after this meeting, other than what is already occurring, which is Alex

Waugh and George Rover continued to produce documents and continued their dialogue with DOJ.

MR. CHERTOFF: And again, at the time of this meeting, of course, you don't have any context from the fact that you had already received the memo of April 22nd with several pages of discussion -- discussion of consent to search -- in which you indicated that perhaps another meeting was needed in D.C. That was also just routine stuff.

JUSTICE VERNIERO: Well again, I don't want to dismiss the DOJ inquiry as routine stuff. It's obviously important, but you're asking-- I believe you're asking what steps, that I was not already taking or not otherwise being taken, did I take as a result of this meeting, and--

MR. CHERTOFF: No, what I'm--

JUSTICE VERNIERO: --my testimony is, we were taking the steps that I thought were appropriate. So there were no additional steps required of me as a require -- as a -- as a result of the May 20, 1997, meeting.

MR. CHERTOFF: What I'm asking you is, in the light of a document addressed to you that discusses, with specificity, consent to search data -- the fact that the Department of Justice is going to be looking at that, because of the precedent of a Maryland consent decree -- in light of that document, in light of the repeated requests by Mr. Waugh to discuss, in light of your saying, "maybe we need to go to D.C.," in light of a meeting at which multiple participants remember that the Maryland numbers and the comparison to New Jersey were discussed, my question to you is, are you taking the position before the Committee that in April and May of 1997, you

had no idea there was any issue with consent to search in the State of New Jersey?

JUSTICE VERNIERO: That's not my testimony. And I would disagree with several premises of your question. It's so long, I won't be able to disagree with all of it, but here are the things I disagree with: that I had gotten -- I think you had said, with specificity -- consent to search information. I don't see that indicated in these prior documents. That there were persons at the meeting that were discussed -- where statistics were discussed with specificity. I do not recall that.

MR. CHERTOFF: I didn't say specificity, Justice Verniero.

JUSTICE VERNIERO: I thought I heard that.

Your questions are very long, Mr. Chertoff--

MR. CHERTOFF: I'll rephrase it.

JUSTICE VERNIERO: --I'm trying to keep up as best I can.

MR. CHERTOFF: I'll rephrase it. And I'll put the context this way: You have before you a document, W-27--

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: It's a--

JUSTICE VERNIERO: W-27?

MR. CHERTOFF: Right.

JUSTICE VERNIERO: Let me just get that, because I don't--  
Okay. Yes.

MR. CHERTOFF: It's addressed to you, right?

JUSTICE VERNIERO: Correct.

MR. CHERTOFF: Mr. Waugh indicates he wants a discussion with you, right?

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: You indicate that another meeting in D.C. may be necessary, right?

JUSTICE VERNIERO: We've discussed this, yes.

MR. CHERTOFF: The body of the document includes several pages of discussion indicating that the Department of Justice is going to be interested in consent to search data, because they're going to try to use the statistics to show selective prosecution in a way that was successful in the Maryland case.

JUSTICE VERNIERO: Well, it says it might, and it also suggests the reasons why it would not be relevant or appropriate for this inquiry to -- to focus on consent to searches.

MR. CHERTOFF: And it also--

JUSTICE VERNIERO: So the -- the document itself is conflicted in a sense.

MR. CHERTOFF: And it indicates that this kind of analysis was used successfully by the plaintiffs in Maryland to impose a consent decree, right?

JUSTICE VERNIERO: It's-- In plain language it says that, yes.

MR. CHERTOFF: So we have this. We also have the fact that there is a meeting called, at Mr. Waugh's repeated request, on May 20th, right?

JUSTICE VERNIERO: Correct.

MR. CHERTOFF: It's attended by the superintendent and the other people in the Office of the Attorney General working on this matter, correct?

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: We have testimony before the Committee, of which I'm sure you're aware, in which everybody -- whether they quibble with the language -- everybody else at the meeting recalls a general comparison made between New Jersey consent to search figures and Maryland consent to search figures, and people also recall it being said that Maryland consent to search figures led to a consent decree, and that the State Police were concerned about it.

Now, in light of all that evidence in the record, is your position that in April and May of 1997, you were not informed that consent to search data in New Jersey was a matter of concern to the State Police?

JUSTICE VERNIERO: My position is that consent to search, at that point in time, was not considered to be the focal point of racial profiling, that Maryland had had its own difficulties and had gone through its own experience with racial profiling that might or might not have been the same as New Jersey -- that was a separate case. That the Department of Justice had not requested consent to search information at this particular time, but certainly had they, we would have turned it over, that was my standing instruction to my staff. And that no one in this meeting said in any urgent way, "We've got a problem."

And the reason for that is, they indicated that racial profiling was not a problem at State Police, and they even, as I recall-- One of the reasons

why consent to search was not the focal point -- at least, this was our thinking at the time -- was that consent to search had to be subject to a case-by-case analysis before a firm conclusion of racial profiling could be -- could be made.

MR. CHERTOFF: So am I--

JUSTICE VERNIERO: Now I reiterate, because I think it's important for the Committee to understand this as my testimony, this is an area where we could have and should have done more. This is an area where, looking back, I wished that I had asked more probing questions. This is an area where even if there wasn't alarm at this meeting, I wished that I had brought up the question myself to say, "Hey, let's get behind consent to search." I didn't for all the reasons that I've testified to previously, but this is an area where I could say-- And I just want the Committee to appreciate where I'm coming from--

MR. CHERTOFF: I have to--

JUSTICE VERNIERO: --that -- that this -- this is an area where I wish I would have done more.

MR. CHERTOFF: I have to stop you, because experience shows if the questioner doesn't insist that his question get answered, then shame on him for not getting the answer he's looking for or trying to get.

JUSTICE VERNIERO: Fair enough.

MR. CHERTOFF: This is my question--

JUSTICE VERNIERO: Yes, sir.

MR. CHERTOFF: Do you now remember, in April and May 1997, that there was discussion that you had about consent to search numbers in New Jersey as the compared to consent to search numbers in Maryland?

JUSTICE VERNIERO: Actual discussion of actual numbers, I do not remember.

MR. CHERTOFF: Putting aside whether there was discussion of specific numbers, was there a discussion of the fact that numbers in New Jersey and Maryland were comparable and that the numbers in Maryland had led to a consent decree?

JUSTICE VERNIERO: I have a vague recollection that the numbers were described as in the ballpark, that the Maryland suit was a private suit, not between DOJ and the State of Maryland, but between plaintiffs and Maryland, that Maryland may or may not have had their own *Soto*-type reforms in place, consent to search was not the focal point of our racial profiling understanding at that time, and that in retrospect, we should have and could have done more on the consent to search issue. And I regret that we didn't.

MR. CHERTOFF: So now you do remember discussion along these lines at the time?

JUSTICE VERNIERO: I remember, at best -- and it's vague-- I'm trying to give you the same answer to your question. I have a vague recollection of someone making a general comparison. I have no recollection of numbers. I have no recollection of statistics, and I have no recollection of anyone saying, "We've got a real problem in the State of New Jersey because of consent to search." No one was saying that at that time.

MR. CHERTOFF: Did Colonel Williams express to you his concern about those consent to search numbers at the meeting on May 20th?

JUSTICE VERNIERO: Not that I recall. Colonel Williams--

MR. CHERTOFF: And -- and you--

JUSTICE VERNIERO: To my recollection, Colonel Williams never expressed concern on this issue, other than his concern that we work to ensure that New Jersey and the State Police be treated fairly and not come under a Federal consent decree.

MR. CHERTOFF: And you certainly would agree that as of May 30th, you had not asked anybody to do any individual case-by-case study with respect to racial profiling?

JUSTICE VERNIERO: I did not, no.

MR. CHERTOFF: In fact, is it fair to say that as of May 1997, you really hadn't asked anybody in the Office of the Attorney General to take a look at or request or examine any audit data or statistical data from the State Police?

JUSTICE VERNIERO: Other than the steps that I thought were being taken to do the violator survey and any steps that would have been warranted to respond to DOJ, beyond that, no.

MR. CHERTOFF: When's the first time that you asked or directed that someone from your office get the State Police to turn over documents related to statistics about stops or about consents to search?

JUSTICE VERNIERO: I don't recall. Now, after the troop-- I don't recall a specific date. After the Troop D audits began, presumably the Division of Criminal Justice was asking for that data. That might be the first time, but I don't recall the exact date.

MR. CHERTOFF: So you don't actually know whether anybody in your office ever asked the State Police for any data about stops or consents to search before February of 1999, right?

JUSTICE VERNIERO: I don't have any specific recollection. I would have assumed that if an information request had come into Alex Waugh, he would have passed it along to George Rover, and George Rover might have asked. That's an assumption. But I cannot give testimony to any specific request on any specific date for information.

MR. CHERTOFF: Well, during the period that Alex Waugh was there, did he ever tell you that someone had requested consent to search or stop data or statistics from the State Police?

JUSTICE VERNIERO: In 1997?

MR. CHERTOFF: Yes.

JUSTICE VERNIERO: I have no recollection of that.

MR. CHERTOFF: And in 1998, Mr. Waugh wasn't there anymore, right? We've established that, right?

JUSTICE VERNIERO: That's correct.

MR. CHERTOFF: So who is it that would have told you someone was requesting stop or consent to search data from the State Police?

JUSTICE VERNIERO: It would have been either, I would think, Dave Hespe or, if we were in the Troop D situation, it would have been Paul Zoubek.

I recall, and I don't have the exact date, but I recall in 1998, this was now midway, later toward my tenure, we had gotten an information

request from *The Star-Ledger* and perhaps some other newspapers, that they had requested certain data and information.

MR. CHERTOFF: That's February 1999, actually.

JUSTICE VERNIERO: Was that the first time *The Star-Ledger* request came in? I thought that's when we complied with it. I have a recollection that it came in sometime in 1998.

MR. CHERTOFF: Sorry, 1998, yes. Go ahead.

JUSTICE VERNIERO: Yeah. So it was in that regard I recall someone in my office -- and this might have been the first time, again, I'm just going on my recollection -- there were questions asked of State Police in connection with this *Star-Ledger* request. Do we have the information? What's the format? What's the quality of it? So on and so forth. And my understanding was that the response of State Police was that they did not have the information in an easy to retrieve form. And in fact, I recall we had to send a deputy attorney general, whose name I cannot recall, to physically go over to West Trenton to go to the State Police and to begin to assemble the data and statistics that would have been responsive to *The Star-Ledger* request.

MR. CHERTOFF: So then it's fair to say that as far as you're concerned, as of February 1999, you didn't think the State Police had -- you had never asked the State Police, or to your knowledge no one in your office had ever asked the State Police, except for in connection with this press inquiry, for statistical compilations related to racial profiling?

JUSTICE VERNIERO: As I say, I don't know what Mr. Waugh and Mr. Rover may have asked.

MR. CHERTOFF: They certainly never told you they were asking for that stuff, right?

JUSTICE VERNIERO: I don't have a recollection of being told that anything was asked.

MR. CHERTOFF: And you didn't ask for it?

JUSTICE VERNIERO: No.

MR. CHERTOFF: Now, let's go back to consents to search. You were kept -- further kept informed after this May meeting -- well, let me actually go back to the July memo we looked at -- July 29th. Again, you told us that last page, where it talks about consents to search--

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: --you would not have -- you don't remember seeing that page or looking at that page, right?

JUSTICE VERNIERO: I do not.

MR. CHERTOFF: And then later in the year, there came a time that the Department of Justice finally did drop the other shoe and asked for copies of consent to search forms, right?

JUSTICE VERNIERO: I don't recall, other than in my preparation for this hearing.

MR. CHERTOFF: Let's put up W-31. Do you have that?

JUSTICE VERNIERO: I do, yes.

MR. CHERTOFF: Now, it indicates there that the Department -- this is a memo to you from Mr. Waugh, right?

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: It indicates the Department of Justice requested copies of consent to search forms, and that because they relate to post-stop activities, the position taken is they should be treated as not relevant. But because they indicate the reason for the initial stop, there's no way to resist their production, but the desire of the writer is to go on record that there's no consent to any broadening of the scope of the inquiry. Do you remember getting this?

JUSTICE VERNIERO: I don't. I don't remember it, but I'll assume that I did get it.

MR. CHERTOFF: Were you informed that the position that Mr. Waugh was taking with the Department of Justice was that they were not going to agree that this investigation covered consents to search, and they would only turn over -- or they were turning over the forms with the express understanding that they were being turned over because they have some information about stops, but not because they relate to consent to search? Were you aware of that?

JUSTICE VERNIERO: Well, as I say, I don't recall it. But looking at it now, it appears consistent with the overall mind-set of the Department. Now, keep in mind, these are the senior deputies, essentially, telling me how to respond to the DOJ. And what they're saying to me is, "We ought to turn over this information, but make it clear that it should not be the focal point of racial profiling." That was consistent with the mind-set of the Department.

MR. CHERTOFF: And was the mind-set of the Department at that time that we do not want to have the Department of Justice getting into

the question of consent to search statistics? We want to keep them focused only on stops, right?

JUSTICE VERNIERO: I wouldn't characterize it as that. I think it was -- it was just a bit broader than that. We were focused on *Soto* and the stop information issue and the stop issue, and we thought that was the appropriate inquiry, and that's what we understood the Department of Justice was focused on.

But once the DOJ shifted, I think there's a subsequent indication in the record that we ultimately turned over the information that they had requested.

MR. CHERTOFF: But when you kept hearing about this interest in consents to search, did you ever say to anybody, "Would you explain why this is significant, and whether this is -- we need to look at in terms of our own finding out what's going on?"

JUSTICE VERNIERO: As I indicated, it's one of those areas, Mr. Chertoff, where I wish I had said more. I wish I had done more. I wish I asked more probing and searching questions. I did not, for the reasons that I've already indicated. In retrospect, I should have.

MR. CHERTOFF: In the letter -- in the draft letter, which you have, which ultimately was sent to Mr. Posner, it says in the second paragraph of the attached letter, which is Page 2 of the document which is in front of you: "In New Jersey, consensual motor vehicle searches must be based on a written consent, executed by the motorist, before the search of his or her vehicle. Such requests are only obtained after a motorist has been stopped, and only if the

law enforcement officer determines -- thereafter determines that there is probable cause to believe there may be contraband in the vehicle.”

Is that correct?

JUSTICE VERNIERO: What page is that, sir?

MR. CHERTOFF: It’s the second page.

JUSTICE VERNIERO: The second page of the second letter?

MR. CHERTOFF: No, it’s the first page of the attached letter.

JUSTICE VERNIERO: Okay, the first page of the attached -- okay. I’m sorry, what’s your question?

MR. CHERTOFF: The passage here: “Consensual motor vehicle searches must be based on a written consent, executed by the motorist, before the search of his or her vehicle. Such requests are only obtained after a motorist has been stopped, and only if the law enforcement officer thereafter determines that there’s probable cause to believe that there may be contraband in the vehicle.”

Is that a correct statement of what the rule in New Jersey is, or was at the time?

JUSTICE VERNIERO: Well, let me just confine my answer to was at the time--

MR. CHERTOFF: Yeah, was at the time.

JUSTICE VERNIERO: --so we don’t get into any future issues that might become -- might come before the court.

No, that’s incorrect. It’s not the probable cause standard. It’s the reasonable, articulable suspicion standard.

MR. CHERTOFF: Do you know how it is that this -- you don't remember reviewing this?

JUSTICE VERNIERO: I do not, no.

MR. CHERTOFF: Do you know how it is that a letter with that misstatement was executed and sent out under your letterhead?

JUSTICE VERNIERO: I assume it was just oversight -- innocent oversight.

MR. CHERTOFF: Now, is it fair to say, then, in 1997, through that year, at no time did you ask anybody to give you any information concerning what statistical information was showing concerning stops or consent to search or any other police activity on the Turnpike?

JUSTICE VERNIERO: What was the time predicate in your question?

MR. CHERTOFF: 1997, during 1997.

JUSTICE VERNIERO: 1997, I did not ask for data, that's correct.

MR. CHERTOFF: Did you ask for that data in 1998?

JUSTICE VERNIERO: Well, 1998 was an entirely different situation, after the Turnpike shooting event, where I asked many questions of State Police and of Division of Criminal Justice in connection with the Troop D audit and other -- and other issues.

MR. CHERTOFF: I'm not talking about the Troop D audit now. I'm asking whether, in general, in connection with the issue of statistics about stops and consents to search, did you ask anybody for information about that in 1998?

JUSTICE VERNIERO: I don't have any specific recollection other than what might have been part of the Troop D audit.

MR. CHERTOFF: Well, the Troop D audit was being conducted by Lieutenant Sachetti and under Lieutenant Colonel Dunlop, and ultimately with the supervision of Mr. Zoubek, correct?

JUSTICE VERNIERO: That's right.

MR. CHERTOFF: Did you, however, ask for any information, generally, about statistics -- audit statistics or other statistics related to stops and searches in 1998?

JUSTICE VERNIERO: I don't recall.

MR. CHERTOFF: Is it fair to say the first time you addressed that issue was in February 1999?

JUSTICE VERNIERO: Well, that was the first time where I put a formal investigation in place, in which we would produce a report with respect to conclusions in that regard. I always understood that the precursor to the February report -- to the April report, was the Troop D audit, that that was the first time, because of the falsification allegations and the Turnpike shooting and the other issues that were in our thinking at that point in time, that we should take appropriate steps, at least in connection with Troop D, to determine whether we had a problem.

It was in with -- it was within the falsification context, however.

MR. CHERTOFF: Would you agree with me that if you have consent to search data -- I'm not taking it to 1999 -- would you agree with me that if you have consent to search data which shows a majority of the people who are stopped, who are asked for consent to searches, are minorities, that

that is the kind of data that would warrant further investigation of the underlying facts, because of the prima facie indication of selective of enforcement?

JUSTICE VERNIERO: What was the percentage that you had indicated -- majority percentage?

MR. CHERTOFF: A majority, yes.

JUSTICE VERNIERO: That might be something that we ought to look at, yes. I would say that.

MR. CHERTOFF: So that for example, if we were to look at the -- at W-30, which was the July 29, 1997 document sent to you by Mr. Waugh, which has 62 percent minority driver consent searches in 1995, you'd agree with me, that kind of number is the kind of number that should cause further investigation, right?

JUSTICE VERNIERO: What's the document number?

MR. CHERTOFF: It's W-30, last page.

JUSTICE VERNIERO: Well again, this is -- I have no recollection of actually seeing that document. But secondly, reviewing it now, it is pre-*Soto*, 1995 data. So my answer there would be the same as I've given previously, that there was a distinction being made between old and new data.

MR. CHERTOFF: So is it your position that the only point at which the statistical data became important to you was when a certain amount of time elapsed after *Soto*?

JUSTICE VERNIERO: My testimony is that we should have done more on the consent to search issue. I'm explaining to you why we didn't.

Why we didn't was, we viewed *Soto* as a line of demarcation, if you will. After *Soto*, there were reforms put in place that hopefully would have eradicated any problem that existed.

MR. CHERTOFF: And those reforms were a telex sent by the State Police and telling everybody to reread FOP-55, which had been in existence for five years.

JUSTICE VERNIERO: They were similar--

MR. CHERTOFF: Those were the reforms.

JUSTICE VERNIERO: They were similar to the reforms put in place by the previous administration, which I have heard heralded during this hearing process, as being effective in dealing with the problem.

MR. CHERTOFF: So in other words, your reforms--

JUSTICE VERNIERO: So I was -- I believed at the time, based on the information that I was getting, that these were the reforms that were appropriate to address the issue, in the aftermath of *Soto*.

MR. CHERTOFF: I'm sorry. Did you tell us just a moment ago that the reforms put into place after *Soto* were simply the same reforms that had been put into place under Colonel Dintino?

JUSTICE VERNIERO: I said my understanding is that they were similar, and you yourself had indicated that the SOP was five years old.

MR. CHERTOFF: So what was the big reform that happened after *Soto*? What was the dramatic step after the *Soto* decision that led you to believe that everything occurring at that point was statistically irrelevant, because the reforms were going to change everything?

JUSTICE VERNIERO: Well, first, the SOPs were going to be enforced and be satisfied. One of the--

MR. CHERTOFF: How was that -- what was the reform to make them enforced?

JUSTICE VERNIERO: The telex from the superintendent, the training and review committee that -- and I don't know the depth of it, whether they went barracks by barracks, or whether they had training seminars on regular intervals -- and just the leadership of the State Police itself would work to ensure that SOP-55 was being carried out to the fullest.

MR. CHERTOFF: Well, what did you do to find out, specifically -- let me step back. As I understand your testimony, your position in 1997 is that you're not concerned about statistics, because you believe there are now reforms in place, after *Soto*, that are going to cure the problem. Is that fair to say?

JUSTICE VERNIERO: I -- my testimony was if there were concern about statistics, it was discounted based on a few factors.

MR. CHERTOFF: Okay.

JUSTICE VERNIERO: One of which was the assurances that we were receiving from the State Police that it was not a problem. That's--

MR. CHERTOFF: Is that a reform, assurances that it was not a problem?

JUSTICE VERNIERO: No, that's the overarching context, however. It has to be part of my answer, if you're looking for a full and complete answer.

Secondly, there were reforms in place, post-*Soto*, which may have resembled the pre-*Soto* reforms. Maybe there were additions to them, maybe we were trying to execute them in a better fashion, but I was informed by my deputies that those reforms were significant, needed some time to be implemented, and so forth.

MR. CHERTOFF: Who told you that?

JUSTICE VERNIERO: We had -- part of my briefings, and I believe we even emphasized this, if I'm not mistaken -- strike that. I don't know if it's in the *Soto* brief. I don't recall who emphasized it to me, but it may have actually been in one of the Fahy memos. Maybe it was Jack Fahy. But that was my understanding that there were reforms in place that needed some time to work, that were going to be implemented. And the other thing, again, I say, is the definition of racial profiling at that point in time did not encompass consent to search, which was something that, if I had to do over again, I would have put more attention to.

MR. CHERTOFF: Well, I'm just -- I really want to get specific about this, because your position has been that in 1997 you don't feel it's -- you just count the figures. Well, first of all, you acknowledge that you were aware that there are some figures being corrected in 1996, right?

JUSTICE VERNIERO: I don't recall reviewing these various attachments, but the attachments say what they say. So I can't dispute what's in black and white.

MR. CHERTOFF: And you also know that you've been told, in a letter drafted, you struck out that there were some kinds of reports being made, right?

JUSTICE VERNIERO: Yes, but I don't know who put that in the letter. I don't know if it was, for example, Jack Fahy who wrote that letter. I don't know what he was relying on when he put that sentence in the letter.

MR. CHERTOFF: But you do know you didn't ask to follow up?

JUSTICE VERNIERO: That's correct.

MR. CHERTOFF: Now, and so your basis for discounting it is your belief that now there is a sea change because of these new reforms, correct?

JUSTICE VERNIERO: I don't understand your question.

MR. CHERTOFF: Well, your basis for discounting 1995 and 1996 statistical evidence is that you believe that there are reforms -- meaningful reforms post-*Soto*, which change the landscape. Is that fair to say?

JUSTICE VERNIERO: My reasons for discounting the figures are severalfold: the post-*Soto* reforms; the fact that we did not have a violator survey against which to measure the numbers, so they were, therefore, inconclusive; the assurances that I had received, adamantly, from the State Police leadership that racial profiling wasn't a problem; the focus, at that time frame, on stop data and on *Soto*, which was on appeal.

So I can't say one factor weighed more heavily than another. It was a combination of factors that was in place, was in my mind-set in the early part of my tenure.

That changed, however, after the Turnpike investigation, after the Turnpike shooting, after I had learned, for the first time, in 1998, that there were troopers who might have been falsifying records. Obviously you don't need a violator survey to know that that's wrong. And you don't need a lot of

high-powered advice to know that falsification is a very significant issue. And my thinking--

MR. CHERTOFF: I'm still back--

JUSTICE VERNIERO: My thinking changed and evolved because of that -- because of those events.

MR. CHERTOFF: My question is this. I would still like you to tell us the specific reforms that occurred post-*Soto* that you relied upon as indicating that you no longer -- that you could now discount the issue of what the figures were.

JUSTICE VERNIERO: My only disagreement with your question is you keep referring to the *Soto* reforms as my sole reliance. It was not. It was one of the four or five elements that I have described. And I have described those *Soto* reforms to you. I will do so again.

It is my understanding they were -- the SOP-55 was reinvigorated or reissued. It was a committee between the Attorney General's Office and the State Police that enhanced practice and curriculum and training. It was the telex or Teletype that the superintendent had sent to the various barracks, and hopefully it was the leadership of the State Police itself, post-*Soto*, who would work to ensure that the various regulations already on the books, which made racial profiling illegal, were being enforced.

MR. CHERTOFF: And just so we're--

JUSTICE VERNIERO: That is one -- that is one element of four or five elements that went into my thinking that accounts for why I discounted the consent to search.

MR. CHERTOFF: Again, I've got to ask you to answer my question. My question is this: The reforms are SOP F-55, which already was on the books, right?

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: It was a telex by Colonel Williams. Did you ever look at the telex?

JUSTICE VERNIERO: No. It was issued before I became Attorney General.

MR. CHERTOFF: Did you look -- well, if you were relying on the telex, right, did you look at it, even though it had been issued before?

JUSTICE VERNIERO: No, I did not.

MR. CHERTOFF: Did you know what the telex basically said is, we disagree with the judge's decision, but you shouldn't be racial profiling?

JUSTICE VERNIERO: If that's your representation. I don't recall what it said.

MR. CHERTOFF: Did you ever judge or evaluate whether the telex was an effective way of trying to promote this change in the organization?

JUSTICE VERNIERO: Mr. Chertoff, in the early part of my tenure, I did not second-guess the superintendent in the manner in which he issued telex to his barracks. That was his responsibility. I did not second-guess it.

MR. CHERTOFF: So we have the telex; we have the SOP F-55. And then you say there was the formation of a committee?

JUSTICE VERNIERO: That's my understanding, yes. Remember, these were things that had taken place prior to my becoming

Attorney General, so I don't have intimate detail of every aspect of them. I was informed that these reforms were in place, and that we had to give them a chance to work before we put any conclusion to any data.

MR. CHERTOFF: But again, I'm simply asking what the reforms were, and I'm trying--

JUSTICE VERNIERO: I -- yes--

MR. CHERTOFF: I want -- let me -- let's go through them one by one. SOP F-55, did you understand that had been on the books since the early '90s, yes or no?

JUSTICE VERNIERO: I understood it was existing. I can't say that I knew the date it went into operation.

MR. CHERTOFF: There's the telex from Colonel Williams. Did you ever read it?

JUSTICE VERNIERO: I've already testified I did not read that.

MR. CHERTOFF: There's the committee. Did you know who was on the committee?

JUSTICE VERNIERO: I recall that it was a joint committee of lawyers from the Office of Attorney General and the State Police.

MR. CHERTOFF: Did you know how often it met?

JUSTICE VERNIERO: No, sir.

MR. CHERTOFF: Did you know what it concerned itself with?

JUSTICE VERNIERO: I understood that it was training and practices and those sorts of issues.

MR. CHERTOFF: Were you, in fact, told in May 1998 that a new initiative that should be considered after the shooting was to reinvigorate the committee?

JUSTICE VERNIERO: I might have. I don't recall.

MR. CHERTOFF: So you have no idea -- you had no idea in 1997 what the committee was doing or how effective it was?

JUSTICE VERNIERO: I was relying on the assurances of the State Police that racial profiling was not a problem, and I was operating under a presumption that the post-*Soto* reforms were being implemented accordingly.

MR. CHERTOFF: Did I miss any reforms, when I went through my list?

JUSTICE VERNIERO: You may have. There may be some reforms that I'm missing. I'm doing this all by memory.

MR. CHERTOFF: And your confidence in the State Police's telling you that nothing's a problem, everything's working, that was never shaken by any statement by Colonel Williams that he was concerned about the consent to search numbers?

JUSTICE VERNIERO: No. My confidence in the State Police began to change after the Turnpike shooting incident.

MR. CHERTOFF: Now, let's go to 1999. There comes a point in February 1999 that you assigned Mr. Zoubek to head the State Police Review Team, correct?

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: And then a couple of days after -- initially when it's announced, it's not -- it's not announced as covering racial profiling, correct?

JUSTICE VERNIERO: Well, I've had the occasion to review the press statement. It doesn't say racial profiling. I don't know whether that was an oversight, whether I always intended it. It was a full review of State Police practices of not only the issue of uneven law enforcement, but issues of personnel -- and I don't have the press release in front of me, but it was intended to be a wide scale review. I think you're correct, it does not use the term racial profiling.

MR. CHERTOFF: It was only a couple of days later, in connection with a meeting with the press at which Mr. Zoubek was present, that you informed him that racial profiling was going to become one of the issues there.

JUSTICE VERNIERO: I don't recall meeting with the press for that purpose. There might have been a misunderstanding between Paul and me, or maybe I thought I was less than clear in the first -- in the first press release.

I always intended it to be a formal review of State Police. I don't recall whether I used the words racial profiling or not.

MR. CHERTOFF: And so then sometime, at least in the next few days, you will agree at that point, you do say to him, racial profiling is to be a focus in this, correct?

JUSTICE VERNIERO: Oh, that was clearly communicated to him, yes.

MR. CHERTOFF: By the way, let me -- before we -- I just want to -- overlooked one thing on this May 20th meeting. Is it your recollection that at the May 20th, 1997 meeting -- the meeting you now know you had been on May 20th -- but the meeting we had been talking about earlier. Is it your recollection that if any statistics were discussed, they were pre-*Soto* statistics?

JUSTICE VERNIERO: I don't recall statistics being discussed, so I don't have an answer to that question.

MR. CHERTOFF: Well, I have had the benefit of looking at your interview, over the weekend, with a number of reporters, including, I guess, the Gannett reporter, who, in the version that appeared in the *Asbury Park Press*, quotes you as saying, "It's why, at the May 20, 1997 meeting, when possibly statistics were being discussed, and I don't recall that they were, that it's clear that these were pre-*Soto* statistics."

JUSTICE VERNIERO: Oh, I see. I believe that question was asked in connection with the Gilbert memorandum, which I did not see until after the fact. And it was clear, in reading that memorandum, that the statistics in the Gilbert memorandum, I believe, are pre-*Soto* statistics.

MR. CHERTOFF: Well, don't some of them actually continue on into 1996, after the *Soto* decision?

JUSTICE VERNIERO: Well again, there was the *Soto* decision. Then there was the post-*Soto* reforms, and then an opportunity for implementation of those reforms.

MR. CHERTOFF: So you actually consider pre-*Soto* to be not only before the decision of *Soto*, but really for some considerable period of time after *Soto*?

JUSTICE VERNIERO: Well, some period of implementation. I can't put a -- I can't put a calendar date to it.

MR. CHERTOFF: And so your feeling was basically that in the wake of the *Soto* reforms, which we've been discussing for the last few minutes, you could kind of let nature take its course, so to speak, for some period of time before it was necessary to go back and actually test to see what was going on?

JUSTICE VERNIERO: Well again, it was not nature taking its course. It was the post-*Soto* reforms, plus the assurances that I had received from the State Police, plus our mind-set on consent to search information. It was -- and plus, the lack of a violator survey against which to measure the data. It was a combination of those things that I thought at the time were sufficient.

As I have testified, it's one of those areas where I wish I had done more.

MR. CHERTOFF: Now, in March -- on March 15th, Mr. Zoubek comes into your office and gives you a blue notebook from Sergeant Gilbert, correct?

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: He shows you the notebook, right?

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: He asks you whether you're familiar with the contents of the notebook?

JUSTICE VERNIERO: I don't -- I don't know what his exact words were. I know that he was fairly upset -- strike that. I shouldn't say fairly. He was upset. I don't want to characterize it.

He clearly was not happy that he had been given this blue binder that he was receiving for the first time.

MR. CHERTOFF: Did he tell you why he was unhappy?

JUSTICE VERNIERO: He thought it might be relevant to what he was doing, and he thought it was something that the State Police should have produced sooner.

MR. CHERTOFF: Well, he thought it might be relevant to production of documents that were being promised to the Department of Justice, right?

JUSTICE VERNIERO: I don't recall.

MR. CHERTOFF: Well, did he tell you that?

JUSTICE VERNIERO: I don't recall exactly what he thought it might be relevant to. He was not happy that he was receiving it on that date.

MR. CHERTOFF: Would you have considered it important in March 1996 if someone had told you they thought maybe documents that were supposed to have been produced for the Department of Justice had been withheld? Would that have been a matter of concern or importance to you?

JUSTICE VERNIERO: Sure.

MR. CHERTOFF: So I have to ask you, based on Mr. Zoubek's testimony yesterday, did he communicate to you a concern that there were documents that should have been turned over to the Department of Justice that hadn't been turned over?

JUSTICE VERNIERO: I don't recall. If he had, I'm sure my reaction would have been, "Go produce it."

MR. CHERTOFF: Did he tell you that he had gotten a memo from Mr. Rover, who was working under Mr. Waugh and dealing with you, that Mr. Rover had simply kept documents in the file that he withheld from the Department of Justice?

JUSTICE VERNIERO: I don't recall that conversation, and I'm not sure that that was Mr. Zoubek's testimony, although obviously I can't swear to his testimony, that Mr. Rover had "withheld" documents from the DOJ.

I do recall that throughout this time frame there was some uncertainty as to what exactly the Department of Justice was even requesting. As we indicated earlier, we had gotten this blank form that was -- that was not specific to New Jersey, that first it started with some random dates, and there was always some discussion, back and forth, with DOJ and my office as to precisely what was being requested.

So I don't recall, on March 15th or 14th, Paul Zoubek saying George Rover "withheld" documents that should have been produced. I just don't recall him saying that.

MR. CHERTOFF: So when he comes in with this blue notebook, and he's upset, he doesn't tell you that he's upset because he thinks this is material that should have been produced and wasn't?

JUSTICE VERNIERO: That might have been behind his, you know, his concern. It was a fairly quick -- I don't even want to say it was a meeting. He came into my office. He put the binder down on the table. He

said, you know, "Look at this." He directed my attention to, as I recall, the Gilbert memo. That might have been near the top of the pile. We kind of flipped through the documents. And I was concerned myself, when I saw the Gilbert memo, because of the language used in the Gilbert memo.

MR. CHERTOFF: And so what did you say?

JUSTICE VERNIERO: I said, "Where did this come from," words to that effect.

MR. CHERTOFF: And did you then, at some point the next day, prepare a memo to the file about having received this information?

JUSTICE VERNIERO: I recall putting a memo together. I don't know the exact date.

MR. CHERTOFF: Z-16. Do you see it?

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: Have you seen this before?

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: Did you prepare this?

JUSTICE VERNIERO: I signed it, yes. I don't know if I actually typed it, but I signed it.

MR. CHERTOFF: Why -- have you ever written a memo like this before, to file, as Attorney General?

JUSTICE VERNIERO: As Attorney General, I don't think so. In private practice, I would do it from time to time.

MR. CHERTOFF: And whose idea was it to write this memo to the file?

JUSTICE VERNIERO: I don't recall.

MR. CHERTOFF: Do you know whether the content of the memo-- Is it accurate?

JUSTICE VERNIERO: I believe it was accurate at the time -- that there were certain documents that I had not seen. And I think that's accurate now, even in hindsight. I had not seen the Gilbert memo. And there were other documents that I had never seen, so I believe it was accurate at the time I signed it, yes.

MR. CHERTOFF: Well, I mean, for example, when you say to that -- became aware for the first time of the existence of certain State Police documents, were you meaning to suggest you had no awareness of the existence of the type of documents that were in this blue binder before March 15th, 1999?

JUSTICE VERNIERO: I can't put any gloss on this letter, Mr. Chertoff. It's pretty straightforward. It says, "For the first time I became aware of certain documents." My recollection is that that was principally the Gilbert memo, which Mr. Zoubek, as I recall, directed my attention to. And there might have been other documents at the time. One of the things we did not do which we probably should have done was sit down and actually inventory the entire notebook and be very, very specific as to what was in there. This was a very fast meeting. I signed this memo. I believe it was accurate at the time, and I believe it's still accurate.

MR. CHERTOFF: Didn't Mr. Zoubek look the memo over before you signed off on it?

JUSTICE VERNIERO: I don't remember who might have seen it.

MR. CHERTOFF: Was there some rush about putting this in the file?

JUSTICE VERNIERO: No particular rush.

MR. CHERTOFF: Were you concerned that perhaps someone from the Department of Justice in Washington might later question why documents were turned over late, and therefore you wanted to have this in the file?

JUSTICE VERNIERO: That could have gone into our thinking. I don't know. Perhaps we were just reacting as lawyers sometimes react when they're surprised.

MR. CHERTOFF: But you had never done a memo like this as Attorney General, right?

JUSTICE VERNIERO: Mr. Chertoff, I had never done a lot of things before becoming Attorney General. This was a very unique time in our history in this state and in that office. So it was unique. Absolutely. The issue was unique.

MR. CHERTOFF: And of course, did you become aware that on the very same day that you first saw this blue notebook, that Mr. Zoubek had had an oral argument with the Appellate Division, where the Appellate Division raised issues concerning the fact that the State is only now beginning to investigate racial profiling years after the *Soto* litigation had been under way?

JUSTICE VERNIERO: I don't recall the oral argument.

MR. CHERTOFF: Did Mr. Zoubek tell you he had come back from an oral argument where the judges were critical of the State's position in *Soto*?

JUSTICE VERNIERO: I have a recollection that he thought the oral argument was difficult. I don't recall the specifics of why he sensed that. You know, when a lawyer comes back from oral argument -- was it easy? Was it hard? Don't ask me whether this is easy or hard. But I thought he said it was a difficult -- it was a difficult argument.

MR. CHERTOFF: But help me out. This is what I don't understand. You told us 30 seconds ago that this is a historic time. This issue of racial profiling and race is huge. It's a huge event in New Jersey. And yet, with respect to the circumstances of potentially withheld documents, arguments on a big case where the Appellate Division is critical of the State, one-time memos to file indicating that documents have been produced, you don't have much of a recollection of any of the circumstances of this. Was this a historic, memorable period of time, or a routine, regular kind of, you know, run-of-the-mill period of time?

JUSTICE VERNIERO: It was historic and unique, and I'm doing the best I can, with all the human frailties of memory and otherwise, to answer your questions.

MR. CHERTOFF: You have no sense that Mr. Zoubek conveyed to you that the State Police were -- had had -- I'm sorry -- that the State Appellate Division had actually had discussion with him concerning the ethical obligations of the State to make sure that if they had information consistent

with our litigation position, they better disclose it? He didn't mention that to you?

JUSTICE VERNIERO: He might have. I don't recall. I recall him saying it was a tough argument.

MR. CHERTOFF: Even putting yourself in the frame of mind you had back then, isn't it a huge potential embarrassment, as Attorney General of the State of New Jersey, to contemplate the possibility that the Appellate Division, in a very significant case, might possibly criticize whether the State was being ethical in its handling of information? Wouldn't that be an absolute paramount issue for you?

JUSTICE VERNIERO: I would presume so, yes. Also at this point in time, we, and I can't remember the exact moment we decided to withdraw the *Soto* appeal-- But that might have factored into my thinking that if there were problems with the argument, or problems with the appeal, it might factor into our thinking as to whether to withdraw the appeal.

MR. CHERTOFF: And the problem in particular would be whether the State was in possession of information that should have been either disclosed or should have resulted in the change of position in *Soto*, right?

JUSTICE VERNIERO: I don't recall if that was the reason we decided to withdraw *Soto*. As I recall, in light of the April 20th, 1990 report and its conclusions, that the appeal in *Soto* would be untenable and not in the public interest. I don't recall us withdrawing *Soto* out of fear or concern of discovery violations, if that's your suggestion. As I say, Paul may have mentioned some of what the Appellate Division was saying. I simply don't have a recollection of it.

MR. CHERTOFF: Was the memo to the file created in part because you thought there might be someone who would pursue the issue about whether these things should have been disclosed in the *Soto* litigation?

JUSTICE VERNIERO: I don't recall going through a litany of reasons why I signed the memo. It seemed like the appropriate thing to do at the time. As I say, maybe we were just all acting as lawyers instinctively to set forth a chain of custody. I just can't recall it any more than that. It was accurate when I signed it. I believe it's still accurate, as far as I know.

MR. CHERTOFF: Now, then there were a series of--

Then you asked, actually, to have the interim report on racial profiling accelerated, right?

JUSTICE VERNIERO: The interim report was accelerated so we could reach a conclusion as to whether or not to appeal -- to continue the appeal in *Soto*. As I recall, we had asked the Appellate Division for an extension of time, which was denied.

MR. CHERTOFF: Did you look at--

JUSTICE VERNIERO: And that then set an outer limit for a decision. Do we go forward with the appeal, or do we drop the appeal?

MR. CHERTOFF: Did you look at drafts of the report?

JUSTICE VERNIERO: I recall looking at some drafts -- the next to the last draft, the penultimate draft. I recall looking at some drafts late in the process.

MR. CHERTOFF: Also in this time period, was there discussion that you had with anybody about the possibility of investigating Colonel Williams or the State Police to see why documents were withheld?

JUSTICE VERNIERO: Could you repeat the question?

MR. CHERTOFF: Did you have any conversation with anyone in this period of time, from March -- beginning of March to the end of April of 1999, about the possibility that Colonel Williams, or the State Police, should be investigated for possibly withholding documents?

JUSTICE VERNIERO: I don't know if it was specific to Colonel Williams. I do recall asking Paul Zoubek to look into the issue of how certain documents were being produced and the timing of them. I don't recall it being targeted at Colonel Williams or any one individual.

MR. CHERTOFF: Well, what do you mean to look into the timing that certain documents were produced?

JUSTICE VERNIERO: To investigate whether any official had failed to produce documents.

MR. CHERTOFF: Well, are you saying that after March 1996, you had the concern in your mind that maybe an official had failed to produce documents to your office or to the Department of Justice that should have been produced?

JUSTICE VERNIERO: No, I was keying off of Paul Zoubek's concerns, frankly. I mean, Paul is a fairly even-keeled guy. He comes into my office with this blue notebook. He puts it down on my desk. He's very unhappy. He's expressing his unhappiness. He's pointing my attention to the Gilbert memo, which is -- has very urgent language in it.

A very interesting thing about the Gilbert memo, as well, is the way it's written. And this struck me, as well, when I saw it in the blue binder.

MR. CHERTOFF: Oh, so you remember focusing on this now.

JUSTICE VERNIERO: Well, he focused me on the Gilbert memo, as I recall. And I have since reviewed the Gilbert memo. This is one of those issues where, as I said candidly at the outset, I know more now than I knew then, and my recollection is refreshed having been prepared -- in my preparation for this hearing.

As I recall, I was pointed to the Gilbert memo. I have since read it very carefully. One thing that strikes me in the Gilbert memo is it's very odd the way it's formatted. It's not an up-the-chain-of-command memo. It goes from a sergeant directly to the Colonel, with no one else in between.

That is not the kind of information or memorandum that is going "up the chain." And that strikes me as a bit odd.

MR. CHERTOFF: But here's my question, which we've wandered a bit off of. My question is this: After March 16th, was it your view or belief that someone in the State Police or in the Office of the Attorney General had improperly withheld documents?

JUSTICE VERNIERO: I didn't know what to believe.

MR. CHERTOFF: Did you ask for an investigation?

JUSTICE VERNIERO: As I said, I was keying off of Mr. Zoubek's--

MR. CHERTOFF: Did you ask for an investigation?

JUSTICE VERNIERO: I'm trying to answer your question, Mr. Chertoff.

I was keying off of Mr. Zoubek's concerns. He put the binder on my desk. He was concerned. I don't recall my exact words. I said something like, "You should look into this."

MR. CHERTOFF: And that was the end of it.

JUSTICE VERNIERO: That was my instruction to Mr. Zoubek.

MR. CHERTOFF: So you had no particular belief or understanding of what Mr. Zoubek was going to do.

JUSTICE VERNIERO: I assumed he was going to look into how the document went through the various steps in the process by which it arrived at his desk. It was not anything more specific than that.

MR. CHERTOFF: Did you ever ask him what the upshot of that was?

JUSTICE VERNIERO: No, because as I recall, I left the office fairly soon thereafter.

MR. CHERTOFF: So really, from March 1999 until you left the office, you never had any more conversation with Mr. Zoubek saying whatever happened to that issue about whether the State Police withheld documents?

JUSTICE VERNIERO: Well again, it was not necessarily targeted at the State Police. I might have. I just don't recall.

MR. CHERTOFF: I mean, would you agree with me that if the State Police withheld information from the Attorney General who supervises them, that would be a very serious matter?

JUSTICE VERNIERO: Of course.

MR. CHERTOFF: It would strike at the heart of civilian control over the police, correct?

JUSTICE VERNIERO: It would not be something that was appropriate or professional, no.

MR. CHERTOFF: And if you had--

JUSTICE VERNIERO: But getting assurances that racial profiling is not a problem -- is not an issue, when, in fact, it is, that strikes at the heart of civilian control, as well. So we were dealing with a very difficult time in our history.

MR. CHERTOFF: So then--

JUSTICE VERNIERO: I was giving the benefit of doubt to those in leadership positions. I did not want to jump to conclusions. As I indicated, I tilted in favor of State Police until I had reason not to. And when Mr. Zoubek puts the binder in my desk and is visibly upset by it, I turn to him and say, "Well, you should look into this. You should resolve any concerns that you might have regarding the chain of custody of these documents."

MR. CHERTOFF: But you, as Attorney General of the State -- you did not direct him? If he expressed a concern about whether documents had been withheld, you can direct him to get to the bottom of it and find out whether someone had misbehaved.

JUSTICE VERNIERO: Well, that was the essence of what I was communicating to him.

MR. CHERTOFF: Go find out what happened and take care of it.

JUSTICE VERNIERO: Well again, I don't remember my exact words, but I turned to Mr. Zoubek and said, "Look into this. Find out what happened." Now, Paul Zoubek is someone who I reposed great trust in.

MR. CHERTOFF: Let me stop you.

JUSTICE VERNIERO: I did not have to sit down with him and give him chapter and verse of what I meant by that. I assumed he understood what I was saying.

MR. CHERTOFF: Well, was there an investigation or not? Do you know?

JUSTICE VERNIERO: I don't recall. I mean, to my knowledge, he was supposed to do one. I don't know what happened after that. I understand what his deposition testimony was. But I had issued my instruction to him, and I assumed it would be carried out.

MR. CHERTOFF: So you didn't know whether he actually did an investigation.

JUSTICE VERNIERO: In which time frame, Mr. Chertoff?

MR. CHERTOFF: From March 15th on, when you said go do what you have to do, or words to that effect. You don't know whether he actually did an investigation.

JUSTICE VERNIERO: I might have asked him for a status report. Now, you're talking about a very truncated period of time, March 16th to May 15th, when I left the Attorney General's Office. Even for government, that's a pretty short time frame to expect action, even on a significant issue as to whether data was withheld. So everything has to be seen in context.

MR. CHERTOFF: I didn't ask you whether he completed the investigation, I only asked you this--

JUSTICE VERNIERO: I thought you had asked me whether it was completed.

MR. CHERTOFF: --do you know whether any investigation was conducted by Mr. Zoubek after March 16th?

JUSTICE VERNIERO: As a certainty, I do not know. I only know I asked him to look into it. And I assumed that he was.

MR. CHERTOFF: So when you were asked, for example, at your -- on April 26th, during the racial profiling hearing, the following question--

Well, let me go back. Do you remember the interim report, which we should give you a copy of. On Page 23--

If you look at Page 23 of the interim report, it says in mid-March, the review team began to receive documents from the State Police pertaining to audits, compilations in data, and analysis of data about the racial characteristics of detained motorists, some of which have not been previously provided to the Office of the Attorney General or the Division of Criminal Justice.

When you were asked about that passage by Senator Gormley on April 26th, he asked you on Page 25, who didn't provide the information?

And you said, "I can't answer that question, Senator." He said, "Okay. By the nature of an ongoing investigation?" And you said, "Yes." When you said there was an ongoing investigation on April 26th, you really didn't know whether there was one or not, right?

JUSTICE VERNIERO: My understanding was that there was an investigation going on.

MR. CHERTOFF: And where did you get that from?

JUSTICE VERNIERO: My instruction to Paul Zoubek to conduct one.

MR. CHERTOFF: When you said go find out what happened, right?

JUSTICE VERNIERO: Well, those were not my exact words, and I would never be that flip to a subordinate, Mr. Chertoff. I instructed Mr. Zoubek to get to the bottom of the issue, to find out what happened and why. Maybe investigation was a term of art, a word that was not the correct word or not the best word to use, but that's what I had in mind--

MR. CHERTOFF: Well, wasn't the reason--

JUSTICE VERNIERO: --that there would be an investigation, and as far as I know, and I might have spoken to Paul prior to my testimony. I do not recall, the investigation was pending at the time I answered Senator Gormley's question.

MR. CHERTOFF: Wasn't the reason you used that answer because you understood from your prior experience testifying before the Legislature that whenever the Attorney General says there's an ongoing investigation, can't comment, that basically stops the question?

JUSTICE VERNIERO: No, I don't recall that going through my mind.

MR. CHERTOFF: Isn't it a fact that--

JUSTICE VERNIERO: You get--

MR. CHERTOFF: Isn't it--

JUSTICE VERNIERO: I'll take that as a compliment that I was that careful in my wording. It was a term of art. It was-- I said go look into it. I assumed it was an investigation. Perhaps it was something less than that. But all I meant by my response to Senator Gormley was, I can't answer the

question, fair enough. The reason I can't answer the question is that the investigation into the answer is pending.

MR. CHERTOFF: Are you saying you weren't careful in considering what answers you'd be giving before the Committee on April 26th?

JUSTICE VERNIERO: I was careful, but I was not as careful as you're suggesting -- that I was selective.

MR. CHERTOFF: Were you prepared?

JUSTICE VERNIERO: You're suggesting that I was selectively using words that would cut off additional lines of questions. And that was not my approach to this Committee.

MR. CHERTOFF: Well, you prepared for the hearing, right?

JUSTICE VERNIERO: I did.

MR. CHERTOFF: You met with Mr. Zoubek, right?

JUSTICE VERNIERO: Do I remember Mr. Zoubek?

MR. CHERTOFF: You met with Mr. Zoubek, right?

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: And in connection with your talking with Mr. Zoubek -- in fact there was a point in time that he directly asked you about whether there had been a meeting concerning consent to search data that he had heard about from Colonel Dunlop, right?

JUSTICE VERNIERO: I don't understand your question.

MR. CHERTOFF: At some point in time before the hearing, Mr. Zoubek asked you had there been a meeting where the subjects of the Gilbert memo had been discussed, right?

JUSTICE VERNIERO: I don't recall that. I understand that's his testimony.

MR. CHERTOFF: And then there was a later point in time that Mr. Zoubek came to you and said that he had spoken -- he had looked at Mr. Rover's box, and Mr. Rover's box contained a lot of documents that had come from the State Police that were in that box, right?

JUSTICE VERNIERO: I don't recall, but I understand that's his testimony.

MR. CHERTOFF: And your response to him is, "Is there anything in that paperwork that shows he came to me," right?

JUSTICE VERNIERO: I don't recall saying that. I may have, which would have been a human reaction, again, keying off of Paul's -- his mental state at finding this information. I think it would have been natural for me to say, "Well, was I told of this? Was I given this information," as a way of suggesting that perhaps there was something that I should have received, but I didn't receive it.

MR. CHERTOFF: Actually, I don't think his testimony was that you said, "Was I told about it?" I think his testimony was that you said, "Is there anything on that paperwork that shows that I got it?"

JUSTICE VERNIERO: I don't recall the exact words. I don't even recall the conversation. But as I'm trying to reconstruct it for you this afternoon. What would have gone through my mind is, "Hey, has anyone kept anything from me that I should have seen?" And the way to answer that question is, whose names are on the documents? What's the chain of command? What's the chain of custody? It was a very natural question.

MR. CHERTOFF: And then did Mr. Zoubek also tell you before the hearing, in preparation for the hearing, that he had spoken to Mr. Fahy and Mr. Rover, and they remembered a meeting you had attended where consent to search statistics were discussed?

JUSTICE VERNIERO: He may have. I don't recall it.

MR. CHERTOFF: And all of this information-- Well, was Mr. Zoubek talking to you in an effort to kind of prepare you for questions that might arise in the hearing about when certain information was being turned over?

JUSTICE VERNIERO: I don't recall why he was saying these things.

MR. CHERTOFF: Are you saying when you went into this hearing, you had no idea you were going to be asked about that passage on Page 23 that says that some of this important information had not been previously provided to the Attorney General by the State Police?

JUSTICE VERNIERO: Oh, I presume that I was going to be asked about the entire report, including that page.

MR. CHERTOFF: But you knew there was going to be a hot reaction to the suggestion--

JUSTICE VERNIERO: Well, I--

MR. CHERTOFF: Let me finish, please, Mr. Justice.

JUSTICE VERNIERO: Yes. I'm sorry.

MR. CHERTOFF: You remember-- And there was going-- You knew there would be a hot reaction to the suggestion in the report -- even

watered down as it is here, that there was relevant information that had been withheld by the State Police from the Attorney General.

JUSTICE VERNIERO: If I may just turn to Page 23.

MR. CHERTOFF: Sure.

JUSTICE VERNIERO: Now, your question is?

MR. CHERTOFF: My question is, did you anticipate that there would be pointed questioning concerning the suggesting or the allegation that there was relevant material and analysis that had been withheld from the Attorney General's Office by the State Police?

JUSTICE VERNIERO: I'm sure I would have assumed that Page 23 would have garnered some questions. Now, of course, I believed at the time, and I think this is still accurate, that what Page 23 was referring to was the so-called blue binder. So I'm not sure, much beyond that, what I would have had to prepare for. I gather your question is how did I prepare to respond to potential questions to Page 23. Is that your question?

MR. CHERTOFF: My question to you is and -- because you raised the question of whether your use of the investigation was a calculated way to deflect attention from the issue, my question is, going into the hearing, were you aware that the question of what the State Police turned over and whether it was going to be a hot issue--

JUSTICE VERNIERO: Was I aware of that?

MR. CHERTOFF: Did you anticipate it?

JUSTICE VERNIERO: I'm not sure I thought about it. I mean, the whole issue was a "hot issue," to use your phrase. Every page of this report

was a landmark report. So I don't know if I gave any more or less time to Page 23 as I did to any other page.

MR. CHERTOFF: On the Saturday before you went--

Let me withdraw the question.

Is it your testimony, therefore, that you didn't-- Did you role-play? Did you have like a moot court or something before your testimony on April 26th, where people acted out in the parts of Senators and asked questions?

JUSTICE VERNIERO: You're not going to ask me who played the Senators, are you?

MR. CHERTOFF: No, we're not going to do that. (laughter)

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: And in connection with that moot court, I guess we can call it, did anybody ask you questions concerning who didn't turn over documents as alleged on Page 23?

JUSTICE VERNIERO: I don't recall.

MR. CHERTOFF: And is it your testimony that you're--

Let me take back the question.

When Mr. Zoubek came in, he told you about the documents found in Rover's box, and he told you that Fahy and Rover said that there had been a meeting where consent to search data was discussed. And he told you that Dunlop said that there was people who remembered such a meeting. Did you understand all of this to be designed to put you on notice so that you'd be prepared to deal with this issue of whether documents were withheld when you got before the Senate?

JUSTICE VERNIERO: It could have been. I don't recall Paul saying those things specifically for the purpose of preparing me for the hearing. He may have.

MR. CHERTOFF: On the Saturday before the report was issued, which I believe was April 17th, did you have a meeting with the Governor and other people and Mr. Zoubek about the draft report?

JUSTICE VERNIERO: We did. I don't recall whether it was that Saturday prior to its release. We did have a meeting.

MR. CHERTOFF: And Mr. Zoubek indicated that it was the next to last draft that would have been shown to the people in the meeting, which we have as the draft of April 16th. And I take it you have no reason to disagree with that.

JUSTICE VERNIERO: No, that sounds about right.

MR. CHERTOFF: Do you remember the reaction at the meeting of the people, being that they were upset and disturbed about the consent to search data in the report?

JUSTICE VERNIERO: I don't recall any specific concern on that issue. I recall just general reaction. This was a, as I say -- a fairly significant report with very firm conclusions that were inconsistent with the conventional thinking at that time and inconsistent with the assurances that we had received from State Police. So the whole report invoked a concern on the part of the Governor and the other participants.

MR. CHERTOFF: And you read the draft before you sent it over, right?

JUSTICE VERNIERO: If it's the draft-- Well, I don't know the exact drafts that I read. My recollection is, I read at least the last draft prior to becoming final, the penultimate draft.

MR. CHERTOFF: Right.

JUSTICE VERNIERO: I don't recall whether that was the draft that was sent over and discussed at that meeting.

MR. CHERTOFF: And you would not have sent over a draft-- You would not have sent over a draft to the Governor that you had not -- were not comfortable about the accuracy about.

JUSTICE VERNIERO: Again, I don't recall the exact draft. That's a safe assumption on my part -- on your part, but I don't recall it.

MR. CHERTOFF: Do you remember in the draft on Page 3 -- the April 16th draft, it says: "The most startling evidence of such a disparate treatment comes in the form of statistics that were compiled by the State Police as part of an internal audit, one not previously disclosed to the Attorney General's Office or the Division of Criminal Justice, which shows that eight out of every ten of the consent searches conducted by troopers assigned to the Moorestown and Cranbury stations involved minority motorists." Do you remember that passage?

JUSTICE VERNIERO: I don't.

MR. CHERTOFF: Now, do you know whether that passage-- Well, the passage plainly relates to the Gilbert data and then the 1997 and '98 data that follows that regarding consents to search, right?

JUSTICE VERNIERO: I'll take your representation on that.

MR. CHERTOFF: Well, you reviewed this, and it went out under your imprimatur. Did you not know what this passage related to when you sent it over to the Governor's Office?

JUSTICE VERNIERO: I don't have the passage in front of me. May I have that so I could better respond?

MR. CHERTOFF: Sure, it's OAG-3034 -- Z-19. And I'll give you a moment to find it.

JUSTICE VERNIERO: Page 3, you had said?

MR. CHERTOFF: Well, the best way to do it is, if you look at the numbers on the bottom, OAG-3034 is the best way to find the specific page.

JUSTICE VERNIERO: 3034. No, my document is not numbered in that fashion. My document is 2619, 2625. There is no 3034.

SENATOR FURNARI: The other side of the page, bottom left.

JUSTICE VERNIERO: No, I have-- On the other side of the page, I have SP-12.

MR. CHERTOFF: SP-12, 226--

JUSTICE VERNIERO: SP-12-- Oh, wait, here it is. I'm sorry, 3034, yes. Okay.

MR. CHERTOFF: Now, you have-- You see, at the very top is the--

JUSTICE VERNIERO: The most startling-- Okay. Yes.

MR. CHERTOFF: Right. Now, this passage relates to the consent search data initially compiled by Sergeant Gilbert and then compiled thereafter in '97 and '98, correct?

JUSTICE VERNIERO: I have no way of confirming that for you as I sit here. I can't verify that. I'll accept your representation.

MR. CHERTOFF: Well, I-- Do you know when-- When you saw this passage when you looked at the draft, did it leap out at you as a serious accusation of misconduct by the State Police?

JUSTICE VERNIERO: I don't recall. As I say, this entire document was leaked out, so to speak. I can't say that I spent more attention to one paragraph as I would on another, particularly in connection with a draft -- a work product. I just don't recall what my reaction was when I read that paragraph.

MR. CHERTOFF: But, Justice Verniero, on its face, this paragraph says that the most significant evidence was not disclosed by the State Police. Is there any conceivable way that could not be viewed as a very, very serious allegation being made on the part of the authors of this draft?

JUSTICE VERNIERO: If I had focused on it, I might have had that reaction. I don't recall what my reaction was when I read this draft report three years ago.

MR. CHERTOFF: Did the Governor focus on it?

JUSTICE VERNIERO: I don't recall.

MR. CHERTOFF: We had testimony yesterday that the Governor focused on this issue with respect to the question of whether information had been withheld from her Attorney General by her State Police. Did she have any reaction to it?

JUSTICE VERNIERO: I recall the Governor's overall reaction was that she was concerned that the various assurances that she had received or

that I had received from State Police, that racial profiling was not a problem, had turned out to be inaccurate.

Now, in fairness to the State Police, they might have believed, when they-- They might have believed their own conclusions, their own assurances when they gave them to me. I'm not suggesting otherwise.

MR. CHERTOFF: But putting--

JUSTICE VERNIERO: But we had been led to believe that racial profiling was not a problem. And here is a report that had reached an opposite conclusion. That's what I remember the Governor was predominantly concerned about. Would she have had a concern about this paragraph? That sounds right to me, I just don't have a recollection of it.

MR. CHERTOFF: And the basis for reaching the opposite conclusion were statistics that the State Police had generated that they claimed they had turned over.

JUSTICE VERNIERO: I disagree with that, with all respect. And I've heard this criticism that this report reflects no more than old numbers that we already had. That's not an accurate description of this report and its conclusions. This report reached its conclusions based on some old data, but many new data and new information -- the falsification, which was a-- As I say, that was the key turning point. There were interviews and direct testimony, I believe, with actual troopers who began to give us direct testimony as to racial profiling. There was data and information that were post-*Soto* that we were receiving for the first time as part of this report, as I recall.

So it was a combination of factors that allowed us to reach the conclusions in this report. It was not simply old data.

MR. CHERTOFF: Well, let's go over that for a moment. Did you know that Christine Boyle, from the Department of Law and Public Safety, testified that with respect to the numbers, the actual numerical charts, that was really just a State Police compilation of data?

JUSTICE VERNIERO: I'm not familiar with that testimony.

MR. CHERTOFF: And with respect to the issue of anecdotal information coming from troopers, you know from the memo -- July 29th, 1997 memo -- which was directed to you, that there were minority troopers back in 1996 who were making allegations of profiling. So that was certainly old news, right?

JUSTICE VERNIERO: As I say, I do not recall specifically reviewing the appendices of the July 1997 memorandum. So I can't answer it anymore than I've already answered it.

MR. CHERTOFF: And as far as the falsification information that had been collected by Lieutenant Sachetti in the Troop D audit, he testified the other day that none of that was actually in the interim report. So what is the new material in the interim report in 1999 that didn't exist in 1997 and 1996?

JUSTICE VERNIERO: You are grossly understanding the significance of falsification. That was a real turning point in our thinking, and there may not be actual numerics disclosing falsification, but there is a clear indication in this report that falsification data -- a reliance on that data -- is part of the report's conclusion. You can't understate it, at least, that's from my perspective. That was one of the big things that occurred late in my tenure

that changed our thinking and changed our focus. And it's embodied in the conclusion of this report.

As I recall, there is also data in here that is post-*Soto* data, that is fresh data. I think it's '97 or '98 data. There's '98 data, itself, in this report. So if your premise of your question is everything in this report was prior to 1998, I think that premise is belied by the fact that we cite to '97-'98 data, as I recall.

MR. CHERTOFF: Actually, my premise is that everything in the-- That had-- Although the report was assembled by the State Police Review Team out of your office, all the content actually comes from work the State Police were doing. The 1996 compilation, the 1997 compilation, the 1998 compilation, the Troop D audit, all of these were activities compiled and assembled by the State Police.

My question is: What did the Review Team add that wasn't present if someone had looked at the data in '96, '97, and '98 as it was being assembled?

JUSTICE VERNIERO: It was the change of focus. It was the way in which we have -- we came to appreciate the significance of the data itself.

MR. CHERTOFF: Is it fair to say that it was -- that it was only in February 1999 that someone in the Office of the Attorney General really seriously asked for it? Is that what changed it?

JUSTICE VERNIERO: I've indicated what changed it, and it's a long answer, and if you'd like, I'll repeat it. It was a change of focus. It was a change in our thinking. It was an evolution of thought. It was an evolution of the very definition and essence of racial profiling. It was keyed principally

on falsification, but there were other issues as well -- direct testimony from troopers.

All of those factors evolved and came together in a form, which was expressed in this report.

MR. CHERTOFF: And the time that you became personally involved in putting together or demanding that this material be put together, in terms of a study of racial profiling, was sometime after February 10th, 1999, when you directed Mr. Zoubek to do that, right?

JUSTICE VERNIERO: That's when I formally asked him to do it. As I say, the precursors of -- of some of this report was the Troop D audit.

MR. CHERTOFF: And the Troop D audit was being run by Mr. Zoubek, right?

JUSTICE VERNIERO: That's my recollection.

MR. CHERTOFF: And again, you told us prior to February 1999 you never asked the State Police for any raw statistical data that they were assembling concerning stops or consents to search, right?

JUSTICE VERNIERO: I don't recall.

MR. CHERTOFF: Now, when the-- There was discussion concerning this draft and the issue of--

Well, then let me ask you this question. When it says, "The most startling evidence of such disparate treatment comes in the form of statistics that were compiled by the State Police as part of an internal audit--"

JUSTICE VERNIERO: Are you reading from a page?

MR. CHERTOFF: Yes, I'm reading from the page we have before us.

JUSTICE VERNIERO: Okay.

MR. CHERTOFF: “One not previously disclosed to the Attorney General’s Office or the Division of Criminal Justice,” wouldn’t it be fairer to say, not previously asked for by the Attorney General’s Office or the Division of Criminal Justice?

JUSTICE VERNIERO: I’m sorry, what line are you on?

MR. CHERTOFF: Line 3. “Not previously disclosed--”

JUSTICE VERNIERO: Not previously-- Oh, okay.

MR. CHERTOFF: “--to the Attorney General’s Office.” Wouldn’t it be more accurate to say it was not previously requested by the Attorney General’s Office?

JUSTICE VERNIERO: I -- I don’t want to get into the position of speculating what would be more accurate or not accurate in a paragraph, which, ultimately, did not make its way into the final report.

MR. CHERTOFF: Didn’t it not make its way into the final report, because after the meeting with the Governor, when Mr. Zoubek focused on this, he realized that this mischaracterized the facts, and therefore, he watered it down?

JUSTICE VERNIERO: I don’t know if he watered it down at all. I know Paul, as I was in all my work at the Attorney General’s Office, was very concerned about accuracy in all respects. We would not want to publish a significant report unless it were accurate. So, if he went back after our meeting and decided to revise any part of this report for accuracy’s sake, I would -- I certainly would have encouraged that, and I assume that’s what happened. But, as I say, I don’t recall it.

MR. CHERTOFF: You perceive a difference between saying that something wasn't previously disclosed to the Attorney General's Office and saying something wasn't previously requested by the Attorney General's Office? There's a pretty big difference there, isn't there?

JUSTICE VERNIERO: Well, there's a difference in meaning, yes.

MR. CHERTOFF: The difference is, in one place the responsibility for the disconnect is placed on the State Police. In the other, the responsibility for the disconnect is placed on the Attorney General's Office.

JUSTICE VERNIERO: I don't think we were trying to pin responsibility on anyone. We were trying to deal with a situation that was terribly complex, that had really reached an acute level, at this point in time in April. We were laboring under a deadline that the Appellate Division had essentially set for us, and we wanted to make sure our -- our report was accurate.

I cannot sit here, Mr. Chertoff, and testify as to why we used this word or that word. I cannot testify whether I have focused on one paragraph or another. I had enormous confidence in Director Zoubek and those who actually wrote this report that it would accurate in all respects.

MR. CHERTOFF: So your position is, as far as you're concerned, the interim report did not attempt to fix--

I'm going to move to another question. As far as you're concerned, did you ever suggest or indicate that the State Police bore responsibility for any failure of information getting into the hands of the Attorney General's Office?

JUSTICE VERNIERO: That was one of the things that I had asked Paul Zoubek to look into. That's why I said, Paul, you should look into the, you know, the so-called blue binder issue.

MR. CHERTOFF: And you took no position on the merits. You just said, "look into it," but you didn't take a position or suggest that the State Police were somehow responsible for a disconnect between the information getting from their files into the files of the Office of the Attorney General?

JUSTICE VERNIERO: I don't recall if I took a position on the merits. At that point in time, again keep in mind, my approach to the State Police had changed. Prior to 1998, I gave them the benefit of the doubt, because I thought that they deserved it. And after 1998, upon learning of the falsification possibilities and other issues, I began to be less confident in the assurances that I was receiving for State Police.

But I don't recall whether I was pointing fingers on the "merits" at that particular time.

MR. CHERTOFF: Now, let me ask you this, again with respect to this issue. Same exhibit, which is before you, but this time, let's turn to Page 3189, which is another April 16th draft.

JUSTICE VERNIERO: Okay, this is a different document or the same?

MR. CHERTOFF: Same document -- OAG-3189, that page.

JUSTICE VERNIERO: Okay, 3189, okay.

MR. CHERTOFF: You see there's a table there, "motor vehicle stops by Cranbury and Moorestown Stations, 30 sample days."

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: "1995 and 1996."

JUSTICE VERNIERO: Correct.

MR. CHERTOFF: Did you tell Mr. Zoubek to take this out of the draft report?

JUSTICE VERNIERO: I don't recall that. I understand that's his testimony, however.

MR. CHERTOFF: Did you tell him, because of the reference to the fact that this was pursuant to a request made by the Department of Justice, that you wanted it out of the report?

JUSTICE VERNIERO: I may have, in the -- in the connection of investigative privilege, suggested that this be removed. I don't recall it specifically.

MR. CHERTOFF: What investigative privilege?

JUSTICE VERNIERO: The fact that this might have been subject to a -- an investigation of either the Troop D audit or something that the-- If I'm not mistaken, at this point in time, DOJ had formalized their inquiry into an investigation, and I might have suggested that this might be subject to an investigative privilege. I don't recall an extended conversation on it.

MR. CHERTOFF: Well, this was the Department of Justice inquiry, which Mr. Rover had supposedly been providing information with respect to. Remember that?

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: And your--

JUSTICE VERNIERO: At some point, though--

MR. CHERTOFF: --testimony is you took this out, because you thought there was an investigative privilege?

JUSTICE VERNIERO: My testimony is, I don't recall the conversation. I recall Mr. Zoubek's deposition, and you've asked me, to the best of my recollection, what I might have had in mind. I don't recall saying it at all. You're asking me to piece together what might have occurred. What might have occurred is that I suggested to Paul that, because the DOJ had now formalized their inquiry into an investigation, that there might be some privilege attached to it. I'm assuming that Paul deleted the reference. He agreed with that or didn't disagree.

But my testimony is, I don't remember. Everything that I've said is my best recollection at trying to piece it together.

MR. CHERTOFF: If Mr.-- Mr. Zoubek testified, I believe in his deposition, that he actually wanted to keep this in, and you wanted it out, because you didn't want to disclose the substance of the investigation.

Does that jog your memory?

JUSTICE VERNIERO: No, it does not.

MR. CHERTOFF: Are you in a position to disagree with that testimony?

JUSTICE VERNIERO: I'm in a position to say I don't recall it one way or the other.

MR. CHERTOFF: Now, you'd agree with me that if we look at, for example, this passage here in the draft, if we look at the July 29, 1997, memo, which we've talked about earlier involving Moorestown, and if we look at the January 1997 letter to DOJ which you struck out, that there are a

number of indications in the record that there were statistical studies and data collected by the State Police in 1995 and 1996, which wound up in this interim report.

Is that fair to say?

JUSTICE VERNIERO: I've heard that characterization. Unless I went through and verified it, I don't want to characterize it. I'll accept your characterization.

MR. CHERTOFF: When you were asked on May 5th -- in the hearing here -- about the length of time it took--

JUSTICE VERNIERO: Do you have a page?

MR. CHERTOFF: Yes.

JUSTICE VERNIERO: Am I finished with this document?

MR. CHERTOFF: I think-- Well, I think so, yes.

JUSTICE VERNIERO: Okay.

MR. CHERTOFF: I think when we--

JUSTICE VERNIERO: Do you have a page for-- You said May 5th?

MR. CHERTOFF: May 5th, Page 65.

JUSTICE VERNIERO: Sixty-five, okay.

MR. CHERTOFF: When you were asked about the length of time it took to get to the point of the interim report by Senator Matheussen, you answered at Page 65-- The question was, "Why that amount of time? It was some two years -- two and one-half years." And you said, "Well, the underlying data that was used to support the report, we had actually begun

collecting a year ago, thereabouts, as a result of the Turnpike incident that occurred in April of last year.”

Would you agree with me that, in fact, the underlying data in the report was collected as far back and was being collected as far back as 1995, 1996, and 1997? Well, earlier than a year before.

JUSTICE VERNIERO: That is not the data that I was-- As I recall, that is not the data that I was referring to in that passage. I was referring to the Troop D audit.

MR. CHERTOFF: There is no mention of the Troop D audit data in the interim report.

JUSTICE VERNIERO: There is no specific mention of data. There's no numerals to it, but that was my shorthand reference of referring to the falsification investigations, which were the Troop D audit.

MR. CHERTOFF: I'm sorry, is there anything-- And do you have an entire copy of your testimony before you? I think you do.

JUSTICE VERNIERO: I do, yes.

MR. CHERTOFF: Okay. So I don't want to be unfair. Would you find me anything in the preceding question or a couple of questions earlier that suggested to you that the reference to the underlying data that was used to support the report was restricted to the Troop D audit involving falsification?

JUSTICE VERNIERO: I don't understand your question.

MR. CHERTOFF: Well, in other words, my-- You're interpreting the word data in a very restrictive way. In your mind, you said it applied only

to the Troop D falsification information. That's the data you're referring to, is that what you're telling us?

JUSTICE VERNIERO: That's correct.

MR. CHERTOFF: But if you look at the interim report, there is not a scintilla of data from the Troop D audit report in the interim report.

JUSTICE VERNIERO: Yeah, I may have been mistaken when I referred to data in that sense. What I-- What I was referring to was the fact that after the Turnpike incident we had begun in a very formalized way, by virtue of the Troop D audit, to review allegations of falsification, which were tantamount to racial profiling, and that that process had actually predated the February 1999 review team.

MR. CHERTOFF: But then you came back to the same point again at Page 85 of the same hearing. And at that point it's in response to questions from Senator Zane, and you say at Page 85, "As I indicated last week at this Committee, the whole issue of profiling became crystallized and uppermost in my mind at around the time of the Turnpike incident of last year."

JUSTICE VERNIERO: Is that a different day?

MR. CHERTOFF: Same day.

JUSTICE VERNIERO: Okay.

MR. CHERTOFF: Page 85.

JUSTICE VERNIERO: Yes, I see it.

MR. CHERTOFF: Middle of the page.

And you go on to say, “And I think it is fair to say, particularly since we relied, in part, on this data that we gathered last year, that I had been looking at racial profiling for at least the year.”

Again, when you talk about the data that you gathered last year, were you suggesting that the gathering of data here, again, only began in the last year?

JUSTICE VERNIERO: In -- in my mind, and -- and I was obviously inarticulate in my response to Senator Zane, it was the information and data in connection with the falsification, that we had begun to look at the various barracks along the Turnpike and finding for the first time that there might be falsification.

Now, there is a reference, I believe, somewhere in the interim report to falsification and even falsification data. So the best that I could remember at this point, in trying to reconstruct it, is that that’s what I had in mind.

MR. CHERTOFF: Well--

JUSTICE VERNIERO: Now, I might have been mistaken that this data was not actually formally expressed in terms of numbers or charts in the interim report, but that was the gist of my thinking when I responded to Senator Zane.

MR. CHERTOFF: And then it came--

JUSTICE VERNIERO: I also had a belief, and maybe it was inaccurate at the time-- I -- see I used the word “we.” Again, that was a very unartful way-- At this point in time in my tenure, “we” did not refer to State Police. “We” referred to the Office of Attorney General, and so when I said

“we” were doing X, Y, and Z, it was more of a closed definition of the review team and persons within the OAG.

In looking back, that was -- that was not the best way of responding. It was inarticulate, and I regret that. And I apologize to Senator Zane, but what I had in mind--

MR. CHERTOFF: Let me-- Before we finish, let me--

JUSTICE VERNIERO: --was the -- the falsification.

MR. CHERTOFF: And it came up again later in the same hearing.

JUSTICE VERNIERO: And, Mr. Chertoff--

MR. CHERTOFF: Page 203.

JUSTICE VERNIERO: --my answer -- my answer will be the same. That was my mind-set. That was my frame of mind.

MR. CHERTOFF: Well, let's get it into the record, because I want to give you an ample opportunity to respond. On Page 203, it was Senator Girgenti, now, and you say, “Well--”

At Page 203, same day, May 5th.

JUSTICE VERNIERO: Yes.

MR. CHERTOFF: And you say, “As I indicated last week and I believe earlier, the data that was included in the report recently issued was gathered -- we had began that process almost a year ago.”

JUSTICE VERNIERO: That's-- That's the steps that were taken in the aftermath of the Turnpike shooting. That's what I was referring to.

MR. CHERTOFF: So there again, the data referred to as being included in the report, you, in your mind, were limiting that to just the falsification data, not the rest of the data.

JUSTICE VERNIERO: Well, it was falsification and the other information we were getting out of that. It wasn't just data. It was interviews with troopers and things of that nature. I mean, it was an investigation.

My understanding -- I could have been mistaken at the time -- my understanding was that it was not just that they were looking at records in the Troop D audit. They were looking at records. They were speaking to supervisors. I used data in the more expansive sense of data and information--

MR. CHERTOFF: But you--

JUSTICE VERNIERO: --and it was that data and information that we began-- Again we -- a very limited audience there, not State Police, we meaning Division of Criminal Justice or OAG -- we had begun that process almost a year ago, and I think that was accurate. This was May 5th, and that process began -- maybe it was June, as you've indicated, so it was a little bit less than a year. That's why I said maybe a year. I wasn't sure of the exact date.

MR. CHERTOFF: So again, for the third time, when you talk about having begun collecting the data only in 1998, in your mind you were restricting that to the falsification data and not the more general statistical data which is all over the interim report?

JUSTICE VERNIERO: I was referring to the things that I knew my office was doing at that time.

MR. CHERTOFF: And then--

JUSTICE VERNIERO: And it was falsification. It might have been-- I might have remembered -- again, this is going back now -- I might have believed that in addition to the falsification, there might have been some data retrieval from OAG at that point.

But the gist of what I was saying was-- Putting aside the exact words I used, the gist of what I was saying was -- and I believe this is accurate; it might have been unartful, but I believe it was accurate -- was that we had begun the process of retrieving the information that we needed in order to reach the conclusion that some troopers were falsifying records.

And that conclusion, or that possibility -- we never reached a formal conclusion, because it was part of an investigation -- was the turning point in our thinking and very much a part of the result of this report.

MR. CHERTOFF: Well--

JUSTICE VERNIERO: Or very much a part of what led to this report.

MR. CHERTOFF: And here is the last instance of this I want to cover for just a second. And this is finally the next day, May 6th, and it's starting in Page 7. And I think here the--

JUSTICE VERNIERO: Page 7?

MR. CHERTOFF: Yes, May 6th.

JUSTICE VERNIERO: Okay. I'm sorry.

MR. CHERTOFF: And here I don't think there can be any ambiguity that the question was not limited to falsification.

JUSTICE VERNIERO: Okay. Page 7, yes.

MR. CHERTOFF: Page 7, Senator Lynch, "And armed with the verdict in *Soto* and with the interest of the Justice Department, did that trigger in your mind the need for you to do some analysis of what was going on with stops as well as arrests?"

And you answered: "Well, I considered the process by which we were supplying information to be that kind of process. Obviously, neither the Justice Department nor my Office reached any conclusions until a period of time when we each were able to see the information, analyze it, and then make our various conclusions. In my case, the conclusions were issued in a report on April 20, and I'm still not exactly clear--"

Question: "But you didn't begin that study that's contained in that report on the issue of stops until after February 10, 1999."

You say, "Well, as I indicated yesterday--"

"Is that correct?"

You answer, "As I indicated yesterday, the data that is used in part and cited in the April 20 report we actually began gathering a year ago."

Now, was it not clear to you that the data there referred to not the data having to do with falsification, but stop data out of Moorestown?

JUSTICE VERNIERO: Well, it was my understanding that the falsification data, or the information relating to the falsification investigation, would have stop data on it. It depends on what form we were looking at that might have been falsified. If it was a--

MR. CHERTOFF: So here, again, you're limiting the term data to the falsification.

JUSTICE VERNIERO: If I may just finish.

If it were a consent to search form that was alleged to be falsified, it would have race, it would have information-- It would have all the information that would allow us to put together some sort of statistical analysis.

So, yes, that was the -- that was my frame of reference.

MR. CHERTOFF: So when you go on to answer further, you say, "It was data coming out of the Cranbury, Moorestown barracks. I don't know, as I sit here, if it was exclusively on arrests. It may have been other forms of data. It may have been stop-and-search data."

Nowhere do you mention that this was limited to falsification data.

JUSTICE VERNIERO: Well, I say again, I'm not sure, which is the last part of my answer.

MR. CHERTOFF: Now this is really my last -- almost my last question. Did you just tell us a moment ago that in connection with all of these answers, in your mind, you considered that or you understood that the falsification data or the falsification investigation did, in fact, involve the Cranbury and Moorestown stop data and arrest data and things of that sort?

JUSTICE VERNIERO: Well, I assumed that in the course of uncovering any allegations of falsification, because they were checking records with respect to race, there might be an ability to gather race information. I assumed that that might occur.

MR. CHERTOFF: But, in other words, as you say right here-- You're telling us that this answer on May 6th has to do with the falsification investigation, correct?

JUSTICE VERNIERO: It had to do with the things that we were doing post-April shooting.

MR. CHERTOFF: And the--

JUSTICE VERNIERO: As I recall, that was principally the so-called Troop D barracks. I also believed, at the time -- and as I say, I might

have been mistaken -- but I also believed at the time, that there was interviews between my office and State Troopers, and there was other forms of information that we -- we meaning OAG or Division of Criminal Justice -- had begun to form, begun to retrieve for the first time.

MR. CHERTOFF: We're wandering from my question--

JUSTICE VERNIERO: Okay.

MR. CHERTOFF: --which is this, did you tell us a moment ago, in connection with telling us that all of these references to data had to do with the falsification investigation only, did you tell us that you understood that the falsification investigation did involve the stop and search data and the other types of data at Moorestown and Cranbury, right?

JUSTICE VERNIERO: As I say here, I'm not sure. I said, it may have been stop data. It may have been search data. I'm not sure.

MR. CHERTOFF: But you knew that it related to Cranbury and Moorestown, right?

JUSTICE VERNIERO: Pardon me?

MR. CHERTOFF: You knew that the investigation of falsification was looking at Cranbury and Moorestown.

JUSTICE VERNIERO: As well as Newark, the other barracks from Troop D. I think Newark is Troop D.

MR. CHERTOFF: At any point in time, up to February 10, 1999, while you were aware of the falsification investigation, did you ever consider or consult with anybody to see whether any of the information that had been provided to the Department of Justice by Mr. Rover included false data?

JUSTICE VERNIERO: Well, after Mr. Zoubek became First Assistant -- and I don't recall the exact date -- I know that Paul took over the principal liaison role with the Department of--

MR. CHERTOFF: I have to stop you. I said before February 1999.

JUSTICE VERNIERO: Oh, before. I'm sorry, I misunderstood the question.

MR. CHERTOFF: In the period before February 1999, when you brought Mr. Zoubek in--

JUSTICE VERNIERO: No, I don't recall doing that, which doesn't surprise me, since, as I said in response to an earlier question, it was unverified at that point. The Troop D audit was ongoing and unverified.

MR. CHERTOFF: Did you even ask anybody to take a look to consider whether steps ought to be taken to correct information that had been sent to the Department of Justice up until February 1999?

JUSTICE VERNIERO: I don't recall.

MR. CHERTOFF: When you say you don't recall, does that mean it's possible that you did, or does it mean that, in fact, you never asked anybody to do that.

JUSTICE VERNIERO: I don't recall asking anyone to do that prior to 1999.

MR. CHERTOFF: I have nothing further.

SENATOR GORMLEY: We will take a 15-minute break, then Jo Glading questions, and then Norm Robertson.

**(RECESS)**

**AFTER RECESS:**

SENATOR GORMLEY: Be seated, please.

Jo, you're ready? (affirmative response)

We'll now resume the questioning.

Jo Glading.

MS GLADING (Senate Democratic Staff Counsel): Thank you, Mr. Chairman.

Justice Verniero, what is your understanding of what the Troop D audit found?

JUSTICE VERNIERO: I don't know if I ever learned the conclusion of the Troop D audit. The Troop D audit, as I recall, was started sometime after the 1998 Turnpike shooting had begun to uncover allegations of falsification of data or records.

I recall at the time we announced the indictment of Troopers Hogan and Kenna, I believe we were asked and said publicly, at the time, that there were in the ballpark of 10 other troopers whose records we were reviewing or might be questioning, but I don't recall the outcome of the Troop D audit.

MS. GLADING: So you don't recall it finding widespread race-based records falsification?

JUSTICE VERNIERO: I don't.

MS. GLADING: Okay.

JUSTICE VERNIERO: I don't recall the outcome of it.

MS. GLADING: Do you recall, by February, there being conclusive results regarding one trooper that approximated the offenses that were committed by Troopers Hogan and Kenna?

JUSTICE VERNIERO: I don't remember that.

MS. GLADING: Did anybody ever mention to you that it had come up with at least one trooper whose level of wrongdoing approximated that of Troopers Hogan and Kenna?

JUSTICE VERNIERO: They might have. I don't remember it.

MS. GLADING: Was there any discussion about holding off on the falsification indictment to include additional troopers?

JUSTICE VERNIERO: I don't recall. As I said earlier, the -- at the March meeting, I was advised that the Hogan and Kenna investigation was complete, and I proceeded for the reasons that I enunciated. I don't recall anyone suggesting that we either hold up or accelerate the Hogan and Kenna indictment because of any other trooper.

MS. GLADING: Okay. When you were testifying earlier, you said at the time of the falsification indictment you may have talked to the press office and asked them if they thought the press would have any interest in this.

JUSTICE VERNIERO: My testimony was, once we made the decision to go forward with the indictment and to release it, it would have been sort of the ordinary occurrence for me to then talk to the, you know, press persons and have them set up whatever needed to be set up in order to release the information.

MS. GLADING: Yeah. Naturally, I wrote down what you said. You said, you may have asked the press office if they thought there would be any interest in this. That was--

JUSTICE VERNIERO: I-- I might have--

MS. GLADING: Was there any doubt in your mind that there would be extraordinary interest in this?

JUSTICE VERNIERO: Oh, no. I believe I said that in my answer, that it was pretty clear that we could not-- I think my phrase was we cannot slow dance to a press conference. I knew we were going to have a press conference, or I was virtually certain, which is why there was no point to try, you know, just a press release or a press availability. I believe that was my testimony in context.

MS. GLADING: Let me ask you if--

JUSTICE VERNIERO: I can't hear you.

MS. GLADING: Yeah, I can't either.

If you could put W-27 in front of you.

JUSTICE VERNIERO: Yes.

MS. GLADING: That's the April 22nd memo by George Rover.

JUSTICE VERNIERO: Okay. These aren't in any order, so bear with me. Okay, I have it.

MS. GLADING: Let me just wait for them to get it. This is that memo that went to you that was written by Mr. Rover that outlined the consent to search issues. I just want to clarify something you testified to earlier. There's a paragraph on Page OAG-872 that discusses the Maryland agreement in some depth. It indicates that as a result of the finding in

Maryland, the Maryland State Police and a group of plaintiffs entered into a consent order. The order not only required the Maryland State Police to enact certain policies relating to traffic stops, but also allows the plaintiffs to monitor Maryland State Police stop practices for the next two years, and permits plaintiffs to go into court to compel any additional changes that it believes are necessary to carry out the spirit of the order.

You testified earlier that private litigation, or litigation with private litigants, are settled for all kinds of reasons, but this is a pretty extraordinary settlement with private litigants, wouldn't you agree?

JUSTICE VERNIERO: I have to surmise that it was significant from Maryland's perspective, and this was the Maryland State Police, and they were obviously-- This was-- I-- I just have to assume it was as important to Maryland as it would have been for New Jersey.

MS. GLADING: So when there were discussions about how New Jersey's numbers were comparable to Maryland's, and you had already received this memo and this information about the Maryland settlement, the fact that it was private litigation in Maryland wasn't really an issue, was it?

JUSTICE VERNIERO: Well, it was an issue in the sense that, as I indicated, private litigation is often set off for different reasons. I'm not aware of the exact language in this particular consent order, whether there was an admission of liability or error. I was--

MS. GLADING: No. The point is, though, in this consent order it-- Maryland State Police apparently had to restructure significant parts of their operations. That's a pretty significant consent order, right?

JUSTICE VERNIERO: I have not reviewed, to my knowledge -- I have not reviewed the Maryland consent order, so I don't want to characterize it.

MS. GLADING: But you reviewed this at the time, right?

JUSTICE VERNIERO: Well, as I indicated, I have a recollection of receiving this memo, and I might have flipped through it. The note to Mr. Waugh indicating do we need another meeting is sort of a signal from me that perhaps we should discuss it. I don't recall reviewing every aspect of these attachments at the time. I might have. I just don't remember.

MS. GLADING: I want to clarify something else in your earlier testimony.

JUSTICE VERNIERO: Yes.

MS. GLADING: You testified that at the May 20th meeting, the Justice Department had not asked for consent to search data yet or had not asked for consent to search forms. Do you recall testifying to that?

JUSTICE VERNIERO: I recall-- I don't recall my exact testimony. My recollection is, I wasn't exactly sure what they had asked for at the time, unless maybe I was confused with the fact that we turned it over -- we turned over the information November 1997. They may have requested it at the time. I just don't remember.

MS. GLADING: No. No. I'm asking about the May 20th meeting. You testified that at that point consent to searches were not a major topic of discussion because the Department of Justice had not even asked for them at that point.

JUSTICE VERNIERO: I don't recall if it was a major topic of discussion. If I said that they hadn't requested it and they had, in fact, requested it, I was mistaken, and I stand corrected.

MS. GLADING: For the record, they had, and a memo went from George Rover to Colonel Williams on May 16th outlining all of the traffic search information that they were seeking and the 30 sample dates which had been agreed upon, which your office had analyzed and vetted.

JUSTICE VERNIERO: I stand corrected.

MS. GLADING: Since you knew the Department of Justice was looking for consent search data at that point, does that change your answer in terms of your characterization at the May 20th meeting?

JUSTICE VERNIERO: No. Because if they were looking for it at that point in time, I don't recall, as I sit here, whether that was a predominant discussion. As I indicated, I do not recall much about the meeting other than it was basically a status update. There was not a sense of alarm coming out of that meeting. I have to rely on the agenda to jog my memory. And if I'm not mistaken, and again this is something that I know only because of my review for these hearings, we did ultimately turn over the consent to search information to the Justice Department. I believe it was November of that year, although I don't know the exact date.

MS. GLADING: There's some mention-- There's a number of mentions of a violator survey in your January 3rd letter to Loretta King, 1997. You discussed the need-- You believed the time has come to conduct a trustworthy violator survey. There's discussions in January between Mr. Fahy and experts. They go-- In fact, they travel to visit with experts and talk with

them about conducting a violator survey. And you've indicated that you believe one was needed in order to measure the accuracy of the *Soto* numbers. Is that correct?

JUSTICE VERNIERO: That was the predominant thought in my office at the time, yes.

MS. GLADING: Okay. And in May of 1998, which is a year and a half later, Mr. Fahy writes you another memo, which we saw before, explaining the issue of a violator survey again. And he had testified that you had probably asked him for a memo on it, because it had come up. But this is right after the shooting. Do you recall why that issue came up then?

JUSTICE VERNIERO: I don't. Perhaps if I saw the memo, my recollection would be refreshed.

MS. GLADING: Okay.

JUSTICE VERNIERO: I have the document.

MS. GLADING: Okay. I'm looking for mine.

JUSTICE VERNIERO: Oh, okay.

MS. GLADING: Does that refresh your memory?

JUSTICE VERNIERO: It really doesn't. Obviously, it's addressed to me. I presume to have seen it and read it. The document does not indicate why it was written to me, so I can't recall whether this was something that Mr. Fahy had forwarded to me as part of his own updating of the situation or whether I had asked for it. I just don't recall.

MS. GLADING: Okay. Is your-- What is your understanding of a violator survey?

JUSTICE VERNIERO: A violator survey is-- My understanding was, at the time, that a violator survey would be a benchmark of -- a statistical benchmark of those motorists by race and, perhaps, other characteristics, who were violating the traffic laws during a given time frame.

MS. GLADING: Okay. And in your January 3rd letter to Loretta King, you said that the draft of the letter, Mr. Fahy wrote, "The time has come to conduct a violator's survey, because it's hard for you to believe that troopers would be intentionally violating rules that prohibit race-based traffic decisions." Is that right?

JUSTICE VERNIERO: Let me get that letter. I think I still have it here. That's F-26?

MS. GLADING: Yeah. And it's the second to last page.

JUSTICE VERNIERO: The violator's survey, as I recall, was something that the Department felt that it needed in order to properly verify and analyze particular data and information, as it related to the issue of racial profiling.

MS. GLADING: Actually, the testimony of other witnesses has been that New Jersey is the one that raised the issue of a violator's survey in that letter, your letter, and that the Department of Justice was very interested in advising and offering advice on the methodology for a survey.

JUSTICE VERNIERO: We invited DOJ's input. We actually wanted them to advise us, because it was, as I recall, a fairly unique project, and we needed some help on it. As I recall, we had some pretty good discussions, but for reasons unknown to me the project was never completed.

MS. GLADING: Okay. And a year and a half later you were researching it again and had asked Jack Fahy for some kind of a memo, apparently, in May of '98.

JUSTICE VERNIERO: Yeah. I say, I don't recall whether I had asked Jack for it. Maybe it was some follow-up that I had -- I just turned to Jack or someone on Jack's behalf and say, can I have an update, or maybe he gave me the update. As I say, I just don't recall what generated this document.

MS. GLADING: Okay. And it is fair to say that a violator's survey would be useful to the State as a method of explaining why minorities are being stopped at a disproportionately high rate?

JUSTICE VERNIERO: What I recall--

MS. GLADING: Or being searched at a disproportionately high rate?

JUSTICE VERNIERO: I recalled at the time that that's basically what the statisticians and consultants were telling us. Later on--

MS. GLADING: Who told you that?

JUSTICE VERNIERO: Pardon me?

MS. GLADING: Who advised you of that?

JUSTICE VERNIERO: Who advised me? No one advised me personally. I did not personally deal with the statisticians or consultants.

MS. GLADING: Okay. Who told Jack Fahy that when he put it into the letter?

JUSTICE VERNIERO: I don't recall. I don't know who Mr. Fahy was talking about. In-- My general recollection was that a violators survey was recommended for the purposes that I've enunciated, but that later on our

thinking had changed. And I believe, in the April 20th report, we referred to a population survey as opposed to a violator's survey. And I must confess, I am not expert in these matters. So what I was led to believe was that we needed a reliable benchmark, whether that was a violator survey or a population survey. As I say, I'm not an expert in those kinds of matters, but that was something that I thought was important and pursued it. And unfortunately, we never succeeded in obtaining one.

MS. GLADING: Okay. And the benchmark was needed because the State was refuting as junk science the survey that was conducted in *Soto* that had shown a 13.5 percent minority traffic population and a 15 percent minority traffic violator -- 15 percent of violators were minorities, right?

JUSTICE VERNIERO: I can't verify everything that you've just said, but the gist of it is correct, yes.

MS. GLADING: So a violator survey would have told you that there's a disproportionate rate of minorities being stopped, because minorities violate traffic laws, moving or nonmoving, at a disproportionate rate or more egregiously, right? They break more traffic laws or they do it worse?

JUSTICE VERNIERO: No. As I say, I don't know exactly how a violator survey works.

MS. GLADING: But what was in your mind when you put that in the letter to Loretta King?

JUSTICE VERNIERO: Well, this letter was drafted by, presumably, Mr. Fahy, maybe someone else. It was the position of my office that we needed a benchmark, a reliable benchmark, and the violator's survey seemed to satisfy that goal. And that's what I understand the consultants and

the statisticians were urging at the time. Later on, the project was not completed, and I believe--

MS. GLADING: Well, it wasn't started, was it?

JUSTICE VERNIERO: Oh, yes. It was started.

MS. GLADING: By whom?

JUSTICE VERNIERO: By my office.

MS. GLADING: You started conducting a violator survey?

JUSTICE VERNIERO: No. We started the process of trying to obtain a violator's survey. That process ran into some difficulties, as I indicated, and the project was never completed.

MS. GLADING: Are you still of the view that a violator survey is needed in order to show that minorities are stopped at a disproportionately high rate, because minorities break traffic laws more frequently or more egregiously than nonminorities?

JUSTICE VERNIERO: No. I don't accept the premise of your question, because I'm not an expert in these matters. My office believed that a violator's survey was appropriate in order to test the data in *Soto*. We had sought the advice of the Department of Justice. It agreed that perhaps that was something that was advisable. We had taken steps to try to complete a violator's survey. I believe Mr. Fahy, or someone in my office, had consulted with statisticians or experts. Later on in my tenure, as reflected in the April report, it was determined that a population survey would actually be a better benchmark.

MS. GLADING: Okay. And just so that we're clear about this, the State maintained the *Soto* appeal that it had brought for three years. One

of the key premises of that appeal was that the *Soto* defendants had relied upon a survey that was junk science.

JUSTICE VERNIERO: I don't know if we phrased it as that--

MS. GLADING: I think you used that phrase earlier.

JUSTICE VERNIERO: --but, yes, that's the phrase that the former Attorney General used -- junk science.

MS. GLADING: And you never conducted a violator's survey or a traffic population survey to refute that claim and to support your appeal?

JUSTICE VERNIERO: Well, we tried to complete a violator survey, but for many reasons it was -- it became very complicated, and we were unsuccessful in completing the project.

MS. GLADING: In his interview, Judge Ciancia indicated that the *Soto* appeal was always contingent, when they left office -- that there was an understanding that the *Soto* appeal was contingent upon a review of the transcripts. Was that your understanding as well?

JUSTICE VERNIERO: Review of which transcripts?

MS. GLADING: The *Soto* transcripts.

JUSTICE VERNIERO: That was not my understanding.

MS. GLADING: In the area of the *Soto* reforms that you relied upon earlier in your testimony, you indicated that Mr. Fahy may have been the one who briefed you on *Soto* when you took office in July of '96. Is that correct?

JUSTICE VERNIERO: He might have been. As I recall, he was one of the individuals who came down to Washington with me. I could be

mistaken on that, but I have a recollection that it was Jack Fahy. And he tried the *Soto* case, so he--

MS. GLADING: I wasn't talking about Washington in December of 1996.

JUSTICE VERNIERO: No. I'm just trying to answer your question by working backward in my mind. If he came to Washington with me in January of '97, he probably--

MS. GLADING: It was 1996, actually.

JUSTICE VERNIERO: Ninety six. December, 1996. He probably was the person that might have briefed me on *Soto*. I'm guessing. I'm trying to give you a name, and I think it's Jack Fahy.

MS. GLADING: Okay. Did he brief you on the reforms that had been undertaken?

JUSTICE VERNIERO: I recall being briefed on the appeal, the reason for the appeal, the arguments that we would make on appeal, and the steps taken in the aftermath of *Soto*.

MS. GLADING: Okay. Did he tell you that he served on a committee of State Police and Attorney General's Office people?

JUSTICE VERNIERO: He may have. I was aware of that committee as one of the reforms. But as I say, I don't recall whether it was Mr. Fahy who briefed me on it.

MS. GLADING: Okay. I think your testimony earlier was when Chief Justice Poritz, or the departing Attorney General Poritz, told you about the reforms that she had enacted, that she advised you to stay on them to see if they were working. Is that correct?

JUSTICE VERNIERO: I have a recollection, either in transition or when the Attorney General decided to appeal the case, that she would be taking steps to ensure that racial profiling was not occurring. And it wasn't anything more specific than, you know, keep your eye on the issue, keep your eye on a lot of issues. We had a fairly hurried transition, as you might recall. The sudden death of Chief Justice Wilentz and our respective nominations and confirmations occurred fairly rapidly. We did not have a lot of time to prepare a transition. So we covered a lot of issues. One of them may have been *Soto*, either in transition or when the appeal was brought in March of 1996.

MS. GLADING: Did she indicate during that transition that there was a need for better statistics or more -- there was a need to capture better statistics and that the numbers were troubling to her, and there was a need for an internal audit?

JUSTICE VERNIERO: I don't recall. I am fairly clear, because I would have remembered this, that she did not suggest or recommend that I do this kind of full-scale review of State Police that ultimately yielded the April 20 interim report. My recollection is that our discussions of racial profiling were confined to *Soto*, the grounds for the appeal, and the various elements of the case.

MS. GLADING: So it's your testimony that she did not advise you to conduct an internal audit or to stay on top of the collection of better statistics or that the numbers were troubling?

JUSTICE VERNIERO: Well, I'm not sure what you mean by internal audit. She did not advise me to do a full-scale review of State Police. She did not--

MS. GLADING: Did she ask you to do any of those three things?

JUSTICE VERNIERO: I don't recall. I don't recall her saying the numbers are problematic. I recall her saying that the numbers or the conclusions contained in the *Soto* record were "junk science," but I do not remember her saying that the numbers were problematic.

MS. GLADING: When Mr. Fahy briefed you about-- When Mr. Fahy brought you up to speed on *Soto* and told you that he had served on this committee of State Police and Attorney General's Office people, what did he tell you about the work of that committee?

JUSTICE VERNIERO: As I say, it may have been Jack Fahy. Let's assume that it was. I got a general overview of the committee, who was on it. It was, as I understood it, a composite committee of Deputy Attorneys General, members of State Police. They reviewed training practices, materials used for training, the various things that they would do to -- and needed to do to underscore that racial profiling was illegal in New Jersey and the kinds of things that needed to occur in order to properly record a stop and comply with the various SOPs that were on the books at the time.

MS. GLADING: Did Mr. Fahy inform you that Major Touw of Internal Affairs believed that inspection audits would be an effective means of monitoring trooper activities and that he began conducting such audits?

JUSTICE VERNIERO: I don't recall that.

MS. GLADING: Did Mr. Fahy inform you or anyone else inform you that a review would be undertaken of the troopers that were involved in the *Soto* cases and that if that review was problematic, the appeal would be reconsidered?

JUSTICE VERNIERO: I don't remember.

MS. GLADING: Did he inform you that that review was undertaken, and it showed minority arrest rates ranging from 63 percent to 100 percent over a three-year period for those troopers?

JUSTICE VERNIERO: I don't recall that, no.

MS. GLADING: I think you testified earlier you didn't recall that there were ongoing suppression motions around the state, in which cases were being plea-bargained out because of problem Internal Affairs backgrounds of troopers?

JUSTICE VERNIERO: I don't recall. I may have been informed of that fact at the time. I just don't remember.

MS. GLADING: Did anyone inform you that one of the reforms proposed by this committee was a new requirement to put -- to require troopers to put race on the patrol chart -- race of the motorist who had been stopped on the patrol chart, as a more reliable record keeping mechanism?

JUSTICE VERNIERO: I don't remember that level of detail.

MS. GLADING: But you knew that inadequate record keeping was a problem?

JUSTICE VERNIERO: Well, I believe Judge Francis found that it was a problem, yes.

MS. GLADING: And I think that you testify -- actually testified that there was a reiteration of SOP F-53, but actually the reiteration was of SOP F-3, which required radioing in the race of the motorist. Do you recall that?

JUSTICE VERNIERO: Somehow I have in my mind SOP-55, but I could have been mistaken as to the number. I was advised that the existing SOPs -- maybe there was more than one of them -- would be underscored and enforced more fully to compensate and address the deficiency that Judge Francis found.

MS. GLADING: Okay. But you knew nothing about a recommendation by this committee to actually change SOP F-3 to require recording race on the trooper's patrol chart?

JUSTICE VERNIERO: I don't recall that at the time. I might have known. I just don't remember it.

MS. GLADING: Do you recall when that was actually adopted?

JUSTICE VERNIERO: No.

MS. GLADING: It was actually adopted in November of 1998. It was two and a half years after it was recommended. Do you recall that topic of discussion coming up at all in the course of the interim report?

JUSTICE VERNIERO: I do not.

MS. GLADING: If racial profiling crystallized in your mind in -- after the shooting in 1998 -- or actually your testimony was, "crystallized and was uppermost in my mind from that point onward," why did the State take a -- take nearly a year to reconsider the *Soto* appeal and to drop it?

JUSTICE VERNIERO: Well, as I recall, from that time frame forward, we were developing a great concern that the issue might be real, that it was a real possibility that racial profiling was indeed a reality in New Jersey. But even then, in 1998, we weren't sure. We begun the process of taking what

I considered to be appropriate steps at the time. The Troop D audit was part of that. That led ultimately to the interim report.

There were other things that we were doing at the time, and this perhaps relates back to an earlier question by Mr. Chertoff. It wasn't just that we were looking at falsification and record keeping, but all aspects of management at State Police in terms of internal complaints, IAB, in terms of recruitment. I was very concerned about diversity issues.

MS. GLADING: Actually, I was just asking about the racial profiling allegations that the State was refuting and appealing in the *Soto* case.

JUSTICE VERNIERO: Well, there's a tie-in, though, because some of the complaints, as I recall, that Mr. Hespe was looking at or looking into might have dealt with racial profiling internally. So we were looking at those as well. All of that information culminated in the result of the April 20th report.

MS. GLADING: Okay. But -- so it's fair to say that for a year after racial profiling had crystallized and was uppermost in your mind that--

JUSTICE VERNIERO: But--

MS. GLADING: Let me finish my question.

JUSTICE VERNIERO: Yeah, sure. Of course.

MS. GLADING: That the defendants in the *Soto* cases remained in a position where they had to continue to fight your appeal, right?

JUSTICE VERNIERO: Well, when I say it crystallized, that was -- and I addressed this in my opening statement -- it was a poor choice of wording because it was open to interpretation. I had not reached a conclusion of profiling in 1998. I begun the process of thought that led to the conclusion,

and I'd begun to look at things, some of which I had seen prior to 1998, in a new and different light. And the issue had evolved and developed beginning at the point of the Turnpike shoot forward. So crystallization in retrospect was accurate. It described what I was feeling and what my mind-set -- but unfortunately, the word has been open to too much interpretation.

MS. GLADING: Okay. Well-- I guess I won't ask, then, for the meaning of uppermost in my mind. The Troop D audit was actually initiated by State Police, wasn't it?

JUSTICE VERNIERO: I don't remember whether it was State Police or whether it was CJ, whether it was a meeting of the minds. I do remember it was fairly clear, once we had allegations of falsification, that somebody had to do an audit. We had to make sure of the extent of the problem. I don't recall whether it originated from one division versus another.

MS. GLADING: Okay. Let me ask you about audits. Mr. Zoubek testified that he received a significant packet of audits in the summer of 1998, after the shooting, because they were looking for information that was related to Troopers Hogan and Kenna. And he indicated that he told you that he had received the packet of audits from the State Police as part of the Hogan-Kenna investigation. And these are audits that were conducted over the previous two years. Do you recall him telling you that?

JUSTICE VERNIERO: Previous two years was a suggestion, being we knew about falsification prior to 1998?

MS. GLADING: No. These are audits that were conducted for a variety of reasons, and they contained statistics on stop and search data from 1996 through 1998 that Mr. Zoubek requested as part of the Hogan-Kenna

investigation, and said that he then apprised you that he had received a packet of audits. He didn't say he gave it to you, but he told you that he had received ongoing statistical information.

JUSTICE VERNIERO: And this was in 1998?

MS. GLADING: This was the summer of 1998, after the Hogan and Kenna shooting.

JUSTICE VERNIERO: I don't recall, but that might have been, again going back to an earlier question by Mr. Chertoff, that might have been what I was referring to when I said that we had begun the process of retrieving information prior to 1999, information and data, but I just don't remember.

MS. GLADING: When Mr. Hespe and Mr. Waugh transition, and Mr. Hespe-- Well, let me ask you this: Is it correct that when Mr. Waugh left the Department of Law and Public Safety, that Mr. Hespe took over his supervision of the Department of Justice investigation?

JUSTICE VERNIERO: That is my recollection, but there might be some gap there. I don't recall their exact dates. Mr. Hespe was the first assistant attorney general, so he was not a direct replacement of Mr. Waugh. But my recollection is--

MS. GLADING: Well, Mr. Waugh wasn't actually replaced, right?

JUSTICE VERNIERO: That's correct.

MS. GLADING: Okay.

JUSTICE VERNIERO: The position stayed vacant, and then-- I mean, ultimately, there was someone sitting in his office, but I recall I had divided up some of the responsibilities at that point. My recollection is, Dave Hespe pretty much assumed the role that Alex had assumed. There might be

some variances there, but he was the person, I believe, that was supervising George Rover.

MS. GLADING: Well, Mr. Rover wouldn't have been left unsupervised, would he?

JUSTICE VERNIERO: No.

MS. GLADING: So, if it wasn't Mr. Hespe, who else could it have been?

JUSTICE VERNIERO: Yeah. That's why I'm saying I assumed it was Mr. Hespe.

MS. GLADING: And then Mr. Hespe was reporting to you on what Mr. Rover was doing?

JUSTICE VERNIERO: Well, I don't-- I don't recall exactly what Mr. Rover was doing or whether I got regular reports. I would have assumed that if there was anything significant, Mr. Hespe would have come to me, but I don't recall anything specific.

MS. GLADING: So, for the period of January 1st, 1998 through February -- sometime in February of 1999, there was nothing significant in terms of the Department of Justice investigation?

JUSTICE VERNIERO: I don't recall. As I testified earlier, my involvement with the issue was more prominent, for lack of a better word, in my earlier tenure. After I had gone down to the Justice Department, there was a flurry of letters back and forth. I remember after the Turnpike shooting, I had less involvement for whatever reason. I don't know why.

MS. GLADING: Okay. There has been, as you know, a massive document release. And Mr. Rover's transmission documents to the

Department of Justice-- He actually did not begin sending the actual responsive data for the 30 dates -- the 30 sample dates until June 17th of 1997. And that process continued. And he would send a couple each day. It continued until May of 1998. And Sergeant Gilbert, who provided him with those materials, said that they were all provided by the fall of 1997.

Did you ever instruct anyone or know that the pace of the document delivery to the Department of Justice was being conducted in this manner, or instruct anyone to do so?

JUSTICE VERNIERO: I never instructed anyone to conceal or delay information that was material or relevant. As I indicated, there was a period where we might have been a little confused as to what DOJ actually wanted. As I said earlier, I was not involved with the day-to-day turnover of information. I presumed it was occurring. Everyone knew what my feelings were. They should have known that if it's a document that's requested and should be produced, we should produce it.

MS. GLADING: I'm going to give you a document. It was the April 26th, 1999 letter from the Department of Justice informing the State that -- that it had found a pattern or practice of discriminatory law enforcement. For the record, it's SJC-5.

JUSTICE VERNIERO: Yes.

MS. GLADING: Are you familiar with this document?

JUSTICE VERNIERO: I recall this document, yes.

MS. GLADING: Okay. In this document, the Department indicated, didn't it, that it was -- it would file suit -- or would defer filing suit if it could reach a settlement, right?

JUSTICE VERNIERO: I would have to review this entire letter, but that--

MS. GLADING: Okay. Take a look at it.

JUSTICE VERNIERO: That's my gist of it. I mean, this-- As I understand it, this was the document. This letter signaled a turning point in the Department of Justice's investigation that ultimately led to a consent decree.

MS. GLADING: Mr.-- Colonel Dunlop testified that when he attempted, in the days just immediately prior to the interim report -- when he attempted to bring new statistics to your attention, he was told by Mr. Zoubek, "We don't have any time. You're going to have to get down here right away. We're 16 hours ahead of a lawsuit by DOJ." Were you aware that that was the status of the DOJ investigation at that point -- that they were about to file a suit?

JUSTICE VERNIERO: I don't recall Colonel Dunlop asking to see me and being turned away for that purpose.

MS. GLADING: No, I didn't say that he was turned away. He did come down. There was a PowerPoint presentation. I don't know if you attended it.

JUSTICE VERNIERO: I don't recall that. I remember--

MS. GLADING: No, I'm asking, do you recall what the status was of the Department of Justice's investigation into the weeks leading up to the interim report?

JUSTICE VERNIERO: I recall that when I testified previously, I think I might have been asked by a member of the Committee what the status

was. And I didn't recall what it was. And then I went back to my office and received this letter. And then I believe I issued a letter to the Committee correcting my prior testimony that, in fact, this was now an investigation, and it had taken on a different dimension.

MS. GLADING: Okay. Let's look at your testimony from the April 26th hearing on Page 23. Senator Gormley asked you, "General, what's the status of the Federal investigation or review?" And you answered, "Well, I really can't--"

JUSTICE VERNIERO: I'm sorry. What page is that?

MS. GLADING: Page 23.

JUSTICE VERNIERO: Of April--

MS. GLADING: 26th.

JUSTICE VERNIERO: --26th. Yes.

MS. GLADING: Senator Gormley asked you what the status of the Federal investigation or review was, and you said: "Well, I really can't speak for the Justice Department. It is still ongoing, as I understand it. They have not filed a notice with us of any complaint and so forth. There's been no formal filing, as far as I'm aware of."

JUSTICE VERNIERO: That's right. And then I remember I went back to my office. I don't remember if it was that day or the day after. And then this letter was presented to me, and I believe I sent a letter to Senator Gormley correcting this aspect of my testimony.

MS. GLADING: So you were surprised to see the letter?

JUSTICE VERNIERO: I did not know this-- Obviously, if I knew I was getting this letter, I would have made some reference to it, or at least--

I'm supposing I would have made some reference to it to Senator Gormley. All I know is that when I came back to my office that day or the day after, this letter arrived, and I immediately sent Senator Gormley a letter to indicate that. It makes no sense, had I--

MS. GLADING: Actually, for the record, your letter came three days later.

JUSTICE VERNIERO: Three-- As I say, I don't remember whether it was the day after the testimony or two days later.

MS. GLADING: Three.

JUSTICE VERNIERO: Three days later. But obviously, since I wanted Senator Gormley to be aware of this letter, so much so that I wrote to him directly, I have to presume that had I known about it during my testimony, I would have advised him of the letter.

MS. GLADING: Well, you were aware that Paul Zoubek was negotiating with the Justice Department at this point, weren't you?

JUSTICE VERNIERO: I was aware that Paul had gone down to the Justice Department. I don't recall exactly what the purpose was. He was sort of new in the first assistant's role. Paul had a different perspective, by virtue of his background. I don't recall exactly what was said between he and the Justice Department at that point in time.

MS. GLADING: In Mr. Zoubek's testimony, he said that he-- He was asked about a reference in one of the drafts of the interim report in which it said, "We need not wait for a court to approve a consent order before we take those steps." And it was talking about the reform steps. And that

reference was deleted from the final version of the interim report. There was no reference of a consent order. And Mr. Zoubek--

Mr. Susswein testified that he wrote that, because it was clear to him at that time that a consent decree was under negotiation. You don't recall that, though.

JUSTICE VERNIERO: It might have. I don't recall.

MS. GLADING: Wouldn't you know it if your Department was in negotiations with the U.S. Department of Justice on a consent decree?

JUSTICE VERNIERO: Well, presumably I would, but you're asking me at what point do I recall the discussions leading to a consent decree or being a signal that a consent decree would actually be occurring. And I just don't remember.

MS. GLADING: Was it your understanding that the Department of Justice investigation had been cranked up into a much higher speed at this point?

JUSTICE VERNIERO: Well, I'm not sure I understand what cranked up is. Obviously, there was a point in time when the Department of Justice became more serious. And that was-- I don't want to say it was about the time that Director Zoubek became first assistant, but certainly, as time progressed, the Justice Department became more serious in their interest in New Jersey.

MS. GLADING: There's another reference, which you were asked about earlier by Mr. Chertoff, in which the Department of Justice reference was taken out of a draft version of the interim report. And it was Mr. Zoubek's testimony that that reference was taken out at your specific

instructions, because you did not want to disclose the substance of the investigation in the interim report.

JUSTICE VERNIERO: My testimony was, I didn't recall it. I was speculating as to what it might be.

MS. GLADING: So you had taken out a reference to-- The draft interim -- the interim report took out a reference to consent decrees. And it took out a reference to the Department of Justice.

JUSTICE VERNIERO: Could you show me the draft report so I have an idea of what you're asking?

MS. GLADING: Sure.

If you look at Z-19, Justice.

JUSTICE VERNIERO: Do I have it in front of me?

MS. GLADING: Uh-huh.

JUSTICE VERNIERO: Yes, I have Z-19.

MS. GLADING: If you look at the first-- If you look at OAG-2636 -- and I'm in the middle of that paragraph -- it says, "In the circumstances--"

Do you have the page?

JUSTICE VERNIERO: I have 2935, and then it jumps to 2941.

MS. GLADING: Is there a different packet? Look in the beginning of the packet.

JUSTICE VERNIERO: This is document Zoubek-19?

MS. GLADING: Uh-huh.

JUSTICE VERNIERO: It begins OAG-002619, then it jumps to 2625. And 2626-- Is that the reference?

MS. GLADING: Yeah. It's the April 7th draft. It begins at 2619.

JUSTICE VERNIERO: 2619.

MS. GLADING: Do you see that?

JUSTICE VERNIERO: Yes, I have that.

MS. GLADING: Okay. Go six pages into it.

JUSTICE VERNIERO: That's 2698. I don't think we have the same document.

MS. GLADING: Maybe I'll just show you my copy for a second.

JUSTICE VERNIERO: Okay.

MS. GLADING: Oh, hang on a second. It's on the screen. Can you read it there?

Garry--

Thanks, Christine.

JUSTICE VERNIERO: Yes.

MS. GLADING: In the middle of that paragraph, it says, "In the circumstances, we need not wait for a court to approve a consent order before we take those steps we deem to be necessary and appropriate to ensure strict compliance with all constitutional rights and to enhance the professionalism of the New Jersey State Police."

Mr. Susswein testified that when he wrote that, he wrote that because it was his understanding that a consent decree was under negotiation. And in fact, he said the day he finished writing the interim report, he took one night off, and the next day -- a day later he started working on that -- those negotiations with Mr. Zoubek, I guess.

But is it your testimony that you don't recall consent decree discussions going on in the period leading up to the interim report?

JUSTICE VERNIERO: They might have. I don't recall. It's the best I can do. I just don't remember.

MS. GLADING: And it's your testimony that you were surprised at receiving the letter from the Department of Justice at 5/20 on the day that you testified about the interim report.

JUSTICE VERNIERO: I thought it was a coincidence. I can't say that I was surprised, given the events that had occurred in New Jersey, again, starting with the April 1998 Turnpike shooting. New Jersey had become very prominent nationwide on the racial profiling issue. I'm not saying I was surprised. I didn't know, at the time I testified at my prior hearing, what the precise status was of the DOJ investigation. This letter arrived sometime after my testimony, which does indicate a precise status. And I thought that it was appropriate to disclose this to the Committee in a letter that was sent two or three days later.

MS. GLADING: Okay. And it was-- Would you characterize the letter-- Let me back up. So your testimony on the 26th, at the racial profiling hearing, where you said, "Well, I really can't speak for the Justice Department. It is still ongoing, as I understand it. They have not filed any notice with us of any complaint, and so forth. There's been no formal filing, as far as I'm aware of," that was-- That testimony was the extent of your knowledge at that point about the Justice investigation -- the status of it?

JUSTICE VERNIERO: I don't recall the extent of my knowledge. I recall that that was an accurate statement, and I believe that it still is an

accurate statement. The coincidence is that the formal notice-- I suppose you could denote this April 26th, 1999 letter as a formal notice, although it's not denominated as such -- certainly was a notice of the intention of the DOJ, which I had not received prior to my testimony before the Committee, which is why I disclosed it to the Committee after the fact.

MS. GLADING: And there's no -- nothing -- no reason you can think of of why Mr. Zoubek might have told Colonel Dunlop, "If you want to show us new numbers, get down here now, because we're about 16 hours ahead of a lawsuit." And this is about four or five days before the interim report.

JUSTICE VERNIERO: I don't recall Mr. Zoubek saying that to Mr. Dunlop. I was not privy to that conversation, to my knowledge.

MS. GLADING: And Mr. Zoubek never said anything like that to you -- that Justice was looking at a lawsuit.

JUSTICE VERNIERO: Well, you know, the-- From the day the Department of Justice called, there was a possibility that they were looking for a lawsuit back in November of whenever it was -- November 1996. And that was--

MS. GLADING: No, I'm talking about-- I'm talking about April of 1999.

JUSTICE VERNIERO: I understand that, but that was always a possibility. But that's different than knowing for sure that it's going to happen to the extent that I interpreted Senator Gormley's question to me at the time of my hearing. I interpreted Senator Gormley's question to be, is it happening, have you gotten a formal notice? The answer was no, we haven't gotten a formal notice. I went back to my office. A notice of sort had arrived, and I

was very diligent in ensuring that this Committee was notified, which is why I sent a separate letter three days later so the record would be clear.

MS. GLADING: When Mr. Zoubek walked into-- When Mr. Zoubek showed you the blue binder--

JUSTICE VERNIERO: Yes.

MS. GLADING: --what was your testimony about what you did? Did you look at that binder? Did you sit and read it?

JUSTICE VERNIERO: As I recall-- No, I did not sit and read it page by page. As I recall, Director Zoubek put the binder on my conference room table -- on my conference table in my office. He directed my attention to one or more documents. I recall that the Gilbert memo was one of them, at least that's my best recollection. He may have alerted my attention to other documents. I don't remember.

I remember the Gilbert memo. That's the one that stands out in my mind.

MS. GLADING: And then he took it with him when he left.

JUSTICE VERNIERO: He did, yes.

MS. GLADING: Did you ask him for a copy of it?

JUSTICE VERNIERO: I did not, no.

MS. GLADING: So presumably, you didn't want to read it.

JUSTICE VERNIERO: Well, it wasn't a question of my wanting to read it. He had described it to me, in essence -- the gist of it. He had shown me, as I say, one or more of the documents. There was no reason for me to keep a duplicate copy. I mean, Paul's office was adjoining mine. He was in

the midst of the investigation at that point in time. There was no reason for me to ask for a copy.

MS. GLADING: But how could you write your memo to file in which you wrote that it contained data and information relating to stops and searches of minority motorists not heretofore produced to us by State Police, if you didn't read what was in it?

JUSTICE VERNIERO: That was based on a description that Director Zoubek had given me. And as I say, I had looked at, I believe it was, the Gilbert memo, and I was fairly certain, at that point in time, that I had never seen that document.

MS. GLADING: Your memo to file mentions that Attorney General David Hespe said he, too, was unaware of these documents, and noted to me that he had, on several occasions, requested State Police for this kind of information to no avail. What did Mr. Hespe say to you about his request for documents?

JUSTICE VERNIERO: I don't recall beyond what's written here in the memo. I would have to rely on what's here.

MS. GLADING: Well, if this was a fairly serious matter about -- that really threatened the civilian oversight of law enforcement and led to an investigation at your direction by Mr. Zoubek, Mr. Hespe's contention that he had asked for this kind of material in the past and had not been received-- It would have been a fairly important contention, wouldn't it?

JUSTICE VERNIERO: Well, we were, as I say-- During this period of time, our whole perspective on State Police was changing. It began to change after April 1998. I think it might be -- respectfully, it might be a bit

of an overstatement to say that the absence of the Gilbert memo threatened the civilian overview of the State Police. That's a fairly significant statement. But it certainly was something that Paul Zoubek was not happy about, and no one was happy about. We didn't want to jump to any conclusions. We didn't want to leap to any conclusions or point any fingers, so I had asked Director Zoubek to look into the matter and to investigate -- we've already discussed my use of that term -- to see what was at the bottom of this.

MS. GLADING: Okay. If you could look at Page 21 of your racial profiling hearing testimony -- April 26th testimony.

JUSTICE VERNIERO: Page 21.

MS. GLADING: Correct.

JUSTICE VERNIERO: Yes.

MS. GLADING: In the middle of that page, you're being asked about whether or not we should have been enhancing the *Soto* record all along by Senator Gormley. And you say: "I think the bigger issue, Senator, is actually, in terms of this report and the recommendations, to have the early warning system, and to have a regular publication of data at regular intervals will avoid these kinds of problems from ever occurring in the future, will avoid the Attorney General of having to constantly ask for information, and will avoid the sudden appearance of documents, and so forth. That will all be resolved and will not reoccur if our recommendations are put in place."

Did you mean by that that you had been constantly asking for information and had not been getting it?

JUSTICE VERNIERO: That reference was more of an institutional policy point I was trying to make. And it was tied not only to the

blue binder, which is, as I recall the reference to the sudden appearance -- that's the blue binder -- but it was also tied to what had been a fairly difficult process of complying with information requests from *The Star-Ledger* newspaper and from other news outlets -- that whenever these requests came in, or principally when *The Star-Ledger* request came in, the response that we had gotten from the State Police was that it was difficult to retrieve the information. And in fact, I think it was the manner in which the State -- *The Star-Ledger* was asking for it. They wanted statewide data. They wanted particular years, as I recall. They wanted a full description. And one of the report's recommendations is that we shouldn't have to be in a position-- No Attorney General should have to be in the position of ever having to ask for information. It should just be furnished as a matter of course. I had--

MS. GLADING: Okay. But you had never asked for information. That's not what you meant by this, right?

JUSTICE VERNIERO: No, I was talking in a policy sense -- an institutional sense -- send over monthly reports, give the Attorney General, whoever he or she may be, the opportunity to have information, updated. To constantly ask, as I say, that was more of an institutional reference. It might have been a reference, however, to *The Star-Ledger* request where we did have to ask State Police for information.

MS. GLADING: Okay. And when -- the second part of that sentence -- you say, "And we'll avoid the sudden appearance of documents and so forth," that's not just a general policy statement, that's a reference to the Gilbert notebook, right?

JUSTICE VERNIERO: As I said, that was in reference to the blue binder, yes.

MS. GLADING: Okay. I'd like you to take a look at Page 36 of your testimony from April 26th. There's an exchange between you and Senator Lynch. Senator Lynch asks you -- he's trying to determine the extent to which you had believed a survey was needed or conducted surveys. And he says: "Let me ask the question again. At the time that you filed this brief in *Soto* in March of 1997, did you consider the need for a survey to determine whether or not there was, in fact, de facto profiling going on on the Turnpike?" And you answered, "Based on the briefings I have received, and the assurances that I received, no, I did not consider a need to have independent review done at that time."

And then he asks you, "And so, there was no statistical analysis ongoing under your watch until sometime in -- after the shootings in April of 1998, correct?" And you answer, "If there was an analysis going on at that point in time somewhere in the Department of Law and Public Safety, I was not aware of it in July of 1996, no."

So he asked you a question about any statistical analysis prior to the shootings in April of 1998. And you gave him an answer that said that you were not aware of anything in July of 1996. Can you explain why you did -- why you gave that answer to that question?

JUSTICE VERNIERO: It's very hard for me to explain, and I -- to explain it to you other than I misunderstood the question. The-- And I thought about it, because this part of my testimony has gotten some attention. The statement that I made -- the response that I made is accurate. I was not

aware, in July of 1996, when I became Attorney General, of ongoing statistical analyses. The best that I can do to try to explain it is that leading up to that question, I had, in my mind, 1996 as a time frame, because of a previous question in which the Senator asked me from the time you got there in the middle of 1996, and it followed from that point.

MS. GLADING: So did you mean to-- Did you--

JUSTICE VERNIERO: Unfortunately, this was like two ships passing in the night. The question was asked, I answered it, I gave an accurate answer. Obviously, it didn't respond to the question, and I regret that, but--

MS. GLADING: Actually, I think it might have been a little more like two ships colliding, but--

JUSTICE VERNIERO: Well, hopefully, we'll pass without collision.

MS. GLADING: Did you mean to answer April of 1998?

JUSTICE VERNIERO: No. All I can think of is I answered the way I answered because I had thought, incorrectly, obviously, that he was still questioning me regarding the state of knowledge in 1996.

MS. GLADING: Well, what is the answer to the question that he asked?

JUSTICE VERNIERO: There were no statistical analyses after the shooting in April of 1998.

MS. GLADING: No, no, no, the question is, "And so, there were no statistical analyses ongoing under your watch until sometime after the shootings in April of 1998, correct?"

JUSTICE VERNIERO: Well, at that point in time, if I'm not mistaken-- Let's assume I had correctly heard the question--

MS. GLADING: No, I'm asking you now to answer the question.

JUSTICE VERNIERO: Oh, now, at this-- Yes, I'm trying to give-- Well, now I know the answer to the question based on things that I learned after this question was asked. I can try--

MS. GLADING: No, no, no.

JUSTICE VERNIERO: I can try to answer--

MS. GLADING: What did you know at that time, when you were asked that question? What would the answer have been?

JUSTICE VERNIERO: As I said earlier, it's hard for me to distinguish, at this point, what I knew then and what I know now as a result of so much publicity and so much information. And it's very hard for me to distinguish it.

MS. GLADING: Well, we know that you knew that you had received a memo containing statistical analyses in July of 1997, right?

JUSTICE VERNIERO: There is that memo from Alex Waugh. I don't recall whether I had reviewed and studied the attachments.

MS. GLADING: Well, so the correct answer at the time would have been, yes, Senator, there were statistical analyses going on prior to the Turnpike shooting.

JUSTICE VERNIERO: Assuming that I would have recalled the Waugh memo and determined it as a statistical analysis. Let me just get the Waugh memo if we're going to go on that line of questioning, if I might.

The Waugh memo, as I indicated to Mr. Chertoff, was attached to a series of documents, the most prominent of which, in terms of a conclusion, was the complaint filed by minority members at Moorestown. I don't know if I would characterize this as an ongoing statistical analysis. Clearly, there were statistics in it. They were pre-*Soto* statistics.

MS. GLADING: Okay. And you testified earlier that the January 3rd letter referenced to statistical analyses. You don't know that you would characterize that as ongoing statistical analyses. But there were, certainly, statistical analyses--

JUSTICE VERNIERO: Yes.

MS. GLADING: --going on under your watch--

JUSTICE VERNIERO: Yes.

MS. GLADING: --in some kind of an ongoing fashion.

JUSTICE VERNIERO: As I said, it's hard for me to predict how I would have answered the question, had I understood it. I assume I would have made reference to one or more of these documents we're referring to, but I just don't know. I misunderstood the question. I regret it. The answer I gave was accurate, but unfortunately, it was not responsive to the Senator's question.

MS. GLADING: Did George Rover ever inform you that he had obtained statistical analyses of the 30 sample dates and also statistical analyses of the underlying data in the Gilbert February of 1997 memo?

JUSTICE VERNIERO: I don't recall that.

MS. GLADING: Did Mr. Zoubek tell you that he found that statistical information in George Rover's files?

JUSTICE VERNIERO: I don't recall if he indicated that specifically. I do recall, based on prior testimony, that there was some reference that Paul had made to materials that he had found or discovered in Mr. Rover's files. I don't remember the exact details of it.

MS. GLADING: And is it your testimony that Mr. Waugh -- neither Mr. Waugh nor Mr. Hespe informed you that there was statistical analyses that had been developed around the Department of Justice investigation response?

JUSTICE VERNIERO: I don't recall them doing so.

MS. GLADING: When Mr. Rover was charged with pulling together the documents for the Department of Justice investigation, he pulled together consent to search documents because they had specifically requested that. And it's a pretty small packet. It's maybe a half-inch and covered 38 searches over the 30 sample dates in 1995 and 1996. Did you ever ask anyone to take a look at how the numbers were and to see how the numbers looked before sending the consent to search data down to Washington?

JUSTICE VERNIERO: What's that time frame? I'm sorry, 1997?

MS. GLADING: 1997, yes.

JUSTICE VERNIERO: November of 1997?

MS. GLADING: That's right. There was a discussion about whether or not consent to search data was--

JUSTICE VERNIERO: I may--

MS. GLADING: --legitimate representation of racial profiling, and then the consent to search material was sent down.

JUSTICE VERNIERO: I may have asked what the data revealed. I don't remember. I do remember--

MS. GLADING: Do you remember if you were told what the data revealed?

JUSTICE VERNIERO: I don't recall that. I recall that there was a sense that-- And maybe this was something that we should not have done at the time, but we were working in concert with the DOJ. There was a sense that they were seeing, essentially, the numbers that we were seeing, or that my office was seeing. And neither one of us had made any firm conclusions based for the variety of reasons that I have indicated previously. But I don't recall the specific numbers.

MS. GLADING: Did Mr. Hesse ever tell you at the end of 1998 that the Department of Justice had learned that the State was maintaining -- that the State Police were maintaining regular statistics and had asked for them?

JUSTICE VERNIERO: I don't remember Mr. Hesse saying that to me.

MS. GLADING: Mr. Hesse reported to you, right?

JUSTICE VERNIERO: He did.

MS. GLADING: And he was in charge of the Department of Justice investigation, right?

JUSTICE VERNIERO: I don't know if I would say he was in charge, he was--

MS. GLADING: Who was in charge of it?

JUSTICE VERNIERO: He was responsible for overseeing Mr. Rover, as I recall.

MS. GLADING: You were in charge, really.

JUSTICE VERNIERO: Ultimately, as I've said, I held all the reins.

MS. GLADING: Did Mr. Hespe or Mr. Rover ever indicate to you that a decision was made to not forward documents down to Washington that reflected ongoing statistical analyses that were being maintained by the State Police in late 1998?

JUSTICE VERNIERO: No, I do not recall that.

MS. GLADING: You know, we're going to speak to Mr. Hespe again next week. But when he testified under oath in an interview on February 5th, he was asked maybe five or six times about his knowledge of the Department of Justice investigation. And you've testified that he was in charge of it.

JUSTICE VERNIERO: No, I didn't. You--

MS. GLADING: You testified that he supervised Mr. Rover on that.

JUSTICE VERNIERO: My testimony is that, to the best of my recollection, after Alex Waugh left the office, Mr. Rover, if he had questions regarding the DOJ investigation, would go to Mr. Hespe. He did not go directly to me, Mr. Rover. I do recall that.

MS. GLADING: Mr. Rover never reported directly to you.

JUSTICE VERNIERO: I may have spoken to him on -- from time to time, but there was not a direct line report from Mr. Rover to me.

MS. GLADING: So there was no gap period where Mr. Rover did not have an immediate supervisor on the Department of Justice matter, right?

JUSTICE VERNIERO: I don't think there was a gap, but as I say, laying down everyone's calendar side by side, there might have been a gap. I just don't-- I just can't represent to you one way or another. Again, globally, when Alex Waugh left the office, if Mr. Rover had any questions, my understanding was, his contact person was David Hesse, but it is not my testimony that Mr. Hesse was in charge of the investigation.

MS. GLADING: But it is your testimony that Mr. Rover reported to Mr. Hesse on matters involving the Department of Justice investigation.

JUSTICE VERNIERO: If there was a question that needed to be answered, I assume that George would have gone to David.

MS. GLADING: Did Mr. Hesse then go to you on any DOJ matters? Was that how the chain of command worked?

JUSTICE VERNIERO: Well, he would have if there was a significant issue. I don't recall any conversations with respect to the DOJ between me and Dave Hesse. They may have happened. I just don't recall them.

MS. GLADING: Do you recall conversations with Mr. Zoubek about his dissatisfaction with the way in which Mr. Rover responded to the Department of Justice document requests?

JUSTICE VERNIERO: As I said, I recall that Paul was concerned when he had discovered certain documents in Mr. Rover's file. I don't know whether he expressed any personal opinion as to George's management of the issue. I don't recall that if he had. At that point, Paul was concerned about

ensuring, as I was, of course, that any document requests that were relevant should be turned over. That was the focus of his involvement at that time. And I believe that's one of the reasons he went down to Washington, to make sure that everything was up to snuff and above board.

MS. GLADING: Did you have any conversations with Mr. Hespe about Mr. Zoubek's concerns about the ways in which documents had been turned over since Mr. Rover's duties -- supervision was Mr. Hespe's responsibility?

JUSTICE VERNIERO: I don't recall those conversations, if we had them.

MS. GLADING: Mr. Hespe, when he testified-- When he was interviewed under oath, he was asked many times about the Department of Justice investigation. And finally, he was asked by Mr. Jaso, "So, as you sit here today--" He denied any knowledge of the Department of Justice investigation. He said-- Mr. Jaso asked him, "So, as you sit here today, you have no knowledge of any Department of Justice investigation into racial profiling by the New Jersey State Troopers. Commissioner Hespe: "Any -- no." Mr. Jaso: "Is that a no?" Commissioner Hespe: "No, no, no. No three times." Why would he deny knowledge of the Department of Justice investigation if that was one of his responsibilities for his last year under your administration?

JUSTICE VERNIERO: As I say, it was not specifically, as I recall, one of his responsibilities, as the way you're phrasing it. He was the first assistant. So, if there was a question that needed to be answered, and if I was unavailable, Mr. Rover, I'm assuming, would have gone to Dave Hespe.

MS. GLADING: So you don't know who Mr. Rover was reporting to?

JUSTICE VERNIERO: My assumption was that he was reporting to Mr. Hespe.

MS. GLADING: Justice, with all due respect, this was a U.S. Department of Justice investigation.

JUSTICE VERNIERO: Yes.

MS. GLADING: You had been closely involved in the paperwork that was going back and forth to Justice through the early part of 1997.

JUSTICE VERNIERO: Correct.

MS. GLADING: Mr. Waugh was still involved with Mr. Rover on an ongoing basis as late as October of 1997, when there was a dispute about consent to search data. Is it your testimony that you just didn't really focus on it or know anything about how documents were going or how it was being handled for a full year?

JUSTICE VERNIERO: No, my testimony was, and remains-- I set broad parameters. When asked questions, I responded. It could have been, at that point in the process, that Mr. Rover did not require a great deal of supervision, that he was engaged in a sufficient and appropriate dialogue with the DOJ such that he didn't need to ask permission of anybody. I just don't know.

MS. GLADING: So, for 14 months, Mr. Rover potentially engaged in a dialogue with DOJ without informing any of his superiors. Is that what you're saying?

JUSTICE VERNIERO: Well, as I recall, the DOJ investigation-- The tempo of it was sort of up and down. I mean, there were times when they were very interested in New Jersey and had made a number of production requests. And that was in the early tenure. There was a time when--

MS. GLADING: So you were being advised of those document requests.

JUSTICE VERNIERO: I was advised, generally, of the fact that there were ongoing discussions. As I said, I did not supervise the day-to-day turnover of information.

MS. GLADING: When you set the parameters for the response--

JUSTICE VERNIERO: If I may just finish.

MS. GLADING: Sure.

JUSTICE VERNIERO: Then there was a time, as I recall, where there was very little discussion or interest on the part of the DOJ. It was just that kind of relationship. And I didn't think anything of it. I figured they know what they're doing. They asked for relevant information. We'll turn it over. And I assumed that that was occurring with Mr. Rover and whoever else was involved in the process.

MS. GLADING: When you set the parameters for the response of the Department -- the U.S. Department of Justice investigation, did you put those parameters in writing?

JUSTICE VERNIERO: No. No, I expressed them orally. Everyone knew what they were. They heard me say it to DOJ at the meeting. We were going to cooperate. They knew what my feelings were about this.

MS. GLADING: Okay. So I just want to be sure I've gotten your testimony clear -- that Mr. Hespe may have been in charge of Mr. Rover during that period. You're not sure. You don't really recall.

JUSTICE VERNIERO: I guess the disagreement I have is in charge. I mean--

MS. GLADING: No, Mr. Rover was--

JUSTICE VERNIERO: Mr. Rover was working at an entirely different division.

MS. GLADING: We'll get to that later. But Mr. Hespe was supervising Mr. Rover's duties. You may-- He may have been supervising Mr. Rover's duties in terms of responding to the Department of Justice investigation after Mr. Waugh's departure. Mr. Waugh testified that his departure was really effectively in November because of a variety of personal reasons.

So, from November of 1997 on until February of 1999 -- so a period of 16 months, Mr. Rover may or may not have been reporting to Mr. Hespe on Department of Justice matters. Is that your testimony?

JUSTICE VERNIERO: My testimony is, I assume, if George Rover had any questions that he felt a higher-up needed to resolve, he would have gone to either Mr. Hespe or Mr. Me -- or to me. I don't recall him coming to me. So I am assuming that he went to Mr. Hespe. I don't know what the record reveals, and I am not familiar with the prior testimony. I'm just giving you what my assumptions were.

MS. GLADING: And you don't recall whether or not Mr. Hespe ever came to you during that 16-month period with any Department of Justice matters.

JUSTICE VERNIERO: He may have. I don't recall. I certainly don't recall him coming and saying, as you posed earlier, "Should we hold back these documents." I think I would have remembered that.

MS. GLADING: Do you recall Mr. Ramey or Mr. Fahy, who were also apparently in that meeting, saying that Mr. Hespe had advised -- had directed Mr. Rover to not turn over ongoing statistical data that the State Police had?

JUSTICE VERNIERO: I don't recall that, no.

MS. GLADING: If you could turn to your racial profiling testimony on Page 45.

JUSTICE VERNIERO: April 26th?

MS. GLADING: Correct.

In the middle of that page, you answer Senator Lynch-- Well, he asks you: "When did you personally get fully engaged in looking at the profiling issue? Was it post-shooting of April 1998, or was it before that?" And you answer: "Well, it depends on how you define engaged. As I said, I became very concerned or increasingly concerned from the point in time of the April 23, 1998 Turnpike case forward, and I think, using that as the time frame, we see an unbroken chain of steps that I took to determine the truth of the matter."

And you testified earlier about the State Police commencing the Troop D audit. I imagine that's one of those steps. Is that correct?

JUSTICE VERNIERO: Yes.

MS. GLADING: What-- I haven't heard you testify to any other steps that directly address racial profiling until February of 1999. Is that correct?

JUSTICE VERNIERO: Well, as I indicated--

MS. GLADING: Other than the Hogan-Kenna investigation.

JUSTICE VERNIERO: Well, that was a fairly significant -- and as I say, watershed event. So we can't diminish it.

Racial profiling -- it was becoming increasingly clear to me, at this point in time -- was a very complicated, very subtle issue. And the steps required, in my judgment, were more than just doing an audit or retrieving information. It became clear to me that the challenge was to change the culture at State Police. One of the ways to do that is to talk about things like diversity in hiring, is to reform and revise the Internal Affairs process, which, I believe, Mr. Hesse was involved in.

So there were a number of things that we were doing that you could broadly say came under the umbrella of racial profiling. We had, for example, a law enforcement summit -- I believe it was in 1998 -- later that year -- where we confronted, head-on, issues like underrepresentation of minorities at State Police and the manner in which troopers were being promoted to ensure diversity and to try to change and improve the culture at State Police. Those are important--

MS. GLADING: But in terms of specific steps to address racial profiling like those in the -- contained in the interim report, the Hogan-Kenna

investigation and the Troop D audit were the only two steps up until February 10th of 1999, right?

JUSTICE VERNIERO: I disagree with that, because one of the conclusions in the interim report is that there is a culture at State Police that is part of this problem -- or part of the issue, and that we had to take steps in addressing that, as well. I don't know if the report uses the word culture, but it uses the unwritten messages and unwritten cues and so forth.

We are so prone in reviewing this issue in terms of data and statistics. It's important that we do not lose sight of the fact that we have to improve the culture at State Police. And that goes far beyond just numbers. It deals with diversity, hiring, internal reviews. And the April 23rd, 1999 reports, as you recall, was a subset of a larger review that I had ordered to address these other issues. So--

MS. GLADING: Well, let me ask you about that. What is your testimony about why that -- the racial profiling part of that report was speeded up?

JUSTICE VERNIERO: To satisfy the Appellate Division deadline. We had an Appellate Division deadline in *Soto*. We had asked for an extension for our oral argument to prosecute the appeal. That was denied. And I don't recall the exact date, but it was sometime in either April or May where the Appellate Division said, "Look, you either have to argue this case or withdraw it." I mean, those are my words, but that's essentially what was happening.

MS. GLADING: It was March 15th, you mean, when they denied the delay in oral arguments?

JUSTICE VERNIERO: They denied the extension. That's correct. And they set a new date. And I don't recall what it was.

MS. GLADING: No, they kept the same date. It was April 28th.

JUSTICE VERNIERO: Okay, they kept the same date, whatever it was. It was after the interim report. So the thought was, well, if we're going to seriously consider, and if I'm ultimately going to decide to withdraw the *Soto* appeal, I would like the benefit of the interim report to affect and inform my decision making.

So the decision was made, only if it could be done. I realize it might have been impossible to complete, but Paul Zoubek thought he could complete it timely. I went to Paul and said, "Do you think we could separate out the racial profiling piece? Get me a report prior to the April deadline in *Soto* so that I can better make the decision on whether or not to appeal."

MS. GLADING: Okay. So if Jeff Miller, the Director of the Division of Law-- Well, let me read you his testimony. He was asked by-- He said, "The review team-- The issue of racial profiling was speeded up. I recall that." And Mr. Weber said, "Do you know why?" And Mr. Miller answered, "I assume it was because of his confirmation. But I don't know that for a fact." Your testimony is Mr. Miller was wrong about that?

JUSTICE VERNIERO: Mr. Miller was mistaken.

MS. GLADING: It had nothing to do with your confirmation.

JUSTICE VERNIERO: No.

MS. GLADING: Mr. Miller was on the review team, right?

JUSTICE VERNIERO: Yes.

MS. GLADING: This is from *The Star-Ledger* on Tuesday, I guess.

JUSTICE VERNIERO: Yes.

MS. GLADING: From Monday. Have you read this article?

JUSTICE VERNIERO: I have, yes.

MS. GLADING: The highlighted section-- I wanted to read that to you and get your response to it.

We don't have Governor Whitman here to ask the questions of, because she's gone, but we do have her comments from the newspaper.

JUSTICE VERNIERO: Well, she's still with us. She's not gone.

MS. GLADING: Down at the bottom of the first column it says: "Later, when she and Verniero grew concerned that State Police were, in fact, engaged in racial profiling, especially after troopers shot three young black men on the New Jersey Turnpike in 1998, they allowed the State Police to talk them out of taking action. She said, 'We had been bringing them up with the powers that be in the State Police, and every time they'd have a reasonable response,' Whitman said. The State Police rationalized individual trooper's behavior as erratic or supplied plausible reasons for disturbing data, and they believed them, she said. 'You were conditioned to believe the top law enforcement body in the State,' she said. 'They're held in such high regard and have such power, no one wanted to second-guess them. When they tell you something, you believe them. It took us a long time to get to the point that there's more than what they were telling us. The daily press of business in the State House also prevented them from "crystallizing" on the issue,' Whitman added."

And then a little further down, Whitman said that when her administration finally ordered an investigation of the State Police in 1999, she and her attorney general were “hammered.”

Mrs. Whitman appears to be saying here -- clearly is saying here that the State Police talked you out of taking action after the shooting in 1999. But your testimony in 1999 and today has been that he took an unbroken -- that began an unbroken chain of steps. Can you square your testimony with her account of the events of 1998?

JUSTICE VERNIERO: I don't know what her accounts of these events are other than this news article. I have not spoken to her in some time. When I read this quote, I saw it as essentially consistent to what I said at the outset, that our thinking changed after the 1998 Turnpike shoot. We had stopped tilting in favor of State Police. The presumption had changed. We had begun to ask critical questions -- more critical questions than we had, and that the assurances that we were receiving were not accepting at face value. That's all that I read into this quote.

MS. GLADING: So is it fair to say that it had crystallized in your mind, but not in hers at that point?

JUSTICE VERNIERO: I can't speak to what was in the Governor's mind.

MS. GLADING: Did you share with the Governor, at the time, that, in fact, had crystallized in your mind that racial profiling really was a problem that needed to be addressed after the shooting in 1998?

JUSTICE VERNIERO: After the shooting, I may have had a conversation with her in which I said, you know, there might be some serious

issues here. I mean, that was the general sense in the entire Department, or at least on the eighth floor at OAG. That was a watershed event for a number of reasons that I already testified to.

MS. GLADING: Is she--

JUSTICE VERNIERO: I would not have disclosed to the Governor, however, anything of a criminal nature. I was very careful not to share the information with the Governor's Office.

MS. GLADING: Is she wrong when she says that after the shooting, they allowed the State Police to talk them out of taking action?

JUSTICE VERNIERO: I'm not sure what that refers to, although I can recite to the Committee an experience that I had with Colonel Williams that might mirror the Governor's sentiments here.

I recall late in my tenure, in February of '99, I believe, there was a trooper by the name of Longoria. I don't recall the first name.

MS. GLADING: No, I'm talking-- This period-- That reference is to after the Turnpike shooting in April of 1998. Is she incorrect in that statement?

JUSTICE VERNIERO: Well, I'm answering the question by describing something that happened after the April 1998 Turnpike shooting event. It happened in February of 1999 -- in which a trooper by the name of Mr. Longoria--

MS. GLADING: Well, February of 1999, you had already formed the review team, right?

JUSTICE VERNIERO: That's correct.

MS. GLADING: Okay.

JUSTICE VERNIERO: If you'd like to drop the question or withdraw it, that's fine. I'm just trying to answer the question as best I can, not knowing exactly what Governor Whitman had in mind when she was quoted in the paper.

MS. GLADING: No, I don't have any other questions on it.

Just one last question. Do you recall, a couple of days before the interim report was released, a meeting with Governor Whitman and Mr. Zoubek in which the interim report was reviewed? Did you testify to that earlier?

JUSTICE VERNIERO: Yes.

MS. GLADING: Do you recall telling Governor Whitman at that meeting that there was an investigation into Colonel Williams for withholding or not providing documents?

JUSTICE VERNIERO: I don't recall saying that.

MS. GLADING: So you would not have said that.

JUSTICE VERNIERO: I don't recall saying that.

MS. GLADING: Would that have been true at the time?

JUSTICE VERNIERO: I don't-- As I testified earlier, I don't recall our singling out any one person for an investigation in that respect.

MS. GLADING: So, if Mr. Zoubek testified that you had told Governor Whitman that -- not saying that he's wrong or right -- you just don't recall.

JUSTICE VERNIERO: I just don't remember.

MS. GLADING: I think I'm done.

Thank you.

SENATOR GORMLEY: Senator Robertson.

SENATOR ROBERTSON: Thank you, Mr. Chairman.

Good evening, Justice.

JUSTICE VERNIERO: Good evening, Senator.

SENATOR ROBERTSON: I want to take a step back for a moment and talk about the issue of racial profiling a little bit as distinct from the question of what did you know and when did you know it. And I want to do it from two points of view. First of all, the trooper point of view, and then also from a motorist's point of view.

First, from the trooper point of view. It's a very dangerous job, is it not?

JUSTICE VERNIERO: It is.

SENATOR ROBERTSON: The notion of obtaining arrests for purposes of containing distribution of drugs was a major consideration in the last 10 years, would you say, on the Turnpike?

JUSTICE VERNIERO: Yes.

SENATOR ROBERTSON: And that was fueled by a number of things. I have an article here, as a matter of fact, from *The Star-Ledger* in 1990. You don't have it in front of you. I'm just referring to it generally. But the headline on it is, Torricelli urges the use of profiles to curb drug running on highways. Now, I'm not saying this to be critical of Senator Torricelli, who was a Congressman at the time, but going back to 1990, political people of both parties were busy calling for the use of this new technique of profiling in order to help fight the war on drugs. Isn't that true?

JUSTICE VERNIERO: As I said, I don't have the article in front of me. But it is true that the war on drugs became very pronounced in the '80s and '90s at all levels.

SENATOR ROBERTSON: And I should also mention that Senator Torricelli, then Congressman, was careful to say that calling profiles based on race is a disgrace. He said it must be demonstrated that it's not a racial profile. But interestingly enough, one of the chiefs of police that were there that day said that although he agreed with the need for more officers to patrol the county highways, the Bergen County chief of police said he didn't believe in a system based on profiles. He thought it was wrong. He said stopping people should be based on probable cause, and that they should use more professional techniques. So it was even at the outset of -- a business controversial within the police community. Is that right?

JUSTICE VERNIERO: It was-- And as I indicated in my April report, troopers were getting mixed messages during this period, and that was one of the problems affecting the culture at State Police. And really, that's not their fault, to be honest with you. I mean, they were getting mixed messages. I think the vast majority of the troopers are earnest individuals trying to do their job, and in many cases, they simply were getting mixed messages, and profiling was the result.

SENATOR ROBERTSON: Well, wasn't profiling, in part, part of the mixed message that they were getting?

JUSTICE VERNIERO: It was. The whole use of the phrase profile and the whole changing definition of what it is to racially profile, which

was part of my earlier testimony -- that entire definition changed and evolved over my tenure.

SENATOR ROBERTSON: And in fact, many of the training materials that had been used throughout the 1990s made reference to indicia that could be used in order to establish a profile of someone who might be carrying drugs or other sorts of contraband on highways?

JUSTICE VERNIERO: That's my understanding. I don't have a real clear recollection of those prior training materials, but I think it's safe to assume that that was part of the mixed message, as well, yes.

SENATOR ROBERTSON: And in fact, the DEA and Federal government engaged in something that's been referred to during the course of these hearings as Operation Pipeline.

JUSTICE VERNIERO: That's right.

SENATOR ROBERTSON: That zeroed in especially on I-95, which, of course, is the Turnpike as it goes through New Jersey.

Isn't it also the case that the law enforcement brass was also sending messages about the importance of utilizing the most modern techniques possible in order to identify those who might be engaging in running drugs or other forms of contraband?

JUSTICE VERNIERO: Well, I don't know exactly what the "top brass" was saying to the -- troop level, but obviously, they were urging that the war on drugs needed to be prosecuted firmly. I mean, that had been the message of many attorneys general past. And the present Attorney General, I assume, is also prosecuting drug offenses rather vigorously, as I did when I was Attorney General.

SENATOR ROBERTSON: Now-- Because the thing that concerns me, as a Senator, is that I feel, in part, for State Troopers who are confused out on the roadway about what the latest edict is, or the latest Appellate Division nuance on search and seizure is, or what the latest profile is, even, of the sorts of people they should be on the lookout for. Is that sort of confusion understandable to you?

JUSTICE VERNIERO: I don't know what the current state of their training or understanding is. I recall at the time we issued our April 20th report, we said right in the report, there are too many mixed messages being sent to troopers on the road. And we need to do a better job at tightening up our training, tightening up the various SOPs and so forth, and to define racial profiling in a manner in which no one could misunderstand what was meant by racial profiling, that it was wrong, and that it had to be stopped. I don't know what the current understanding is.

SENATOR ROBERTSON: All right. Drawing your attention to your understanding in your final days as Attorney General, what was your understanding of what racial profiling was?

JUSTICE VERNIERO: The understanding of that now is quite clear, I think. And that is, racial profiling is related to any discretionary law enforcement action that occurs at any point in the process, from the point of stop to consent to arrest.

SENATOR ROBERTSON: Now theoretically, that can be a white trooper, with respect to minority motorist profiling. Could it also be a minority trooper with respect to minority motorists' profiling?

JUSTICE VERNIERO: Any form of selective enforcement.

SENATOR ROBERTSON: Is that a yes?

JUSTICE VERNIERO: Yes, any form of selective enforcement would, broadly speaking, satisfy the definition of racial profiling. Obviously, selective enforcement by gender wouldn't be racial profiling. But racial profiling, as we now understand the term, relates to any selective enforcement, by race, in any form of the law enforcement process, stop, consent, or arrest.

SENATOR ROBERTSON: Because I'm struck, really, by the number of troopers that I talked to, or folks that we've seen give testimony today, who get up there, and very honestly, it seems to me, in a very heartfelt manner, say that they try to do the job as best they can, as well as they have been trained to do, and feel that in their heart, they're not acting with respect to race.

JUSTICE VERNIERO: I don't doubt their honesty and sincerity one bit. It points to the difficulty we had, particularly in the early time of my tenure, to fully understand and comprehend what these numbers meant, because we were being told-- And I believed the leadership, because I knew the vast majority -- or I thought the vast majority of troopers were honest and hardworking officials. And that's part of the complexity of the issue.

I might add that that complexity continues to this day. I think it's significant that the recent Federal monitor report, issued, I believe it was in October, found that the numbers -- number of minority stops or consents -- I don't recall the exact variable-- But the number of minorities involved with potentially racially profiled stops is as high as it's ever been, and yet, the monitor concluded the reforms are working -- or seem to be working. There is no overt evidence of discrimination on the part of the State Police. And yet,

the numbers are still high. We have to figure out why that is and deal with that problem. It's just-- It runs to the complexity of this issue, and the -- you know, the nature of statistics and the limits of statistics. But I don't question the sincerity of troopers at all on this point. It's very difficult out on the road. I understand that.

SENATOR ROBERTSON: Turning it around for just a moment and taking a look at it from the point of view from the motorist, do you recall, from your review of statistics, at any point in time, including your preparation for this hearing, any data with respect to defined rates, once there had been consent searches?

JUSTICE VERNIERO: I may have known that at the time. I don't recall what it was. I don't remember.

SENATOR ROBERTSON: We've heard a variety of testimony, but it might be something in the area of 20 or 30 percent, meaning that 20 or 30 percent of those who subjected to consent searches might be carrying drugs or contraband.

Looking at it from a motorist point of view, do you understand why folks would be concerned that 70 percent of those who are subjected to consent searches, or perhaps as high as 80 percent, are folks who are not running drugs--

JUSTICE VERNIERO: That's right.

SENATOR ROBERTSON: --are not concealing contraband? Is that a legitimate concern?

JUSTICE VERNIERO: Of course.

SENATOR ROBERTSON: At the same time, you understand the concern of minority motorists who, from the data that we've been shown so far, appear to be stopped at higher rates, appear to be subjected to consent searches at higher rates. And when you put those two facts together, and then add in the percentage of the population on the road that they represent -- and then focus on the likelihood that a person of color will be subjected to a consent search, might be 10 or 20 times that of a white motorist, do you understand that concern on the part of minority motorists?

JUSTICE VERNIERO: I understand that racial profiling is a real issue in this state. As we said in the report, it's real, not imagined. And I can't, of course, comprehend, because I'm not in -- I'm not a minority, but I can only imagine the humiliation and embarrassment of being stopped illegally. And I could understand from the victims' perspective what they must be feeling. It's a feeling of outrage. I know I would be outraged if I were unlawfully selected for a law enforcement -- as a law enforcement target.

SENATOR ROBERTSON: Well, having noted all that-- And you really didn't do that as a rhetorical exercise, because I think it has to do with the following group of questions.

Looking at the period of your incumbency as Attorney General from July of '96 -- or I guess it is May of '99 -- was there a violators' survey finally done?

JUSTICE VERNIERO: No. As I indicated, that was one of the projects we felt we needed to complete. Unfortunately, we didn't complete it. And then, in the interim report, we spoke about a population survey.

SENATOR ROBERTSON: Now, the number of folks that testified that they were concerned about the numbers, with respect to consent searches and fine rates and the need to understand, comprehensively, what those numbers might tell us-- During that period of time, July '96 to May '99, was an organized comprehensive collection of that data put into place?

JUSTICE VERNIERO: What was your period, Senator?

SENATOR ROBERTSON: The period of your incumbency as Attorney General, because you can only speak really to that.

JUSTICE VERNIERO: As I say, I don't recall what ongoing-- I did not ask for any ongoing report or survey to be generated in my early tenure. I've already testified to that and the reasons for that. From 1998 forward to the time I released the -- the time I asked for the report to be issued, we were focused on the Troop D audit and some of the cultural issues that I described earlier. From February to May of 1999, when I left office, the comprehensive review that I think you speak of is, in fact, the April 20th report. That's an embodiment of that kind of review.

SENATOR ROBERTSON: Well, it certainly is an embodiment of the intention to look forward to trying to put that together. And we'll have an opportunity to talk to the current Attorney General and find out what sort of progress, if any--

JUSTICE VERNIERO: One of the recommendations, however, in the report was that there be this kind of ongoing statistical analysis that I think you're suggesting we should have in this state.

SENATOR ROBERTSON: Absolutely.

JUSTICE VERNIERO: Yes. I believe that's one of the reforms that we had recommended in the report.

SENATOR ROBERTSON: But separate and apart from the shooting and the resultant interim report, there had been the *Soto* case.

JUSTICE VERNIERO: Yes.

SENATOR ROBERTSON: There had been the charges by minority drivers, there had been some discussion of consent searches, and so forth, and there had been a history of racial profiling being a very volatile and very important issue in the State.

In addition to those factors, there's also, during the course of your tenure, the assembly of a staff that would take care of things like the *Soto* decision, especially earlier on -- the *Soto* decision and the Department of Justice inquiry. Now, that staff consisted of Mr. Waugh, who had no criminal experience, correct?

JUSTICE VERNIERO: Yes.

SENATOR ROBERTSON: And by that I mean as an attorney. Mr. Rover, who had no criminal experience as an attorney, and then, as a consultant, to add a little color, we had Mr. Fahy, who had testified that he had banged his head against the wall so -- he didn't use that phrase -- but banged his head against the wall so often asking for a violators' survey, he didn't bother asking for a consent to search survey and, in fact, had been fed information on the existence of numbers by Sergeant Gilbert, but never even asked to see the data. That was the team that was handling this particular--

JUSTICE VERNIERO: Well, I respectfully disagree with the characterization that -- at least insofar as I was concerned that Mr. Fahy was

banging his head against the wall for a violators' survey. I had approved that project fairly early on in my tenure. I can't recall the exact date. And I mean, Jack knew that -- I assume he knew that, because I understand he took steps to try to bring it to conclusion. So that was something that I supported -- that project.

Insofar as the team that was put in place, as I indicated earlier, the DOJ was principally a civil investigation as we understood it. I had great confidence in Mr. Waugh. Although he did not have criminal law background, he was, and is, a person of great intelligence and integrity. And I was confident that he would be able to appropriately represent the State, in respect of the DOJ.

SENATOR ROBERTSON: And in fairness, I should say that Mr. Fahy's discussion about a number of times having asked for a violators' survey-- He went back several years at that. And we were making reference, at the time, to what he had done in the *Soto* case. So I wasn't talking about, necessarily, your tenure, but we do note the fact that despite everyone's good intentions, the violators' survey still had not been put into place.

With respect to Mr. Waugh's background, you did take note, at least, in preparation for this hearing, that when Mr. Zoubek learned of the potential existence of numbers that had been gathered by the State Police that he was unfamiliar with, he said, "Send me what you have." And Sergeant Gilbert sent him the notebook, correct?

JUSTICE VERNIERO: I don't know exactly what Mr. Zoubek said which produced the notebook.

SENATOR ROBERTSON: Okay. Well, then we'll have an opportunity to ask him.

But taking a look at the factors that I've talked about -- about the lack of what some people would consider the building blocks to understanding this situation and the team that had been assigned to this -- do you understand, and can you understand, why some people in the community ask why did it take a shooting -- an incident on the Turnpike -- before sufficient attention was focused on this matter?

JUSTICE VERNIERO: I can understand that sentiment. The best I can do is describe why the shooting event was such a watershed event. And I've described it. It was because of the event itself, the fact that we were learning for the first time about falsification, the definition of racial profiling had begun to evolve at that point in time, and the other factors that came together, which pointed to the possibility of a serious problem.

That's my best explanation. That describes my state of mind. I understand how some would say that I acted too late. That's a judgment call some can make. I believe I took the appropriate steps, based on the information I had. And I take a broader view. We now know that racial profiling has been a problem in this state for many years.

I was Attorney General for about 33 months. It took me about 33 months to get my arms around the problem. I could have acted sooner. I've indicated that. I could have asked more in searching questions of the State Police. I regret that I didn't. But we finally got our arms around a problem that had eluded many attorneys general and many governors. And in some small measure, I see that as an accomplishment.

SENATOR ROBERTSON: When you were here two years ago on April 26th, at the racial profiling hearing, and you sat next to Mr. Zoubek, he and I engaged in a dialogue with respect to the sort of numbers that had been put together on the part of the report. It didn't take me but two minutes, when I saw the consent search data, to come to the conclusion that there was a serious problem when minority motorists are suspected at a rate four times higher than nonminority motorists.

In the absence of-- And then we began to discuss the notion of a benchmark survey and how important it was and the consent search survey and how important that was and the fine rates, because after all, are the fine rates the same across the races, and if they are, then why is one race suspected at a four-times higher rate. What does it tell us about the race consciousness that's in all of us. And these are very important things. And I think those statistical compilations, while not dispositive, are certainly important to the beginning of an understanding.

Given that that violators' survey still hasn't been done, to the best of my knowledge, and we'll find out more about that, and that some of the compilations I'm talking about still haven't been done, how do we-- And maybe I'm asking you to wax philosophical, and I don't mean to be doing that at 7 p.m., but you can answer it any way you want. How do we, as a government, look the young trooper in the eye on the highway, or a young motorist in the eye on a highway, and tell him we really have gotten our arms around the problem? How do we do that?

JUSTICE VERNIERO: Well, first, the statistics that you were seeing at the April 26th hearing were in the context of the April report. So you

yourself were viewing those statistics in a fuller context than I was dealing with in the earlier tenure. So that's the first point -- that not only my development, but I think the entire state, post-Turnpike shooting, had begun to look at this issue in a far and different light, except, of course, for the minority victims. They always knew. That's very clear. And it is difficult to look a victim in the eye and to look a trooper in the eye and say, where do we go from here? The best I can say is, we've got to remain ever vigilant. We have to move beyond the focus of individuals or particular time frames and look more broadly at the issue as a systemic issue and take great pains and efforts to further the reforms that were begun in April of 1999.

SENATOR ROBERTSON: Well, you referenced in your last response the state of your knowledge earlier in your tenure, but yet, when we listen to the fullness of testimony here, we hear Mr. Fahy, who was the frontline guy for seven years until, "Oh, my gosh. They finally found me. I can get out of this work and get into something else -- into the grand jury area." For seven years he did this work and was being told during part of that period that some of this data exists and didn't ask to see it in black and white, whether it had to do with the stop data looking more like -- still looking like the *Soto* case -- the *Soto* numbers or the consent search data still looking like the Maryland numbers.

When we have Mr. Waugh, who didn't really pause to consider the discovery obligations he may or may not have had as he became more aware of this data or the potential -- I don't know if you saw any of his testimony -- or the potential civil liability of the State of New Jersey in a class action lawsuit or otherwise, or when we have Mr. Rover, who's writing letters to the Justice

Department misstating the consent search standards, I sit here as a lawyer especially, maybe because I've been in private, and I have government practice, and maybe I'm putting a private practice standard against it, but I see people assigned to places that aren't from the Departments that can best do the job. And I take a look at that.

And then I hear us talking about the culture of the State Police. From what you've seen from the folks from your Department, when they testified-- What do you have to say-- How does it reflect on the culture within the Office of the Attorney General that these things took place?

JUSTICE VERNIERO: Well, first I would say I take full responsibility for my office. I have identified the areas in which I wish that I had done more and had asked more questions. And I take responsibility for that. That's me. That's my office.

In terms of Mr. Waugh, Mr. Rover, and others, Mr. Fahy-- Mr. Fahy tried the *Soto* case and, as I recall, supported our appeal of that case. So the point to be made with respect to Mr. Fahy is, I guess, a bit more complicated, because Jack was one of the persons that I relied on to prosecute the appeal.

What does it say about the Office of the Attorney General? It says we were grappling with a difficult issue that was very complex. We were making decisions based on the best information that we had, and in hindsight, we could have done more, and should have done better, but it was never on ill motive. It was always with the best of intentions. And we finally put our arms around an intractable problem and, hopefully, laid the foundation for real reform.

SENATOR ROBERTSON: Well-- And I don't mean to get into a philosophical discussion with you, but this is something that always occurs to me as I sit here as an elected official. And I worry about the nature of bureaucracy, and I worry about the attitudes of the folks and people of that bureaucracy. And I see on the front line a gentleman who's anxious to get out of the assignment that he's in and get on to something else. I see in another gentleman, a person who's gone through three or four reviews to be a Superior Court judge. On the other hand, I see--

Well, let's put it this way, I hear from people, and this is something that I should give you an opportunity to respond to, who worry about whether or not what they were seeing during this period was an attempt to get past the next headline, the next hearing, the next letter from the Department of Justice, and not a full-blown effort to really deal with and solve, as if it were that solvable, the issue of racial profiling.

How do you respond to people who make that observation?

JUSTICE VERNIERO: Well, I respond, again, institutionally by pointing out that the Attorney General has many roles and some inherent conflict -- some built-in conflicts. He or she has to at once be the chief prosecutor, the chief law enforcement officer, the chief administrator of the Department, and the chief guardian of civil rights. And all of those factors and all of those roles converge on one person and one office. And it is sometimes difficult to navigate your way through that. We did the best we could under difficult circumstances, but I'm not here to say we couldn't have done more or we couldn't have done it better, because obviously we could have.

SENATOR ROBERTSON: Yeah. And perhaps I can gratuitously suggest that that's a starting point and not a destination.

JUSTICE VERNIERO: Oh, absolutely. And that's why we were very careful to label the interim report just that, interim. It was never intended to be all answers to all questions. It was always intended to be a starting point.

SENATOR ROBERTSON: All right. And just a couple of other quick questions just to clean up a couple of areas. In the interim report, here were two sets of statistics -- two tables. The first had to do with stop data that had been accumulated in 1997 and '98. The other had to do with consent search data that had been accumulated earlier than that.

Why would it be that you didn't sort of mentally discount that earlier data since it was that -- sort of that pre-post-*Soto* data?

JUSTICE VERNIERO: As I said, after the Turnpike shooting incident, when falsification became a real issue, we began to look at some -- some of the same information that we had seen prior to the Turnpike shooting, and we simply viewed it in a different light. We had a different perspective.

SENATOR ROBERTSON: And when you were dealing with the Department of Justice, and their various requests, you were given, at your first meeting, or someone on your staff was given, at or fairly soon after the first meeting, sort of a blank letter that suggested these are the sorts of things we look at in cases of the sort. Did you consider that a formal request by the Department of Justice?

JUSTICE VERNIERO: No, nor did the Department of Justice, as far as I know.

SENATOR ROBERTSON: And all the discussion that we're having with respect to the material that was being supplied to the Department of Justice, were you under any sort of a subpoena, or was it part of an ongoing case that involved issues that had been joined legally?

JUSTICE VERNIERO: No, it was not. Certainly, we were not under subpoena. No.

SENATOR ROBERTSON: And do you think it's appropriate, and this was referred to later, although I don't know if you answered this question-- Do you think it was appropriate that if Mr. Rover had -- or if anyone has-- I'll put in the hypothetical rather than go through all of that.

If someone has a group of documents and has them available to be turned over, but lets them out in sort of a drip, drip, drip fashion, do you think that's really reflective of an organization that's cooperating with the Justice Department?

JUSTICE VERNIERO: I always felt that we were cooperating. And I always felt that that was the sentiment of the Justice Department. I was not aware of any complaints in our relationship.

SENATOR ROBERTSON: Finally, I just want to draw your attention to a document that I believe you've been provided with. It's listed as Z-4, which is a May 21, 1998--

JUSTICE VERNIERO: I have Z-5.

SENATOR ROBERTSON: Z-4 is a memorandum to you from Jack Fahy, dated May 21, 1998.

JUSTICE VERNIERO: Okay.

SENATOR ROBERTSON: It was in the pile that I received, so I assume it was in the pile that you received.

JUSTICE VERNIERO: Just bear with me, I've got a lot of paperwork here. Z-16. Okay. We're getting close. I have Z-19. I don't seem to have Z-4, but let me just check again.

SENATOR ROBERTSON: We have a copy.

JUSTICE VERNIERO: You have another copy? Okay. Thank you. Yes.

SENATOR ROBERTSON: This is a memo dated May 21, 1998, from Jack Fahy to yourself, subject, racial profiling. I'll ask you just to take a look at it if you would.

Now, you were asked a series of questions before concerning your testimony during the course of your confirmation hearings about the compilation of statistical data, many of which you answered by making reference to the Troop D audit. But as you were shown this memorandum, does this -- which, of course, is dated the year before -- May '99 -- this is May '98. Does this refresh your recollection as to what other statistical compilations you might have been engaged in that may have been the subject of your answer at your confirmation hearings?

JUSTICE VERNIERO: Well, as we've established in the previous line of questions, I misunderstood the question that I was asked by Senator Lynch.

SENATOR ROBERTSON: Well, I'm actually talking about the questions asked by Mr. Chertoff today.

JUSTICE VERNIERO: Regarding what? I'm not following your question, Senator.

SENATOR ROBERTSON: Regarding a variety--

Well, I'll refresh your recollection on that.

For instance, in your May 6th, '99 testimony on Page 7, you made the statement toward the top of the page, "We've been supplying information, at least in excess of two years, to the Justice Department--" Oh, that's not the one I'm thinking of. I'm sorry.

On Page 8. I'm sorry.

JUSTICE VERNIERO: Page 8 of what date, Senator?

SENATOR ROBERTSON: Of March 6th. (*sic*)

About a third of the way down, you state, "As I indicated yesterday, the data that is used in part and cited in the April 20 report we actually began gathering a year ago." And there was a lot of--

JUSTICE VERNIERO: Yes.

SENATOR ROBERTSON: --questioning back and forth--

JUSTICE VERNIERO: Yes.

SENATOR ROBERTSON: --about whether or not that involved the Troop D audit.

JUSTICE VERNIERO: Yes.

SENATOR ROBERTSON: And I'm saying, does that refresh your recollection as to--

JUSTICE VERNIERO: My understanding was that after the Turnpike shooting incident, there was the Troop D audit. And as I indicated, there were other things that were happening -- interviews with troopers. I

believe Dave Hesse, although I don't know the exact date, because I'm not sure Dave was first assistant at this point. He may have. But he was involved in his own review of IAB, the Internal Affairs Bureau -- and recall that was originally part of the racial profiling report, but then it got broken out into a separate report.

And it was my impression, when I testified previously, that there were other data collection that had occurred after 1998.

SENATOR ROBERTSON: Okay.

JUSTICE VERNIERO: This memorandum may be an indication of that, but that was my recollection.

SENATOR ROBERTSON: Well, directing your attention to the new or continued initiatives announced, the third bullet point there talks about monitoring an evaluation of stop data. Could that have been--

JUSTICE VERNIERO: It could very well have been. As I say, I don't recall exactly what information that I might have reviewed prior to my testimony. I'm sure I spoke accurately, at least I thought it was accurate at the time.

SENATOR ROBERTSON: Okay.

I have no further questions, Mr. Chairman.

SENATOR GORMLEY: Senator Lynch.

SENATOR LYNCH: Justice Verniero, just some-- Before I get into the same line of questioning that we've had some pieces of today in one fashion or another--

Apparently this Committee, through counsel, made requests for the--

JUSTICE VERNIERO: I'm sorry. I cannot hear you, Senator. A committee, you said--

SENATOR LYNCH: Apparently this Committee, through its -- this Committee, through its counsel--

JUSTICE VERNIERO: Oh, this Committee. Yes.

SENATOR LYNCH: --made requests for the -- your calendars for the time starting the month before you became Attorney General through the time that you left. Are you aware of that?

JUSTICE VERNIERO: I'm aware of discussions between Mr. Mintz and Mr. Chertoff on my calendar.

SENATOR LYNCH: You're not aware of the formal request?

JUSTICE VERNIERO: I believe it was-- I thought it was focused on my Attorney General tenure. It might have focused on something earlier. I had given the present Attorney General unredacted versions of my--

SENATOR LYNCH: Why don't we just stick to the questions.

JUSTICE VERNIERO: I'm sorry.

SENATOR LYNCH: Are you aware of the request?

JUSTICE VERNIERO: I'm aware of requests, generally, with respect to my schedule. I can't say--

SENATOR LYNCH: Are you aware that we received five months of calendars for the entire period?

JUSTICE VERNIERO: I'm aware that my attorneys were going to produce some records today.

SENATOR LYNCH: And then those are all-- Even those five months of the two-plus years that you were there have -- are redacted so that

we see, you know -- as in the case of November of 1996, one date that you have a meeting disclosed, and July of 1996, two dates that there's meetings disclosed, the rest of the days blocked out.

Did you keep your calendars from that period of time -- from June of 1996 until you left in a -- the payroll, and I assume that was around June of 1999?

JUSTICE VERNIERO: I don't understand your question. Did I keep my calendars?

SENATOR LYNCH: Did you have possession of your daily calendars, something that reflected the meetings that you were having during that time frame?

JUSTICE VERNIERO: My calendar was kept by my secretary, who would come up with my daily schedule. And I would receive, on a daily basis, that day's schedule. When we were formulating my monthly schedule, trying to anticipate events, trying to put my calendar in some sort of sense, she would print these calendar blocks of the entire month. I don't know what happened to my individual day-by-day calendars.

SENATOR LYNCH: How about those calendars for the -- your secretary was preparing on a monthly basis? Are they retrievable?

JUSTICE VERNIERO: I believe you have them.

SENATOR LYNCH: We have five months--

JUSTICE VERNIERO: Oh, well, what happened-- I gave--

SENATOR LYNCH: --out of almost three years.

JUSTICE VERNIERO: Anything that I had I gave to the present Attorney General several months ago, in connection with his document disclosure.

SENATOR LYNCH: Do you recall how many months you had in your possession?

JUSTICE VERNIERO: Whatever I had, I turned over to Mr. Farmer.

SENATOR LYNCH: You didn't count -- didn't see what you had?

JUSTICE VERNIERO: I don't remember. I just gave them what I had. There was folder of my calendars, and I turned it in to him.

SENATOR LYNCH: One other sort of curious issue that shows up in the discovery -- there were mock hearings held prior to the racial profile hearings in late April of 1996 and apparently again before your confirmation hearings. Is that correct?

JUSTICE VERNIERO: That sounds right.

SENATOR LYNCH: 1999, I'm sorry.

JUSTICE VERNIERO: I prepared by having mock Q and A, yes.

SENATOR LYNCH: And who participated in the mock Q and A prior to the racial profiling hearing?

JUSTICE VERNIERO: I don't recall.

SENATOR LYNCH: Members of your staff?

JUSTICE VERNIERO: It would be members of my senior executive staff. Not all of them. I don't recall.

SENATOR LYNCH: You don't recall one person that was in that -- any of those mock hearings?

JUSTICE VERNIERO: I presume at the time it would have been Paul Zoubek, particularly since we were appearing together on April 26.

SENATOR LYNCH: But he would have been not a questioner, but somebody who was questioned, correct?

JUSTICE VERNIERO: Yes or no. I don't remember.

SENATOR LYNCH: Who drew the script?

JUSTICE VERNIERO: Well, there was-- As I recall, there was no formal script. Brian Litten, I recall, was a person on my senior executive staff. One of his responsibilities was to be the legislative liaison, so I would have assumed he might have been in the room.

SENATOR LYNCH: Who else do you know was in the room?

JUSTICE VERNIERO: As I said, I don't recall.

SENATOR LYNCH: More than five people?

JUSTICE VERNIERO: There might have been more than five people.

SENATOR LYNCH: Did people play the roles of members of this Committee for purposes of asking questions?

JUSTICE VERNIERO: Not by specific name. I mean--

SENATOR LYNCH: Well, how many people were asking questions?

Let's take first, before the racial profiling hearing, how many people asked questions?

JUSTICE VERNIERO: As I-- It was less than the full membership of the Committee. I didn't-- My senior executive staff was not as big as this Committee.

SENATOR LYNCH: Well, were there more than five people asking questions?

JUSTICE VERNIERO: I don't recall. There might have been.

SENATOR LYNCH: Where did they get the questions from?

JUSTICE VERNIERO: Where did they -- just anticipate questions that they thought I would be asked.

SENATOR LYNCH: And did they ask questions to you at that time with regard to the Department of Justice inquiry or investigation and however you were characterizing it at the moment?

JUSTICE VERNIERO: They may have. I don't remember.

SENATOR LYNCH: Did they ask questions, to your knowledge, as to how you would answer if asked about data that was being retrieved from the Division of State Police from 1996 through the day of the profile hearings?

JUSTICE VERNIERO: I don't remember.

SENATOR LYNCH: What was the purpose of these mock proceedings?

JUSTICE VERNIERO: Well, that's the term you used. I used it as Q and A -- just--

SENATOR LYNCH: It's a dry run, it's a whatever you want to call it.

JUSTICE VERNIERO: I called it questions and answers -- trying to anticipate questions and trying to formulate accurate responses.

SENATOR LYNCH: Much like a candidate would do before a debate.

JUSTICE VERNIERO: I've never been a candidate, so--

SENATOR LYNCH: But you're aware of debate preparation.

JUSTICE VERNIERO: Yes.

SENATOR LYNCH: You've been involved in that.

JUSTICE VERNIERO: I've been involved in debate preparation.  
Yes.

SENATOR LYNCH: So this was similar in nature.

JUSTICE VERNIERO: I don't think it's similar in nature, because candidates -- there's normally two candidates, and the issues are different than the issues that I was preparing for. This was a group of senior people who were assisting in my preparation. We tried to anticipate questions, really, just as a way of ensuring that my responses were as accurate as they could be.

SENATOR LYNCH: Okay. I'm referring specifically now to the preparation for the racial profiling hearings in the last week in April 1999. How many days did you have these dry runs, trial runs, mock -- whatever you want to call them?

JUSTICE VERNIERO: I have no idea, Senator.

SENATOR LYNCH: More than a day?

JUSTICE VERNIERO: I just do not recall whether we would have more than a day. I just don't remember.

SENATOR LYNCH: Did they endure-- Was the line of questioning-- Did it endure for hours?

JUSTICE VERNIERO: I hope it didn't endure for hours, because I didn't have hours to spend.

SENATOR LYNCH: You have no recollection of it.

JUSTICE VERNIERO: I have recollection of questions and answers being posed to me by senior members of my staff. I've testified to that.

SENATOR LYNCH: Now, did you do this same thing prior to the nomination hearings of May 5 and May 6, 1999?

JUSTICE VERNIERO: I don't recall any specific sessions, but it would not surprise me if I did.

SENATOR LYNCH: Again with senior staff?

JUSTICE VERNIERO: Yes.

SENATOR LYNCH: On company time?

JUSTICE VERNIERO: Well, if I had done it at all, obviously it would have been during the workday or after hours. I don't recall.

SENATOR LYNCH: But this had nothing to do with the Office of Attorney General, it had to do with your personal quest to become a nominee -- become a member of the Supreme Court, correct?

JUSTICE VERNIERO: Well, I remember that I had a concern myself about whether I should use Attorney General letterhead, for example, to respond to the various questions of the Committee. And this is generally what you're speaking of.

SENATOR LYNCH: No, it's not what I'm speaking of.

You're still a member-- You're still being paid by the State of New Jersey at the time of the confirmation hearings, correct?

JUSTICE VERNIERO: Yes.

SENATOR LYNCH: So what I want to know is, the people that were participating, if there was a mock session or a primp session prior to your

nomination -- there were members of your staff-- How do you rationalize that they were doing this on a nomination hearing, having nothing to do with their function of the Office of Attorney General?

JUSTICE VERNIERO: I was trying to answer that question, Senator, with respect to the letterhead. I had spoke to Rita Strmensky, the head of the Executive Commission on Ethical Standards, and I asked her this very question: "I'm the current Attorney General. I'm up for a nomination. Can I use letterhead and other resources to prepare for the hearing -- to respond?" And it was her advice, as I recall, that because the issues that were being asked of me during the confirmation process were so intertwined with my tenure as Attorney General, that it would have been appropriate to use letterhead and other resources to respond to the Committee and to prepare for the hearing.

SENATOR LYNCH: I assume, therefore, that you reduced this request for an opinion from Ms. Strmensky in writing, correct?

JUSTICE VERNIERO: It was an oral request. It was not reduced to writing.

SENATOR LYNCH: Prior to your coming into the employ of the State of New Jersey, were you schooled in race discrimination actions, search and seizure law of the State of New Jersey, and racial profiling?

JUSTICE VERNIERO: Other than my formal legal training, which included the search and seizure law, criminal law, and so forth at Herold and Haines and Pitney, Hardin, Kipp, and Szuch, my recollection is there were antidiscrimination policies that I would have been familiar with as part of the personnel process. I had no formal training in racial profiling.

SENATOR LYNCH: And search and seizure law?

JUSTICE VERNIERO: Not outside my formal legal education, no.

SENATOR LYNCH: And race discrimination actions?

JUSTICE VERNIERO: Again, it's the same answer, other than my formal legal training where I would have studied case law and studied issues touching on those subjects.

SENATOR LYNCH: I was just reminded. Did we have a dry run -- mock hearings before these proceedings today?

JUSTICE VERNIERO: Well, that gets into attorney-client privilege, which I would like to assert with the Committee's indulgence.

SENATOR LYNCH: You got a significant education in terms of search and seizure law and, to some extent, race discrimination law when you were clerking for Justice Clifford in 1984-'85, did you not?

JUSTICE VERNIERO: To the extent that the court's docket in that year touched on those issues.

SENATOR LYNCH: Do you recall doing research in writing recommended opinions for Justice Clifford involving search and seizure law that year?

JUSTICE VERNIERO: I don't recall. I may have. I don't recall what the Court's docket was during that term of the Court.

SENATOR LYNCH: Just to go back one second. Did any State employees participate in mock runs, dry runs, proceedings for purposes of this hearing today?

JUSTICE VERNIERO: Any State employees? The only persons in my employ are my law clerks. And they did not participate in any mock proceedings.

SENATOR LYNCH: Let's answer the question. Did any State employees participate in those dry-run exercises preparatory for these proceedings today?

JUSTICE VERNIERO: No.

SENATOR LYNCH: So you had-- If I referred you to a Supreme Court case, decided July 24, 1985 and argued in October 23, 1984, having to do with search and seizure, named State versus *Reldan*, R-E-L-D-A-N -- does that ring a bell?

JUSTICE VERNIERO: It does not.

SENATOR LYNCH: But you know that you had some training in search and seizure -- New Jersey case law during that time period.

JUSTICE VERNIERO: I might have. As I say, I would depend on the Court's docket. It would depend on what cases Justice Clifford would have assigned to me.

SENATOR LYNCH: Well, in November--

JUSTICE VERNIERO: I don't recall.

SENATOR LYNCH: In November of 1997, did you understand what a consent to search was as opposed to a probable cause search?

JUSTICE VERNIERO: As I testified to an earlier question, the standard for consent to search was reasonable, articulable standard.

SENATOR LYNCH: You knew that-- You knew the distinction.

JUSTICE VERNIERO: Yes.

SENATOR LYNCH: And there's a significant distinction between probable cause and reasonable suspicion.

JUSTICE VERNIERO: There's a distinction that-- Case law sometimes blurs the distinction, but there's a distinction.

SENATOR LYNCH: And were you aware of that distinction back in 1996 when you were counsel to the Governor or chief of staff to the Governor?

JUSTICE VERNIERO: I can't say that I recall being aware of that distinction. I can't imagine it ever coming up in that respect, unless I worked on it -- piece of pending legislation that might have touched on that issue.

SENATOR LYNCH: How about with regard to searches, generally? Did you have a workable knowledge of the New Jersey case law on search and seizure at that time?

JUSTICE VERNIERO: I was-- At that time, outside of my formal legal training, I can't say I was educated outside of New Jersey. I don't recall whether my law school curriculum focused on New Jersey case law. I imagine the principles are the same from state to state.

SENATOR LYNCH: But were your-- What was your function -- job title for the fourth quarter of 1995 for Governor Whitman and in the first half of 1996?

JUSTICE VERNIERO: I would have to consult with my own résumé.

SENATOR LYNCH: Well, you were either governor's counsel or chief of staff, right?

JUSTICE VERNIERO: That's correct.

SENATOR LYNCH: And in that role, as you testified before the hearings, you really felt yourself the Governor's lawyer.

JUSTICE VERNIERO: I tried to organize and manage the counsel's office as a small law firm with one client.

SENATOR LYNCH: Were you aware of what was called Camden City Initiative back in the latter part of 1995 or the first half of 1996, which was an initiative by the State Police, instigated by the Department of Law and Public Safety, to go into Camden and address head-on the issues of drugs and guns on the street?

JUSTICE VERNIERO: I am generally aware of that initiative. I'm not certain whether that also included the time frame in which the State Police supplemented the local police force. That may have been part of that initiative, but I can't recall.

SENATOR LYNCH: But there was a good deal of publicity surrounding that initiative in response to some public concerns in Camden about safety issues on the street, guns and drugs and so forth, correct?

JUSTICE VERNIERO: Again, I don't recall it specifically. I remember the name.

SENATOR LYNCH: At some point in time during that time period, the fall of '95 through June of '96, did you consult with or talk to anyone in the hierarchy of the State Police about that program?

JUSTICE VERNIERO: As chief of staff or chief counsel, not that I recall.

SENATOR LYNCH: Forget as anything. Did you talk to anyone in the hierarchy of the State Police from -- starting in October of 1995 through June of 1996, with regard to that program?

JUSTICE VERNIERO: I don't recall. It's possible that if the Governor had a meeting that related to that subject and State Police were present in the meeting, I might have been present, and I might have discussed it, but I don't have a recollection.

SENATOR LYNCH: Let me specifically try to refresh your recollection. Did you interface on this issue during that same time frame with the executive officer, Lieutenant Colonel Lanny Roberson?

JUSTICE VERNIERO: I may have. I just don't recall.

SENATOR LYNCH: And despite-- And along with the newspaper publicity that was received or published as a result of those -- that activity, there was also a couple of incidents that occurred in January of 1996, where a trooper by the name of Davis was shot. And then subsequently in the investigation of that shooting, even Lieutenant Colonel -- then Major Dunlop was shot in the hand. Do you know that? Do you remember that?

JUSTICE VERNIERO: I have a recollection of Colonel Dunlop being shot in the hand. I don't have a recollection of the other.

SENATOR LYNCH: And subsequent to that shooting, and during the pendency of that same program, Camden City Initiative, Governor Whitman made a couple of visits to Camden to look at this initiative and see what was going on, correct?

JUSTICE VERNIERO: I recall something to that effect, yes.

SENATOR LYNCH: Did she discuss those with you -- those visits?

JUSTICE VERNIERO: She might have.

SENATOR LYNCH: Did she ever discuss the program with you?

JUSTICE VERNIERO: She may have.

SENATOR LYNCH: Did you, at any time, not with Governor Whitman-- Did you, at any time, go to Camden to view this program or talk to people about this program?

JUSTICE VERNIERO: I recall when I was Attorney General going to Camden, along with other cabinet officers, to deal with--

SENATOR LYNCH: I'm talking about--

JUSTICE VERNIERO: It was then also called the Camden Initiative, or something very similar to that.

SENATOR LYNCH: I'm talking about prior to this particular program being closed down in June of 1996.

JUSTICE VERNIERO: I don't recall accompanying the Governor on any of those visits, if that's your question.

SENATOR LYNCH: Did you ever discuss this program with then Attorney General Poritz?

JUSTICE VERNIERO: I may have in connection with supplementing the Camden police force, which, as I say, I think might have been a piece of this. There might have been an occasion where then Attorney General Poritz was briefing the Governor on the Camden Initiative or on supplementing local police.

SENATOR LYNCH: Did you visit--

JUSTICE VERNIERO: It would not surprise me if I were in a meeting and was part of that discussion.

SENATOR LYNCH: Did you go to Camden City with then Attorney General Poritz at any time in April, May, or June of 1996?

JUSTICE VERNIERO: Not that I recall.

SENATOR LYNCH: Did you ever discuss-- Do you ever have any recollection of discussing transition -- potential transition with then Attorney General Poritz in the context of a visit to Camden in May or June of 1996?

JUSTICE VERNIERO: No, I don't recall that.

SENATOR LYNCH: And while your nomination to be Attorney General did not occur until the date that Chief Justice Wilentz announced his resignation, June 13, 1996, which was the same date that also then Attorney General Poritz was nominated to the Supreme Court, you had known for some period of time that Justice Wilentz was -- health was very poor, and that there would be a transition.

JUSTICE VERNIERO: Actually, I don't know the length of time. I recall--

SENATOR LYNCH: You know there was some period in time.

JUSTICE VERNIERO: I recall we had notice that he was ill. I don't recall the time frame.

SENATOR LYNCH: Well, I suggest to you that that sort of had to be the case if Governor Whitman, on the same day that Chief Justice Wilentz put out his notice that he was going to resign, effective immediately --

and on that same very date, Governor Whitman nominated Deborah Poritz to be the Chief Justice, and you to be the Attorney General, correct?

JUSTICE VERNIERO: That's the sequence. I don't recall the time frame by which we learned of Chief Justice--

SENATOR LYNCH: And again, you have no recollection of how you learned you were going to be nominated to be the Attorney General?

JUSTICE VERNIERO: I don't know.

SENATOR LYNCH: Who told you it, and in what setting?

JUSTICE VERNIERO: Well, I assume, at some point, the Governor asked me.

SENATOR LYNCH: Somebody asked you to be the Attorney General of the State of New Jersey, in June -- in May or June of 1996, and you don't remember it?

JUSTICE VERNIERO: Well, the person that asked me was a person that I saw practically every day.

SENATOR LYNCH: Oh.

JUSTICE VERNIERO: And I don't distinguish in my mind the day she asked me whether or not I would like to be the Attorney General.

SENATOR LYNCH: Let's get back to the line of questioning then. If you saw Governor Whitman every day -- your client, as you described it before -- did she ever talk to you about her going to go to Camden and do an unlawful search of a 15-year-old black male?

JUSTICE VERNIERO: No, she never spoke to me about that.

SENATOR LYNCH: Did you find out subsequent to May of -- April-- I'm sorry, subsequent to May of 1996 that indeed the Governor had

performed -- done an illegal search -- a wrongful search on a 15-year-old black male?

JUSTICE VERNIERO: The first time that I learned of the so-called Camden frisk photo was when it was published in the newspaper.

SENATOR LYNCH: You never had any anecdotal information that the State Police had this photo, that it had occurred, and the Governor never told you about it.

JUSTICE VERNIERO: The Governor never told me about it. I might have heard a rumor to the effect the day or two before it was published, but that was years later.

SENATOR LYNCH: How about in 1996, did you ever hear about it?

JUSTICE VERNIERO: No, sir.

SENATOR LYNCH: And then-- I'm not talking specifically about the photo, I'm talking about the incident now. Did you hear about the Governor having done this frisk?

JUSTICE VERNIERO: No. My testimony is no. I learned about it at about the same time it was published in the newspaper.

SENATOR LYNCH: If you had learned about it, would you have admonished her that it was wrongful under the law?

JUSTICE VERNIERO: I'm not going to predict what my conversation would have been with the Governor, Senator.

SENATOR LYNCH: Are you familiar with the young man who, at that time, apparently, was 15 or so and the fact that he ultimately, when this came out, started some action or made a claim against the State of New Jersey?

JUSTICE VERNIERO: I don't recall that specifically, no.

SENATOR LYNCH: You have no idea whether that claim was settled or what?

JUSTICE VERNIERO: I do not.

SENATOR LYNCH: When did you hire Paul Zoubek?

JUSTICE VERNIERO: I hired Paul-- I believe it was sometime in 1998, but I'd have to consult the record on that to be absolutely sure.

SENATOR LYNCH: 1998?

JUSTICE VERNIERO: I believe so.

SENATOR LYNCH: I thought he was ultimately made the director of the Division of Criminal Justice in December of '97.

JUSTICE VERNIERO: Then it may have been in '97. As I say, I don't recall the exact date. He was hired first--

SENATOR LYNCH: Well, he says he was hired July 21, 1997. Does that refresh your recollection?

JUSTICE VERNIERO: Yes, that refreshes my recollection.

SENATOR LYNCH: And did you interview him prior to his being hired?

JUSTICE VERNIERO: Yes.

SENATOR LYNCH: Did he come highly recommended to you?

JUSTICE VERNIERO: He did.

SENATOR LYNCH: And you knew his background.

JUSTICE VERNIERO: Generally, yes.

SENATOR LYNCH: And what was that background?

JUSTICE VERNIERO: That he had served in the United States Attorney's Office in Camden.

SENATOR LYNCH: And you had a need for someone who had his experience and skills in criminal prosecution and criminal law, generally, correct?

JUSTICE VERNIERO: I thought he would be a good complement to my eighth-floor team and that he would be able to advise me as to criminal law issues, principally as they related to the Division of Criminal Justice.

SENATOR LYNCH: And had you lost some staff shortly before July 1997, who were significant staff dealing with criminal law issues?

JUSTICE VERNIERO: I don't remember what the staff turnover might have been. I remember that I thought Paul would be a good complement to my eighth-floor team. First, he was brought in on my senior executive staff. Then, when the Director of Criminal Justice position opened up, I put him there.

SENATOR LYNCH: When did that open up, and why?

JUSTICE VERNIERO: It opened up, as I recall, shortly after the gubernatorial election.

SENATOR LYNCH: Is that when Mr. Bozza died?

JUSTICE VERNIERO: I don't remember when Mr. Bozza died. But as I recall, Mr. Farley had made the decision shortly after the election that he wanted to avail himself of an opportunity that had opened up in Ocean County, where he was from, and where I think he had worked on a previous occasion.

SENATOR LYNCH: So now you interview, again, Paul Zoubek, to talk to him about his taking over the reins as the head of the Division of Criminal Justice, correct?

JUSTICE VERNIERO: That's right.

SENATOR LYNCH: And that's in November or December of 1997?

JUSTICE VERNIERO: Whatever the--

SENATOR LYNCH: If I refresh your recollection that he was appointed to that position in December of 1997, does that help you?

JUSTICE VERNIERO: That sounds about right.

SENATOR LYNCH: I'm sorry. My recollection was just refreshed by the testimony that Mr. Zoubek, in the deposition, that he indicates it was a few days after the election of 1997. And that election was, I represent to you, was November the 4th.

JUSTICE VERNIERO: Fine. Whatever the record reveals on Paul's start date, I'll accept.

SENATOR LYNCH: And then he was sworn in in December.

JUSTICE VERNIERO: I'll accept that representation.

SENATOR LYNCH: Did you have a discussion with him prior to his accepting this position to be Director of the Division of Criminal Justice? Did you have a discussion with him about what you expected of him, what his scope of reasonability would be in any particular matters of concern that you wanted him to manage or handle?

JUSTICE VERNIERO: I'm sure I would have. I don't recall exactly what those discussions were.

SENATOR LYNCH: At that point in time, you had this ongoing inquiry/investigation by the Department of Justice that had initiated in -- your first notice that it was either late November or early December of 1996?

JUSTICE VERNIERO: Correct.

SENATOR LYNCH: Did you mention that to Paul Zoubek and -- when you hired him in July or when you promoted him in November?

JUSTICE VERNIERO: I don't recall what we discussed. We spoke generally of the eighth-floor operations, the Department of Law and Public Safety as a whole. I don't recall specifically what subjects we discussed.

SENATOR LYNCH: Okay. So going back to November or December of 1996, you get notice of this inquiry that Alex Waugh tells you about -- that he gets this phone call. And apparently at some point in time during December you had -- before going to Washington, you had some reaction that this might be -- there might be some politics behind this, and that, ultimately, you felt after the December 24th -- I'm sorry -- your visit to Washington that that was not the case, correct?

JUSTICE VERNIERO: I had some initial concerns about the inquiry that were quickly dissipated.

SENATOR LYNCH: Upon your having the visit to Washington and reviewing the matter with the staff that you discussed earlier.

JUSTICE VERNIERO: Yes. One of the reasons that I wanted to go down to Washington myself was to speak face-to-face with my counterparts, and I got a fairly good comfort level coming out of that meeting. I came to respect that office down in Washington.

SENATOR LYNCH: And you came to-- And you at that meeting represented that you and Fahy would cooperate with them in their attempt to retrieve various information along the road.

JUSTICE VERNIERO: That was one of our principal objectives -- was to indicate our cooperation.

SENATOR LYNCH: Right. And you also indicated to them that you were -- you had this *Soto* issue, and that was sort of at the base of all of this, as you felt, at the time -- and that you were going to send them your brief on the matter, because you felt pretty strongly about issues such as shifting of burdens or going forward and not having an adequate baseline where significant issues that you wanted to -- them to read your position on that.

JUSTICE VERNIERO: Well, I understood that it was DOJ that was concerned about *Soto*. But that, in fact, was--

SENATOR LYNCH: That's what I'm saying.

JUSTICE VERNIERO: Okay.

SENATOR LYNCH: They were concerned. And in response to that concern, you said, "I'm going to send you our brief when we have it done, because it outlines our position in this matter."

JUSTICE VERNIERO: Yes.

SENATOR LYNCH: And you personally send that brief to them.

JUSTICE VERNIERO: I signed the cover letter.

SENATOR LYNCH: Is that the only time that you personally communicated, with your name on it, to the Department of Justice during this entire inquiry?

JUSTICE VERNIERO: No. My recollection is that I wrote to Ms. King shortly after our Washington meeting. I signed that letter, as I recall.

SENATOR LYNCH: And that simply was outlining the discussion at the meeting.

JUSTICE VERNIERO: Yes, and the letter speaks for itself. There might have been some other things. I don't have the letter in front of me. I recall signing the letter as a transmittal with the brief. I recall sometime later, communicating with Mr. Lee down in that office. And I recall sending Attorney General Reno a copy of the April 20th report. And I may have signed a letter to her at that point in time, or it may have been four or five letters that I signed.

SENATOR LYNCH: Oh, you mean the interim report -- April 20, 1999.

JUSTICE VERNIERO: The interim report. Yes.

SENATOR LYNCH: Other than those documents, you had no direct communication in writing to the Department of Justice during this inquiry or investigation?

JUSTICE VERNIERO: Not that I recall.

SENATOR LYNCH: All right. So you come back from Washington. You've gotten heads-up from them, at least to where they're generally wanting to go, and you convene a meeting on Christmas Eve in your office with the Superintendent of State Police and maybe another person from his Division, along with Fahy and Waugh.

JUSTICE VERNIERO: I don't recall exactly who was at that meeting. It might be reflected on my schedule.

SENATOR LYNCH: When did you determine that you needed to have someone interface with the Department of Justice in retrieving documents that they wanted and sending them along?

JUSTICE VERNIERO: I don't recall the precise date.

SENATOR LYNCH: How about at the meeting that occurred at the Justice Department in Washington? Did you discuss, at that time, that you were going to have to appoint someone to interface with them or put someone in a position to interface with them -- to communicate with them on a day-to-day basis?

JUSTICE VERNIERO: I may have, but I'm not certain that the discussion progressed to that level of detail with the DOJ at that point in time.

SENATOR LYNCH: But in any event, you, subsequent to the December 24, 1996 meeting, did put someone in the position of providing the day-to-day interface with the Department of Justice regarding their inquiry.

JUSTICE VERNIERO: Well, the person that I relied on was Alex Waugh. And if I'm not mistaken, he then turned to George Rover.

SENATOR LYNCH: Okay. Did you know George Rover before that time?

JUSTICE VERNIERO: Not that I recall.

SENATOR LYNCH: And to your knowledge at that time, which I assume was January of 1997 -- that you knew that Alex Waugh had no background whatsoever in the criminal justice system -- criminal law, search and seizures, etc. And I assume that you knew that Mr. Rover had no such background.

JUSTICE VERNIERO: I recall George was at the ABC at the time. I don't remember what his background was. I don't recall exactly what Mr. Waugh was, but he was--

SENATOR LYNCH: Who's the director of the Division of Criminal Justice in January of 1997?

JUSTICE VERNIERO: January-- I assume it was Terry Farley.

SENATOR LYNCH: Did you think it was important to bring Mr. Farley in to tell him what was going on because it might impact on his circumstances with civil and criminal litigation having to do with discovery issues and the like?

JUSTICE VERNIERO: I probably would have assumed that Jack Fahy was consulting with Terry Farley, but I don't know for sure. As I say, Jack Fahy was involved--

SENATOR LYNCH: From time to time.

JUSTICE VERNIERO: From time to time.

SENATOR LYNCH: But he certainly wasn't put in the position of being the one responsible to retrieve documentation to send to the Department of Justice.

JUSTICE VERNIERO: The person I relied on for that function was Alex Waugh and whoever Alex thought to include in that function.

SENATOR LYNCH: Well, the only person besides Alex Waugh that you knew was in the loop, in terms of retrieval of information and communicating with the Department of Justice on the retrieval, was George Rover, correct?

JUSTICE VERNIERO: That's the only person I knew of from OAG, but I would have assumed that there were others at State Police, and possibly others in the Department, who would be involved in retrieval of information.

I mean, you're asking questions very broadly, Senator. Retrieval of information may require a number of persons.

SENATOR LYNCH: Well, let me get specific. At some time between the 1st of January 1997 and the end of May, it's clear from the record that you had expressed concerns about this inquiry being called an investigation and getting into the public domain, correct?

JUSTICE VERNIERO: I was concerned that New Jersey should be treated fairly in all respects with respect to this inquiry.

SENATOR LYNCH: Can you answer the question?

JUSTICE VERNIERO: That is my answer.

SENATOR LYNCH: Were you concerned-- Did you express concern to members of your staff and others that you didn't want this to become considered an investigation?

JUSTICE VERNIERO: I might have expressed those concerns directly to the DOJ, and if I'm not mistaken, the DOJ agreed that it would be informal, at least at the outset, and that's what it was.

SENATOR LYNCH: All right.

And you were concerned about that.

JUSTICE VERNIERO: As I said, yes, I was.

SENATOR LYNCH: And you were also concerned, as evidenced by what occurred in the record between the 1st of January and the end of May

of 1997, that this not get to the point where you would be facing a consent decree, correct?

JUSTICE VERNIERO: Well, in 1997 and '96, there was no consent decree being proposed, and I certainly was not going to agree to one based on the record as I understood it at that time.

SENATOR LYNCH: Well, you know about Blaker's notes on the memo about what you would do not to sign a consent decree?

JUSTICE VERNIERO: I've read those comments. Yes, I'm familiar with those.

SENATOR LYNCH: Did that refresh your recollection?

JUSTICE VERNIERO: Refresh my recollection to what?

SENATOR LYNCH: As to the fact that you were saying, at least by the end of May of 1997, that you didn't want to get anywhere near a consent decree.

JUSTICE VERNIERO: Oh, I've already testified, I believe, that--

SENATOR LYNCH: I'm only asking you questions.

JUSTICE VERNIERO: --my sentiments at that meeting, I don't recall the exact words I used, but I was very clear that I would not agree to a consent decree had one been proposed.

SENATOR LYNCH: Right.

JUSTICE VERNIERO: And one was not proposed.

SENATOR LYNCH: And you certainly didn't want the Department of Justice filing a suit against the State of New Jersey in this regard, did you?

JUSTICE VERNIERO: A suit would have been inappropriate in my judgment.

SENATOR LYNCH: The question was, you certainly didn't want that.

JUSTICE VERNIERO: You say I didn't want it.

SENATOR LYNCH: You thought that would be--

JUSTICE VERNIERO: It wasn't appropriate.

SENATOR LYNCH: Exactly. Okay.

But you understood that they could have if they found -- if they found that New Jersey was not cooperating, if there was data indicating that there might be significant minority percentages of stops, arrests, searches, etc.?

JUSTICE VERNIERO: I don't know what I understood their criteria was at that point for triggering an investigation.

SENATOR LYNCH: Okay.

JUSTICE VERNIERO: Obviously there was a point in time when, as November 1997 -- I believe the record indicates -- where they had consent to search information. Presumably the statistics were the same as later revealed in the record. And yet, they did not begin a formal notice of suit until sometime in April of 1999.

SENATOR LYNCH: Let me interrupt you, Justice Verniero.

JUSTICE VERNIERO: My point is, I can't pretend to know what was going through the DOJ's mind as to what would trigger in their mind a lawsuit in New Jersey.

SENATOR LYNCH: But that's not what I asked you. I didn't ask you to surmise what was going in their mind. I asked you that that could happen, and you certainly didn't want it to happen.

JUSTICE VERNIERO: I thought it would be unfair if it happened at that point in time.

SENATOR LYNCH: Right. And that's why you agreed to cooperate and provide information.

JUSTICE VERNIERO: I agreed to cooperate, not to thwart a lawsuit which may or may not have happened. I agreed to cooperate, because it was the right thing to do.

SENATOR LYNCH: And you didn't want anything in the public eye that was an investigation, that there was a consent decree, or that there was a lawsuit.

JUSTICE VERNIERO: The premise of your question, Senator, is that I agreed to cooperate as some sort of quid pro quo--

SENATOR LYNCH: I didn't say that.

JUSTICE VERNIERO: --to avoid publicity, and that's not the way it was. I got a request from the Department that they were interested in the *Soto* case. I thought that I should go down to Washington to speak firsthand with my counterparts. I wanted to cooperate. That was a two-way street. I felt we were cooperating with one another, and that's the reason. It wasn't for some ulterior motive--

SENATOR LYNCH: And you were satisfied that--

JUSTICE VERNIERO: --to thwart a lawsuit.

SENATOR LYNCH: And you were satisfied that the putting of George Rover into the position of the interface with the Department of Justice was a competent decision by Alex Waugh and/or you?

JUSTICE VERNIERO: I was satisfied with that at the time.

SENATOR LYNCH: And what did he have in his background that would make him knowledgeable in the issues that were being addressed in this Department of Justice inquiry?

JUSTICE VERNIERO: As I said earlier, I knew Alex, and I was principally focused on Alex. And I relied on Alex to bring whoever he thought was appropriate into the team.

SENATOR LYNCH: So he-- It didn't raise a red flag to you when he brings somebody in to interface with the Department of Justice from the Division of Alcohol and Beverage Control--

JUSTICE VERNIERO: It did not.

SENATOR LYNCH: --who doesn't have any background in criminal law, search and seizure, race discrimination, etc.?

JUSTICE VERNIERO: Because at the outset, I understood the DOJ, at least in the beginning, to be requesting information. Document retrieval might be required. I had confidence that Mr. Waugh and Mr. Rover could retrieve that information in a competent fashion.

SENATOR LYNCH: Now, let me go forward again to where you said that the State of New Jersey, through you or your offices or through your assignment, has sent consent to search information to the Department of Justice in October or November of 1997.

Is that correct?

JUSTICE VERNIERO: That's what I understand, having read the record in preparation of this hearing. I don't recall--

SENATOR LYNCH: How about if I refresh your recollection that it was consent to search forms that were sent to the Department of Justice? Do you know what information was in those forms?

JUSTICE VERNIERO: I do not, no.

SENATOR LYNCH: You never looked at them?

JUSTICE VERNIERO: Not that I recall.

SENATOR LYNCH: And do you know from the record and what you've gleaned so far, that the Department of Justice doesn't even have a cover letter for those forms?

JUSTICE VERNIERO: That I don't know. As I say, I was not involved with the day-to-day turnover of documents.

SENATOR LYNCH: But you were involved in this same time frame, with the drafting of the documents that wound up going to the Department of Justice on November 5, concerning the definition of consent to search in New Jersey?

JUSTICE VERNIERO: What document is that, Senator?

SENATOR LYNCH: I'm talking about-- Let's start with the draft of the document, which is marked W-31, October 31, 1997.

JUSTICE VERNIERO: Yes, I have it.

SENATOR LYNCH: And then there is a draft of that, allegedly authored by Alex Waugh, that is dated on the 3rd of November 1997.

JUSTICE VERNIERO: I see it, yes. The draft letter to Mr. Posner.

SENATOR LYNCH: And that's-- You know, having read this, that there's some emphasis added in certain words in the definition of consent search in New Jersey?

JUSTICE VERNIERO: I don't understand your question -- emphasis added? What are you referring to?

SENATOR LYNCH: It's up on the screen. You see what words are emphasized?

JUSTICE VERNIERO: I don't. My copy, it's very hard to tell what letters-- I think it's, "initial and thereafter."

SENATOR LYNCH: Well, let me give you-- Let me read you the October 31, 1997, draft done by Mr. Rover. In the second paragraph, second sentence, "such requests are only obtained after," underlined, "a motorist has been stopped, and only if the law enforcement officer thereafter determines that there is--"

I'm sorry. I'm sorry.

"Only if the law enforcement officer thereafter," underlined, "determines that there is probable cause to believe that there may be contraband in the vehicle."

Do you remember that?

JUSTICE VERNIERO: I don't have an independent recollection of it. I see it there in the attachment.

SENATOR LYNCH: And you see-- Do you remember reading that?

JUSTICE VERNIERO: I don't have a recollection of reading it.

SENATOR LYNCH: Did you testify on questioning by Mr. Chertoff that you may have glossed through it and missed it or something?

JUSTICE VERNIERO: Yeah, I may have missed it. Mr. Chertoff, I believe, asked me, at the present time, having reviewed it, whether the probable cause is the correct standard. And my understanding was, at the time, that probable cause was not the correct standard.

SENATOR LYNCH: I suggest to you, Justice Verniero, that the letter you sent -- that your Department sent -- to the Department of Justice on November the 5th, 1997, the day after the election, is an attempt to deceive the Department of Justice that there is a distinction between consents to search in New Jersey and consents to search in Maryland.

Are you aware of that?

JUSTICE VERNIERO: I would disagree with that. There was no attempt, as far as I'm concerned--

SENATOR LYNCH: So this was a product of -- even with that emphasis added, this was simply a product of the fact that neither George Rover or Alex Waugh or then Attorney General Verniero had any background whatsoever in search and seizure law, in consent to search law, and the definitions thereof in the State of New Jersey.

JUSTICE VERNIERO: This letter, as I review it now, is consistent with the perception or the development of the racial profiling definition, that it was focused mainly on stops, not on consent to search.

I have already indicated that the words "probable cause" were in error. I have to believe it was inadvertent. I'm certainly not aware of any

intention to deceive the Justice Department by describing an erroneous standard.

SENATOR LYNCH: You see on the screen on the document updated November 5, 1997, that the--

JUSTICE VERNIERO: What -- what date is that? What's the--

SENATOR LYNCH: November 5, 1997.

JUSTICE VERNIERO: What's the exhibit number?

SENATOR LYNCH: It's W-32.

That the emphasis under those two words are removed in the document that goes out.

JUSTICE VERNIERO: I'm sorry, do you have a question?

SENATOR LYNCH: You see in the final form that it takes on November 5, 1997, that's sent to Mr. Posner at the Department of Justice, that the emphasis under the two words of "after and thereafter" have been removed?

JUSTICE VERNIERO: It appears so, yes.

SENATOR LYNCH: And in a reading of this now, you understand that's a misrepresentation of the definition of consent to search in New Jersey, is it not?

JUSTICE VERNIERO: It was not a probable cause standard, as I've already testified.

SENATOR LYNCH: So it is a misrepresentation of what the consent to search definition is in New Jersey.

JUSTICE VERNIERO: Well, misrepresentation is an inflammatory term that implies an intentional misleading by one to another.

SENATOR LYNCH: It is not--

JUSTICE VERNIERO: This, to me, was an honest mistake, as I read this letter.

SENATOR LYNCH: Had you ever talked to-- Have you ever talked to George Rover or Alex Waugh subsequent to November 5, 1997, about this honest mistake?

JUSTICE VERNIERO: No, because until these hearings I've never focused on this particular mistake.

SENATOR LYNCH: Is this the last document that you see that Rover's involved with until after the April 23rd shooting?

JUSTICE VERNIERO: I do not recall what sequence, what was the last or even the first document that I might have seen from George Rover.

SENATOR LYNCH: In December -- or November or December of 1997, the same month that this letter goes out, you're making George -- I mean, Paul Zoubek, the Director of the Division of Criminal Justice.

Correct?

JUSTICE VERNIERO: Yes.

SENATOR LYNCH: Did you think it was appropriate at that time to let Paul Zoubek know about this ongoing inquiry from the Department of Justice and how documents were flowing?

JUSTICE VERNIERO: Well, if I did not advise Mr. Zoubek, I assume I didn't think it was appropriate.

SENATOR LYNCH: And it would not have been appropriate for the Director of the Division of Criminal Justice to know about this, because then there might be discovery obligations, correct?

JUSTICE VERNIERO: It could have been appropriate, but it wasn't inappropriate that I continued to work with the folks that I had put in place from the outset--

SENATOR LYNCH: Did you know--

JUSTICE VERNIERO: --Alex Waugh and George Rover.

SENATOR LYNCH: Did you know, at the time that Paul Zoubek became the Director of the Division of Criminal Justice, that if you made him aware of that, he would have an obligation to make this part of discovery action -- requests -- both in civil and criminal proceedings where this information was requested?

JUSTICE VERNIERO: That was not part of my conscious decision making.

SENATOR LYNCH: So you wind up getting George Rover or the Division of Alcohol Beverage Control interfaced with the Department of Justice on an inquiry that you don't want to rise to the level of an investigation, that you don't want to move towards a consent decree, and you don't want a lawsuit filed by the Department of Justice.

Is that correct?

JUSTICE VERNIERO: Is that a question, Senator?

SENATOR LYNCH: Yes.

JUSTICE VERNIERO: Well, then let me take -- take it in its constituent parts. I relied on Alex Waugh, because I had belief in his integrity and his intelligence. He brought in George Rover, and that was acceptable to me. In the early part of my tenure, in '96 and '97, I would not have agreed to a consent decree, none was proposed and none was warranted in my view.

In my capacity as the Attorney for the State, I had a dual capacity. I had to, yes, cooperate with the Federal authorities, while still maintaining my client's interests, and I believe I discharged those responsibilities appropriately in this time frame.

SENATOR LYNCH: Alex Waugh leaves, effectively, in sometime not long after this letter is sent to Department of Justice on November the 5th 1997, correct?

JUSTICE VERNIERO: I don't recall his exact date. I'll accept whatever representation the record reveals.

SENATOR LYNCH: And Dave Hesper takes his place?

JUSTICE VERNIERO: No. Dave Hesper did not replace Alex Waugh, per se.

SENATOR LYNCH: Nobody did.

JUSTICE VERNIERO: I don't think there was an in-lieu-of replacement. We kept some of his functions, and I divided others, and I spread it around the office, as I recall.

SENATOR LYNCH: Well, if you were doing this division of the function that Alex Waugh was serving up until the time he left, did you, in writing, determine who would interface with George Rover on a day-to-day basis in this Department of Justice inquiry?

JUSTICE VERNIERO: In writing? I don't recall putting anything in writing.

SENATOR LYNCH: Did you do it orally?

JUSTICE VERNIERO: I just don't recall. As I said to an earlier question, I would have assumed that Mr. Rover would know where to go if he needed approval and advice on any particular issue.

SENATOR LYNCH: This guy just parked out over there in the Division of Alcohol Beverage Control, he's going to know where he should go now that Waugh is moving on and out?

JUSTICE VERNIERO: I don't know where his office was at ABC, but my understanding -- or at least, my assumption might have been-- As I say, I do not recall. I'm giving you my assumption that Mr. Rover would have consulted with either Dave Hespe or someone else if he needed any direction or advice in connection with any aspect of the DOJ inquiry.

SENATOR LYNCH: Didn't you have concerns about the potential acceleration of the DOJ inquiry after the April 23rd, 1998 shooting?

JUSTICE VERNIERO: I had many concerns after the April 1998 shooting.

SENATOR LYNCH: Why don't we just answer the question about it?

JUSTICE VERNIERO: I don't recall.

SENATOR LYNCH: Did you have a concern that there might be an accelerated inquiry by the Department of Justice following that shooting, which received a great deal of notoriety?

JUSTICE VERNIERO: I don't recall any specific concern, although, if I'm not mistaken, there were some public calls for a DOJ takeover or a substitution of the Turnpike shooting event. I can't recall exactly when those dates were.

SENATOR LYNCH: And you have no records or recollection of meeting with George Rover or Dave Hespe in April, May, June, July of 1998--

JUSTICE VERNIERO: No, sir.

SENATOR LYNCH: --regarding the Department of Justice inquiry?

JUSTICE VERNIERO: No specific recollection, no.

SENATOR LYNCH: Do you recall having communications with George Rover at any time after Alex Waugh left, on a frequent basis, when he would call you for instructions?

JUSTICE VERNIERO: I may have. I don't recall it.

SENATOR LYNCH: Did Alex Waugh tell you, when he brought George Rover in to serve this purpose, that he had had some previous problems with Rover in freelancing?

JUSTICE VERNIERO: I don't remember that, no.

SENATOR LYNCH: Did Alex Waugh tell you that sometime during the middle of 1997 that he found that Rover had been accumulating data and hadn't been sending it along, and that he was concerned about, again, him freelancing?

JUSTICE VERNIERO: I don't recall.

SENATOR LYNCH: You met with Alex Waugh every day?

JUSTICE VERNIERO: Well, he was part of my senior staff. We had brief meetings, as I indicated, sometimes they were five, ten minutes.

SENATOR LYNCH: And you wouldn't discuss in those meetings the Department of Justice inquiry and what was going on with Rover?

JUSTICE VERNIERO: I don't recall discussing it in those meetings, because there were other persons in the room, as part of my senior executive staff, who played no part in the inquiry. So, again, those senior staff meetings were convened to exchange information that any of us needed to start the workday. The DOJ inquiry, as I recall, was not a topic of those morning meetings. Occasionally, they might have been. I just don't recall that on any regular basis.

SENATOR LYNCH: Have you ever looked back in hindsight and said, "You know what, if I had talked to Paul Zoubek about this inquiry and put him in charge of it in December 1997, there would have been an immediate interface with the Department of Justice -- as there openly turned out to be when he did take it over -- a consent decree would have worked out with the information having flowed directly from the State Police, and we may not have even had a shooting on the 23rd of April in 1998?"

Did you ever consider that?

JUSTICE VERNIERO: No.

SENATOR LYNCH: Somewhere along the line in January, apparently, of 1999, George Rover gets promoted, and you apparently signed off on that, correct?

JUSTICE VERNIERO: I don't recall. I assume I would have had to sign off on any appointments.

SENATOR LYNCH: You don't recall George Rover, while still in this interface position with the Department of Justice and your office, getting promoted and moving to the Division of Gaming Enforcement?

JUSTICE VERNIERO: I have a vague recollection, but as I say, every major appointment or promotion I had to sign off on. I would get these personnel forms in stacks inches high, and I would sign off on them. I have no specific recollection of promoting Mr. Rover. I assume I would have signed off on the promotion as I would have any personnel -- any member of the office.

SENATOR LYNCH: Did you read those promotional forms?

JUSTICE VERNIERO: Oh, I'm sure I did at the time.

SENATOR LYNCH: Well, wouldn't it strike you that if George Rover was moving from the ABC to the Division of Gaming Enforcement, that it might be appropriate to ask him about his function with the Department of Justice and whether that needs to be moved, too?

JUSTICE VERNIERO: I just don't recall. I might have, I just don't remember.

SENATOR LYNCH: But certainly there's nothing here in writing to suggest that you made any inquiry or decision regarding who would be appropriate to handle that with George Rover moving in December -- in January of 1999 to Gaming Enforcement.

JUSTICE VERNIERO: I assume if there was a document it would have been disclosed by the current Attorney General.

SENATOR LYNCH: And the fact is, however, that there would not have been an obligation to provide that, since Rover didn't have any direct relationship to racial profiling.

JUSTICE VERNIERO: I'm sorry, when you say obligation to provide that--

SENATOR LYNCH: On the part of the Attorney General.

JUSTICE VERNIERO: --what is that? I'm not sure, what--

SENATOR LYNCH: In terms of the documents we were to receive here in these proceedings.

JUSTICE VERNIERO: My understanding--

SENATOR LYNCH: Was George Rover covered by what we became entitled to, documentation-wise, from the Department of Law and Public Safety?

JUSTICE VERNIERO: My understanding, and this is probably a question best asked of Mr. Farmer, is that any document that referred to racial profiling, whether it's in respect of George Rover, my calendar, or otherwise, was turned over to the Committee as part of the public disclosure of these 100,000 pages of documents. That's my understanding.

SENATOR LYNCH: We have been told along the way that you took racial profiling files home, and that they had to be retrieved from you at some point in time.

JUSTICE VERNIERO: No, I took no specific racial profiling files home. When I was confirmed and moved out of the Attorney General's Office, any official files remained in Law and Public Safety. I had what's called a chron file, a chronology file. This was an extra copy of personal correspondence, memoranda that I had sent that had my specific name on them, and those were considered, more or less, personal papers of the Attorney General, which were boxed up and I took with me. They were not "racial profiling" files.

So what I did in response to, I believe it was Mr. Miller who called to ask whether I had any documentation that might related in any way to racial

profiling, I reviewed the documents that I had. I sent him everything that I had, and then he decided -- Mr. Miller decided, not I -- what would be turned over and produced to this Committee.

SENATOR LYNCH: With regard to all of the activities swirling around in the first five months of 1999, *The Star-Ledger* article, the Department of Justice, nominations, and other issues, the review team and so forth, Hogan-Kenna-- This flurry of activity, from the record, appears to have ended as soon as your nomination is over, including retrieval of information, this so-called initial quest to find out how and why the State Police weren't sending you documentation, and the like.

Do you sense that from this record?

JUSTICE VERNIERO: I don't -- I don't sense it from the record.  
My--

SENATOR LYNCH: Well, that's all I asked for. You don't sense that.

JUSTICE VERNIERO: Yeah, I don't.

SENATOR LYNCH: Along those lines, the Troop D audit, as we've heard in testimony, was put on hold sometime in May of 1999, and that's the audit that you now say that you relied upon, at least anecdotally, for purposes of the interim report, correct?

JUSTICE VERNIERO: Yes.

SENATOR LYNCH: And it's also what you were referring to in your testimony back at these proceedings in 1999 when you say that they were -- that team was entering their second phase.

JUSTICE VERNIERO: Well, the Troop D audit original purpose was to discover the parameters or possible parameters of falsification.

SENATOR LYNCH: Correct.

JUSTICE VERNIERO: It was then used, in some fashion, as part of our conclusion in the interim report. I do not recall or I do not know, I should say, why, if at all, that audit was stopped after my confirmation. I was no longer the Attorney General. I did not direct that it be stopped. I don't know why that was done.

SENATOR LYNCH: Prior to your decision to proceed with the grand jury presentation on the falsification of documents against Hogan-Kenna, were you made aware, as a result of that audit, there was at least one other case that rose to the level of falsification as Hogan-Kenna?

JUSTICE VERNIERO: I don't have a specific recollection. That question was asked of me earlier today. I might have been informed. I don't remember.

SENATOR LYNCH: And you -- you relied upon this as one of the actions that was being taken by your office to address the racial profile issue, correct?

JUSTICE VERNIERO: One of the actions that was being taken was-- Again, originally, primarily, it was to determine just as fact what the scope of possible falsification was.

SENATOR LYNCH: And do you know why that was put on hold in May of 1999, and that Phase III of that audit was never completed except for one-half of the Cranbury Barracks?

JUSTICE VERNIERO: I have no idea, Senator.

SENATOR LYNCH: It was put on hold in May and shut down in June, is the testimony. You have no knowledge of that?

JUSTICE VERNIERO: I have no knowledge of that, other than what I read in the newspaper.

SENATOR LYNCH: Now, you were concerned, as evidenced by this March 16th memo to file of '99 -- March 16, '99 -- that you had not been receiving the information or the documents concerning stops, arrests, consents to search from the State Police that they may have had in their possession for the preceding couple of years, correct?

JUSTICE VERNIERO: Well, as I testified earlier, Paul Zoubek and myself and Mr. Hesse were unhappy about this sudden production of documents, and I testified as to how and why I made the memo to the file.

SENATOR LYNCH: And you were concerned about the falsification issues not only as it related to Hogan-Kenna, but others that were being found in the audits, correct?

JUSTICE VERNIERO: Oh, I was concerned about the possibility that there was falsification of records by State Troopers.

SENATOR LYNCH: And at the time you presented the Hogan-Kenna falsification to the grand jury, or Gerrow did or whoever did -- I don't know who was presenting that case -- and you indicated before you don't know whether there was another case that you were aware of that rose to the level of Hogan-Kenna on falsification, you had to have some concern that that Troop D audit be looked at in regard to other falsification issues so you didn't have a selective prosecution here, didn't you?

JUSTICE VERNIERO: I would assume that Paul Zoubek or others would have done that.

SENATOR LYNCH: Following your upset about not having had the information that was in the blue book either in writing or orally, Zoubek tells you at some point in time that he has reviewed the Rover file and finds some documentation in there that was in the Gilbert blue book, correct?

JUSTICE VERNIERO: That is my--

SENATOR LYNCH: And he testified that your--

JUSTICE VERNIERO: I have no-- I have no independent recollection of that, and I have read his testimony. I have a vague recollection of it.

SENATOR LYNCH: And he also said that when he gave you the blue book that you didn't even -- you didn't read through it, and you didn't ask him for a copy of it.

JUSTICE VERNIERO: That is correct.

SENATOR LYNCH: Did you ever read the copy of it?

JUSTICE VERNIERO: I have since read it in preparation of these hearings.

SENATOR LYNCH: So you never read a copy of what's in the blue book in March, April, May of 1999?

JUSTICE VERNIERO: I relied on Paul's description of what was contained. He had focused my attention on some of the documents, at least the Gilbert memo, as I recall, and he described others. As I indicated, I probably should have been more precise in making an inventory of what was in that folder, but that didn't occur.

SENATOR LYNCH: And he told you what he found in the Rover file when he retrieved it and brought it into the Division of Criminal Justice in or around February of 1999, correct?

JUSTICE VERNIERO: I don't recall if he told me precisely what was in the Rover file. As I say, I have a vague recollection of Paul saying that he had discovered certain information in the Rover file, that it might have to be produced. I have a recollection -- vague recollection -- that my--

SENATOR LYNCH: Would have to be produced to who?

JUSTICE VERNIERO: To the Justice Department.

SENATOR LYNCH: And how about produced in discovery proceedings handled by the Division of Criminal Justice in civil and criminal cases?

JUSTICE VERNIERO: I don't recall. Obviously, at that point in time, Director Zoubek was both First Assistant and Division of Criminal Director -- Criminal Justice Director. I would have assumed that he was tending to that. I don't recall a specific conversation on that topic.

SENATOR LYNCH: And from the time that he brought this Rover file into the Division of Criminal Justice, because I suggest to you it belonged there in the first place, there was a quick flow of information to the Department of Justice meetings and ultimately winding up with a consent decree that was executed by the State over the next several months, correct?

JUSTICE VERNIERO: That appears to be the chronology.

SENATOR LYNCH: But going back to the March 16th memo to file and your upset about not having received any of this data, did you tell Zoubek or anyone else that you felt the Division of State Police had not

forwarded information that they should have forwarded along and that that is the source of the problem?

JUSTICE VERNIERO: I don't remember that discussion. As I said, it was Paul who was coming to me and expressing his upset and concern, and I shared it and I was basically keying off of his unhappiness.

He was the one that walked in, put the folder on my desk, said -- again, I don't recall his exact words, but it was something like, "I'm not happy about this." He put my attention to, I believe, the Gilbert memo. He flipped through it or I flipped through it. He described the other documents, and at that point, of course, we were pretty well along in our State Police review.

I don't know for sure if we had reached the conclusions in the April 20th report, but we were pretty far down that road, and at that juncture, it was, "Well, Paul's handling the investigation. He's the right person to be the custodian of these documents."

SENATOR LYNCH: He did precisely what should have happened long before, namely that George-- He went to the Rover file, found out what he did or didn't do, and started a process to cure all of the defects in that file, including the need for notification in discovery proceedings and notification to Department of Justice of documents that otherwise had not been passed along, correct?

JUSTICE VERNIERO: I don't know if I agree with the premise of your question that there were these specific defects, as you say, in the file. I don't know if Paul ever made that determination. I reviewed his deposition testimony, and I believe his testimony was it might be -- he was unclear or was not entirely clear what the discovery obligations were with respect to the Rover

file. So I'm not sure he ever made a determination that there was a defect. He may have. I cannot say, because I am not familiar with what's in that file, whether there was a "defect" in this file.

SENATOR LYNCH: In the profile hearing transcript on Page 54, in answer to a question, you said: "I have not engaged in finger-pointing. I have not intended any comments that I have said to date to imply blame on any of my predecessors. I've tried not to make excuses, but rather to explain the situation as I know it to exist. I feel that my office has acted appropriately given the circumstances and the information at various points in this process throughout my tenure."

Do you stand by that statement?

JUSTICE VERNIERO: I do, given the circumstances existing at the time.

SENATOR LYNCH: On the confirmation hearings, May 6th, 1999, Page 32, in response to an inquiry by Senator Zane, you said: "Well, I'm not-- Well, I'm really not at liberty to comment on a pending investigation other than what the Justice Department has already stated in the press, that they are looking at a pattern -- a potential pattern and practice of uneven law enforcement on the part of State Police. They have publicly stated that they believe the April 20 report of my Office can be used as a foundation for an ultimate consent order, which we are now endeavoring to accomplish."

Senator Zane asks another question,:"Do you feel that you know-- Has anyone disclosed to you the full extent of the Federal program?"

And your answer is: "I am aware of certain aspects of what they're looking at. I'm just not at liberty to disclose it at this time. Whether I am

fully aware, that's hard to say, because unless the Justice Department comes forward with an actual detailed report, which they have not done to my knowledge, it's hard for me to answer the question."

Justice Verniero, why did you believe that you were not at liberty to comment upon the information that was requested by Senator Zane?

JUSTICE VERNIERO: Well, my assumption--

SENATOR LYNCH: Did you have a privilege or anything here that you were hiding behind?

JUSTICE VERNIERO: I wasn't hiding behind anything, Senator. It was my understanding, and perhaps it was a mistaken one, but it was my understanding that the Federal investigation -- and I believe at that point in time, it was a full-scale investigation -- was not something that the Department of Justice or my office should be speaking of publicly.

In terms of the actual detailed report, I recall what Senator Zane was asking me was whether the Federal investigation was going to include not only the pattern and practice, but the personnel, the reorganization of the internal complaints, whether it was going to go as far as my April review. I think that was the predicate to his question, and my answer was, I didn't think so. I thought it was focused mainly on pattern and practice, but it might. I didn't know.

SENATOR LYNCH: Let me suggest to you, Justice Verniero, that as part of these mock proceedings that you participated in, you didn't want Senator Zane to be able to go to the next line of questioning, which would be who was handling this for you over these last two years.

JUSTICE VERNIERO: That is incorrect, Senator.

SENATOR LYNCH: Did you have conversations with now Judge Waugh after the documents were released in the fall of 2000?

JUSTICE VERNIERO: Yes, I have.

SENATOR LYNCH: Did you discuss specific documents?

JUSTICE VERNIERO: I may have. We did not discuss specific testimony.

SENATOR LYNCH: Did you ever ask him about how did Rover ever drift off with nobody overseeing him?

JUSTICE VERNIERO: No, I didn't ask him that question.

SENATOR LYNCH: Did you ask him at that point in time, in the fall of 2000, about the tie-me-to-the-tracks quote?

JUSTICE VERNIERO: I -- I may have asked him about that, because it was very prominent in several news accounts, and I recall him saying that he thought I said something similar to that, and then I dropped it. I was very careful not to discuss any substantive testimony that either he or I might have to give, although I'm not sure at that point in our conversation whether these hearings were even announced.

SENATOR LYNCH: Did you read or hear Paul Zoubek's testimony with regard to what your response was to the -- his telling you that the Rover file that he retrieved in early 1999 had State Police documents, including arrests, searches, stops, etc.?

JUSTICE VERNIERO: I recall reading that, yes.

SENATOR LYNCH: And do you recall that he said that your response to him was, "Does it show that I received any copies?"

JUSTICE VERNIERO: I recall his testimony to that effect.

SENATOR LYNCH: Is that true?

JUSTICE VERNIERO: I don't recall exactly what I said. I'm assuming, had I said something like that, it would have been in the context of, "Maybe these documents should have been shown to me. Were they given to me?" It was in that context.

SENATOR LYNCH: Going back to SJC-5, which is the Department of Justice Civil Rights Division letter to you on April 26th, 1999, which is 10 days previous to the testimony I just described, you had a four-page, three-and-a-half-page description of what it is that they were doing with this investigation, what the scope of it was, etc., did you not?

JUSTICE VERNIERO: I did, yes.

SENATOR LYNCH: Let me again repeat your answer to Senator Zane's question on Page 32 of the confirmation hearings.

"I am aware of certain aspects of what they're looking at. I'm just not at liberty to disclose it at this time. Whether I am fully aware, that's hard to say, because unless the Justice Department comes forward with an actual detailed report, which they have not done to my knowledge, it's hard for me to stand -- to answer that question."

Do you still stand on that answer?

JUSTICE VERNIERO: I do, because I understood that question to mean not what was contained in this letter, but rather what would be the outcome, the conclusions, the product of the DOJ investigation. And what I essentially was saying to Senator Zane is, I can't predict what that outcome would be.

SENATOR LYNCH: But you certainly knew the scope of the inquiry at that point in time.

JUSTICE VERNIERO: Well, I knew about this letter, which I think candidly indicated that I was not at liberty to discuss, at least, I felt I was not at liberty to discuss.

SENATOR LYNCH: Along with about 300 things at those hearings.

JUSTICE VERNIERO: Well, that was a very sensitive time in the Department, where we had many actions pending, and there were many issues that I had to be very careful about in describing in public. That comes with the territory.

SENATOR LYNCH: Why did you believe you had to be careful about telling us then that this Department of Justice inquiry, that you knew about for well over two years, had converted into an investigation, and that they were looking for your office to start being more cooperative in sending them documentation, etc.?

JUSTICE VERNIERO: Well, I don't -- I don't view this letter as a statement from the Justice Department that we had to be more cooperative. I don't recall a time when the Department of Justice thought we were anything less than cooperative.

Insofar as the existence of the investigation, I believe I satisfied my disclosure obligations to the Committee by virtue of the supplemental letter that I sent to the Committee two or three days after my April 26th, 1999, appearance.

I believe, in respect to the question by Senator Zane as to what the outcome or result of the investigation would be, that I candidly had no way of knowing.

SENATOR LYNCH: That's not what he asked you for. He didn't ask you for the outcome.

JUSTICE VERNIERO: Well, that's how I understood his question, because it was in the context of, "What are you attempting to accomplish in your own report?"

And I think I made the claim in my testimony or the statement, that I thought we were going to go beyond the Federal government in that we were looking at things more than just pattern and practice. We were looking at internal IAB issues--

SENATOR LYNCH: Let me stop you there, to refresh your recollection as to where the Department of Justice was at that point in time. In the first paragraph of that April 26th, 1999, letter to you: "Accordingly, I have authorized the filing of a civil suit in United States District Court pursuant to statutory 'to obtain equitable and declaratory relief, to eliminate the pattern and practice of misconduct.'"

Do you remember that?

JUSTICE VERNIERO: Well, it's in the letter.

SENATOR LYNCH: Do you remember it?

JUSTICE VERNIERO: I don't have a recollection of this letter, other than what I'm seeing now.

SENATOR LYNCH: I have no further questions.

SENATOR GORMLEY: Okay.

We're going to take a five-minute break, and then we'll come back to Senator Matheussen.

JUSTICE VERNIERO: Thank you.

**(RECESS)**

**AFTER RECESS:**

SENATOR GORMLEY: Ironically, certain people have asked me how long this hearing might go. (laughter) We've talked with counsel to Justice Verniero, who's indicated a desire to try to conclude the hearing this evening.

JUSTICE VERNIERO: Yes.

SENATOR GORMLEY: We've talked to members of the Committee. It's their desire to try to conclude the hearing. So, seeing as how all the interested parties would like to move forward, I think it's appropriate that we just continue and see how far we can get, and hopefully, we will conclude this evening.

Next person to ask questions will be Senator Matheussen.

SENATOR MATHEUSSEN: Thank you, Senator Gormley.

Mr. Justice.

JUSTICE VERNIERO: Good evening.

SENATOR MATHEUSSEN: I won't be too long. I know the hour's late, but I have some things that I need to get squared away.

So, if I may begin, let me start, if I could, with the memo that's been entered as an exhibit, W-29. It's the interoffice memorandum detailing the agenda for the May 20th, 1997 meeting.

JUSTICE VERNIERO: Yes. I have it.

SENATOR MATHEUSSEN: Mr. Justice, at the end it talks about future strategies, and if you'll look at the very bottom it says, "DEA," and in parentheses, "(Operation Pipeline tape and other documents)."

Could you explain what that -- what that refers to?

JUSTICE VERNIERO: I believe--

SENATOR MATHEUSSEN: And, if you can, was it also discussed at the meeting of May 20th.

JUSTICE VERNIERO: I don't recall if it was specifically discussed. My recollection is that Operation Pipeline was a joint exercise or operation between the DEA and certain State Police forces, including New Jersey.

SENATOR MATHEUSSEN: Could you tell us what it entailed?

JUSTICE VERNIERO: I'm assuming in the context of the references to DEA in the earlier Rover material, that perhaps that was an indication that we ought to discuss on a going-forward basis -- on a policy basis -- how the DEA and the State Police ought to be conducting operations. That's a guess on my part. I'm just trying to glean as much as I can from that agenda item.

The DEA operation -- Operation Pipeline -- as I recall was basically an antidrug, war-on-drugs effort that dealt with the pipeline, meaning the major arteries over which drugs were suspected to be transported.

SENATOR MATHEUSSEN: One in particular being 95 and the New Jersey Turnpike, as well?

JUSTICE VERNIERO: The I-95 corridor, yes.

SENATOR MATHEUSSEN: I believe Senator Robertson may have started us off with talking a little bit about that Operation Pipeline, as well, and talked a little bit, perhaps, about the philosophies of the DEA in regards to racial profiling.

Were those ever discussed in your tenure as Attorney General or discussed in any of the meetings that you may have attended either prior or after?

JUSTICE VERNIERO: It may have been discussed. As I recall, there was a reference to Operation Pipeline in one of the Rover memoranda that we've discussed previously, in which Rover was raising the possibility that perhaps Operation Pipeline itself was one of these mixed messages, that perhaps the Justice Department ought to take a look at this program, as well, to determine whether there was any problems in connection with racial profiling.

That's what I recall the context being. I don't recall any extended discussions about Operation Pipeline during my tenure.

SENATOR MATHEUSSEN: I believe I may have asked the question or someone may have asked the question -- and I think it was of Colonel Williams at the time -- about the, I guess, the conflicting nature of Operation Pipeline, DEA, and racial profiling vis-à-vis the policy that perhaps was being dictated by the Department of Justice, the Civil Division.

Could you explain that at all to us?

JUSTICE VERNIERO: Again, only as a reference to the Rover memoranda, where Mr. Rover himself was basically saying, as I recall it, that on the one hand, the Department of Justice is reviewing New Jersey for possible racial profiling. On the other hand, the DEA is working closely with the New Jersey State Police, presumably because they think highly of the State Police. So there seemed to be a little bit of a disconnect, I think was the observation that George Rover was making.

SENATOR MATHEUSSEN: Put it in simple terms. I mean, was there a policy, perhaps, by DEA, and maybe I'm oversimplifying it, but if you profile in certain areas, including perhaps racial profiling, but if you do some profiling, chances are you're going to catch more bad guys out on the road?

JUSTICE VERNIERO: I really can't speak to whether that was DEA policy, Senator. I just don't -- I just don't have that level of detail or knowledge.

SENATOR MATHEUSSEN: Was there an assumption by anyone in the Attorney General's Office or in State Police that that may have been what DEA was talking about?

JUSTICE VERNIERO: I don't know. I thought the reference was that, and I alluded to this in my opening statement, that State Police was always thought in high regard by the Federal government, which was one of the reasons I trusted them. I had every reason to, and Operation Pipeline was an example of that cooperation in that regard.

But in terms of the specifics of Operation Pipeline, whether there might have been a racial profiling problem with Operation Pipeline, I really can't speak to.

SENATOR MATHEUSSEN: Would you acknowledge that the Attorney General's Office-- You alluded to the fact that there were many hats that you wore. I'm not just talking about you, but I'm talking about the institution of the Attorney General's Office as well, that one of the functions of the Attorney General's Office is to be the civilian oversight of the State Police?

JUSTICE VERNIERO: That's correct.

SENATOR MATHEUSSEN: In that capacity as civilian oversight, either with your office or if you know of any preceding Attorney Generals who have served, was there ever a directive from the Attorney General's Office or was there an inquiry by State Police to say, "We need some direction with regard to the conflict of perhaps DEA, Operation Pipeline, and Department of Justice Civil Division saying, 'You can't profile in certain areas.'"

JUSTICE VERNIERO: There might have been a request for legal advice, I don't -- I don't know.

SENATOR MATHEUSSEN: Did it ever come across your desk?

JUSTICE VERNIERO: Not that I recall.

SENATOR MATHEUSSEN: Did any of your Assistant Attorneys General ever tell you or make an inquiry as to what they should be talking about with regard to this conflict that was out there?

JUSTICE VERNIERO: This potential conflict? Not that I'm aware of.

SENATOR MATHEUSSEN: State Police, in examination by this Committee, seemed to have said that there was this conflict looming, and they were looking for some direction. Was it incumbent upon the Attorney

General's Office to seek out and find if there was a conflict, or was it incumbent upon the State Police to come to the Attorney General's Office and say, "We need help. We need to solve this conflict?"

JUSTICE VERNIERO: I think it was incumbent on the Attorney General's Office to train and generally advise New Jersey State Police in all aspects of their responsibility. I would have assumed that their training would have included the appropriate exercise of law enforcement discretion with connection with not only Operation Pipeline, but any operation of State Police. So I think my office had that responsibility.

The flip of the coin is, if there was any specific question or any specific concern, I would have hoped that the State Police would have sought my office's advice if it wasn't covered in the general training and the general advise that we dispensed on a regular basis.

SENATOR MATHEUSSEN: You said the word assume that responsibility. Do you know, in fact, the Attorney General's Office was involved in the training of State Police to make sure that they understood this conflict and how to appropriately deal with it?

JUSTICE VERNIERO: Specifically with respect to this conflict, no. I do have a recollection of, I think it was Ron Susswein was the person who was primarily involved with general training, general review of State Police procedures. He would issue advisories either written or oral to the State Police, I think even to the county prosecutors, with respect to law enforcement issues.

SENATOR MATHEUSSEN: During the years '96 to '99, in one area at least, when it came to racial profiling, it seemed as though the Attorney General's Office's concentration of their abilities to deal with racial profiling,

I should say, were really reacting to two things. One was the *Soto* decision out of Gloucester County, whether or not to appeal, the basis for that appeal, whether or not the appeal should be continued to be pursued in spite of numbers that were coming in. And the second, of course, is to the investigation being conducted by the Department of Justice.

Is that, to your recollection, the real extent of racial profiling's interaction with the Attorney General's Office during those years?

JUSTICE VERNIERO: I would include the Turnpike shooting incident and the falsification Troop D audit to that list. Those were three main events, if you will, that focused around racial profiling. There may have been smaller events.

SENATOR MATHEUSSEN: If we broke it down from the year '96 to '98, would then it be just *Soto* and Department of Justice?

JUSTICE VERNIERO: '96 to '98 was *Soto*, Department of Justice. '98 to '99 was *Soto*, Department of Justice, falsification, and the review team.

SENATOR MATHEUSSEN: Now, there came a time, did it not, that we decided to drop the appeal on the *Soto* case?

JUSTICE VERNIERO: That's correct. The day that we announced the April 20, 1999, report was the day we announced our withdrawal of *Soto*.

SENATOR MATHEUSSEN: And what was the basis for withdrawing the appeal in *Soto*?

JUSTICE VERNIERO: I felt, and professionals in my office agreed, that the main -- the career professionals agreed -- that the *Soto* appeal

had become untenable in light of the conclusions of the April 20th report, and it was not in the public's interest to prosecute that appeal.

SENATOR MATHEUSSEN: What part of the report made it untenable?

JUSTICE VERNIERO: The fact that a big focus of the report was the activities of the Cranbury-Moorestown barracks. The concentration in the report, although we spoke generally of racial profiling, there was a focus on those southern barracks. Those were the two barracks at issue in *Soto*. Even though there probably was a legal ability to argue that the data was pre-*Soto*, post-*Soto*, and so forth, we just felt that in light of the significance of the April 20th report, the appeal was untenable.

SENATOR MATHEUSSEN: Well, did the data, particularly with regard to consent to searches and stops, have a big role in deciding not to continue the appeal?

JUSTICE VERNIERO: Well, it had a role in connection with the report. Consent to searches, as I recall, was not technically at issue in *Soto*. I wouldn't say that there was any one particular factor, but it was just a sense that we all had at the time that in light of the report, the appeal in *Soto* was no longer tenable, and I think that was the correct decision to withdraw it at that time.

SENATOR MATHEUSSEN: Couldn't, though, consent to search have become an issue in *Soto* had, for instance, the Appellate Division sent the case back? Couldn't we have retried it and also opened up a whole can of worms with regard to consent to search at that time in a new trial?

JUSTICE VERNIERO: I never thought about that, if there was a remand whether the issues could have been then expanded. I'm not familiar enough with the individual suppression motions to know whether the defendants in that case were objecting to consents or whether it was just limited to stops.

SENATOR MATHEUSSEN: That same interim report, how did that play with regard to our responses to the Department of Justice?

JUSTICE VERNIERO: Well, I thought at the time that it would be consistent to what we were doing with Justice. As I say, I never viewed the Justice Department as anything but satisfied with what we were doing, and I thought the report, at the time, would be well received by Department of Justice, and I think it was.

I remember the morning that I issued the report, I called up Attorney General Reno. She took the call. It was early in the morning, I remember, and we discussed the report. I wanted to let her know what our conclusions and findings were, because I thought the report would have national implications and that she ought to know. And I recall in that conversation that I thanked her for the cooperation that my Department had received from hers, and it was a brief conversation.

I think the report was well received, and if I'm not mistaken, in the April 26th letter from Mr. Lee (phonetic spelling), he makes positive reference to the April 20th report.

SENATOR MATHEUSSEN: In questioning before this Committee of Deputy Attorney General Rover, he was quoted as saying that we, meaning New Jersey, were willing to accept the Department of Justice's

pace with regard to their investigation. And what he meant by that, by implication, was that we were willing to react to the Department of Justice rather than being proactive.

Do you agree with that issue? Do you agree with his assessment?

JUSTICE VERNIERO: I don't know if-- I don't know if I would describe it as we accepted the pace. Our perspective was, we will cooperate. We will turn documents over that are requested, that are relevant to their investigation or their inquiry. And we just -- we just carried on business on a day-to-day basis in accordance with that philosophy.

As I say, the flow of information sort of had ups and downs, I mean, periods where we weren't hearing from the Justice Department, periods at the outset of my tenure when we heard a lot from the Justice Department. I never got the sense prior to the issuance of my report that there was an urgency to the DOJ investigation from their perspective. I never felt that there was an urgent press from Washington.

SENATOR MATHEUSSEN: Did you ever get the sense, though, that the Department of Justice was perhaps, if not intentionally, at least, in their inquisition, onto something? That there were numbers out there that would give one concern, whether it be from Judge Francis's decision in *Soto* to the numbers that were being compiled with regard to some of the barracks and the records that were being looked at, that Justice was onto something. And that as opposed to being reactive to Justice, could we not have gotten deeper into looking at profiling with an eye at correcting it, if we had been more proactive ourselves?

JUSTICE VERNIERO: Well, I would answer the question this way: After the April 20th or the April 23rd Turnpike shooting incident -- as I say, it was a turning point in my mind -- and I was fairly clear at that point that racial profiling was becoming an issue and required a forceful response that was not to come at the expense of the Justice Department. We were working in concert. And if I was able or in a position to reach the conclusions in my report in a timely fashion, that's something I wanted to accomplish, but I never thought about it as a rivalry to the DOJ, if that's your suggestion.

SENATOR MATHEUSSEN: I don't know if it's my suggestion, but I have, from sitting here for the number of days that I have so far and listening to both -- from witnesses from State Police, but more importantly, from some of the Deputy Attorneys General that worked in the office and worked on this particular matter with regard to Justice's inquiry -- that there was a feeling of don't tell unless they ask. And that seemed to me to be a prevailing response that I have, so far, heard from everyone, and I'm not so sure that we've changed that from your testimony yet tonight.

JUSTICE VERNIERO: Well, I don't know if I would describe it as don't tell unless they ask. That suggests that there's something bad to tell. My recollection was, our approach was, we wanted to cooperate. If we had information requests that were obviously relevant, we would turn over those documents, and it was part of an ongoing relationship that had developed over time. And there were no complaints to my knowledge about the pace or flow of information from Trenton to Washington.

I do remember, I do recall -- and I don't recall a specific conversation, it was just a feeling that we had -- that these were the experts in

Washington. They had this unit in DOJ, this pattern and practice unit, that not only in New Jersey, but nationwide, looked at issues of uneven law enforcement and discrimination. They were the real experts, and we were sending them information, particularly the early years, and if there was a problem that certainly caught their eye that perhaps our senses were dull to, they would let us know if there were a problem.

And I do remember that -- that sense, that they were looking at information. We were looking at information. Neither one of our offices had reached any firm conclusions with respect to the data or information. It was not until the April 20, 1990 (*sic*), report where both offices, then, became very much aware of the issue.

SENATOR MATHEUSSEN: In all due respect, Mr. Justice, I-- The relationship as you explain it, though, seems more of one if I had -- if I go out and hire a consultant to come in and do constructive criticism of my company or of my department and say, "Tell me what I'm doing wrong so I can make the changes."

JUSTICE VERNIERO: No, I don't--

SENATOR MATHEUSSEN: I felt that the relationship with Justice, as it was so far described by all the Deputy Attorneys General so far, was more of one that certainly could have reached the level of adversarial, but we kind of held them back by saying, "Look, we'll cooperate, just tell us what you want."

JUSTICE VERNIERO: I understand that that might have been the perception or the prior testimony. That's not a perception or intent that I certainly held at that time or thought that I held at that time.

I was the lawyer for the State, as I indicated that previously. One of my jobs was to ensure that the State was being treated fairly. That means that any request from Justice had to be relevant, appropriate, it had to be well defined, certainly, and they understood that.

And when we went to Justice and said, "Is this what you really want," sometimes they would narrow the request, sometimes they would say, "You're right. You know, maybe we don't need all this information. We'll accept something different in scope." It was, as I say, cooperative.

But knowing full well at any time, as you say, it's the Department of Justice, it could turn adversarial. There's no question about that.

SENATOR MATHEUSSEN: Let me come at it from a different angle for just a moment. From November of 1996, which is a-- To start off with is a memo from Judge Waugh to your office, talking about the Department of Justice is willing to defer sending a letter confirming that they are investigating profiling by State Police in order to meet with yourself to discuss the investigation.

From that date, November 18, '96, up and through the date up on the board up there, December 24, 1996, there are at least five, perhaps six documents that are passed around through the higher echelons of the Attorney General's Office, including your office, but not exclusively your office, that discuss racial profiling.

Then on December 24th, and I look at that as being somewhat of a date that people would remember, because as it hit me, Sergeant Gilbert came and testified to that he remembers it extremely well for two reasons. One, it was in the afternoon of Christmas Eve, and he has children, and I

presume that they celebrate Christmas, and so that was -- he was hoping he wasn't going to spend too much time with you and the others so he could get home. The other remarkable thing was that he was in your office, and that didn't happen very often for a trooper, he said.

Your recollection of that meeting is somewhat less than that, but there was a lot of ongoing-- And you're not the only one to have less of a recollection than Sergeant Gilbert did. But at that meeting, can you in your best-- Right now, can you best describe what occurred during that meeting, if you could?

JUSTICE VERNIERO: I don't think I can improve upon my earlier answer. Of course, it was unremarkable to me to have the meeting. And you would appreciate that, of course. I had meetings on many subjects several times a day.

The best that I can recollect, given the time frame, the sequence, was that this was a meeting during which I could bring Colonel Williams up-to-date as to my prior meeting with the Justice Department, as a follow-up. That's the best that I could recall, because the calendar implies that. I had met with the Justice Department about two weeks earlier, I believe, and this was a follow-up.

Perhaps we had in hand at that time the blank form, the general guidelines.

SENATOR MATHEUSSEN: Well, actually those five or six documents that I referred to do imply that there was some-- There was a meeting, and that there certainly could have been those topics that were discussed at the December 24th meeting.

But was there not ever discussed, in your best recollection, a revelation of numbers that would have been concerning, either by Sergeant Gilbert or anyone else in the room, either by written form or oral form? No one that you can recall discussed profiling numbers that would have given you some cause for concern?

JUSTICE VERNIERO: Not at that meeting, no.

SENATOR MATHEUSSEN: And no one came back later from anyone that worked in your office to you and said, "Hey, what Gilbert has to say here is somewhat disconcerting. We better do something about it?"

JUSTICE VERNIERO: Not that I recall, no.

SENATOR MATHEUSSEN: From December 24th through May 20th, which was the first document that I asked you about when I started questioning you, there are a total of 15, 16 documents from January 9, 1997, through May 20th, 1997, all of which are on the record. There may be more, but those 16 documents are right now part of the record. Again, various people being informed about racial profiling, what was going on at Justice, what was happening with *Soto*, leading up to the May 20th, 1997, memo.

Now, that May 20th meeting, your testimony before was that your recollection was that it was a status meeting.

JUSTICE VERNIERO: Yes.

SENATOR MATHEUSSEN: Besides a status meeting, was there any opportunities or any discussions by anyone regarding statistics, profiling numbers, consent to search, or a basically, we've got a problem here in New Jersey, what are we going to do about it?

JUSTICE VERNIERO: Well, as I testified earlier, I'm fairly certain that there was no we-got-a-problem type of urgency expressed at the meeting. There might have been a general discussion of Maryland versus New Jersey, but I recall no specific discussion on statistics.

Throughout this period, Senator--

SENATOR MATHEUSSEN: Well, let me just, if I may, interrupt you.

JUSTICE VERNIERO: Yes.

SENATOR MATHEUSSEN: Can you expand on the discussion of a comparison between New Jersey and Maryland? Because, put in the proper context, Maryland had just -- well, not just, but had previously agreed to a consent order by Justice.

And there's a handwritten note, and I don't know if anyone asked you about it. But on the bottom of the memo of May 20th, there's a hand-written note on here that says, "AG advised he would not consent to signing a consent decree. They'd have to tie me to a train and drag me along the track before I'd sign a decree."

Does that refresh your recollection of what may have been said about consent decrees in that meeting?

JUSTICE VERNIERO: Well, first, the Maryland consent decree was not with the Justice Department. That was private litigation, private plaintiffs versus Maryland.

SENATOR MATHEUSSEN: Okay.

JUSTICE VERNIERO: As I indicated earlier -- I thought I had indicated this -- the Colonel, either at this meeting or at this meeting and at

another time, was very concerned that I would be consenting to a Department of Justice jurisdiction at this point in time, and he was urging me not to do that. That was something that he thought was not appropriate. It would have been unfair and not justified. And he felt pretty strongly about it.

And, as a result of that conversation, I responded -- I don't remember the exact words -- but I responded by saying that I would not agree to a consent decree, and I was pretty firm about that, given the state of the record as I understood that. So I wanted to show support for the State Police, because I thought it was justified at that point in time, and importantly, no consent decree was even being proposed by the Justice Department at this time. It was almost a hypothetical question, but it was very important to Colonel Williams and to the State Police.

SENATOR MATHEUSSEN: Well, he indicated so, as did a number of other State Police officials who were in that meeting.

JUSTICE VERNIERO: Yes.

SENATOR MATHEUSSEN: And they were, in fact, pleased, I think, with your decree that you'd be dragged down the track. I'm not sure why they were happy with that decree, but they said that they were happy with that.

But again, going back, no discussion of numbers, statistics by either Lieutenant Sachetti or Sergeant Gilbert, any of those numbers?

JUSTICE VERNIERO: I have no specific recollection of those numbers, again, or a discussion of it. We were in a period where whatever numbers might have been discussed were probably being discounted, because they were either pre-*Soto* or the numbers were inconclusive.

So I don't recall any specific discussion of statistics. Even if there were statistics discussed, they would have been discounted for the reasons that I've already outlined.

SENATOR MATHEUSSEN: Yesterday, in a line of questioning by Mr. Chertoff of Judge Waugh, they were discussing in general terms those consent to search numbers that were produced, I believe at that time by Lieutenant Sachetti, and written down, something along these lines. Mr. Chertoff said, "Did anyone say, let's actually find out what the facts were with respect to the numbers and see if there is any corrective action to be taken." And Judge Waugh, his response was, "Other than constantly reminding State Police that they were supposed to be policing the issue, I don't recall such a decision."

Was he correct in that statement?

JUSTICE VERNIERO: I don't recall our specifically asking for a review at this point in time. I assume you're referring to May 1997?

SENATOR MATHEUSSEN: Yes.

JUSTICE VERNIERO: For the reasons that I've already outlined, we had already made the decision to pursue a violator survey. So that was, in essence, an action step that we had taken. We were given assurances, which we thought were valid at the time, by State Police that this was not a systematic problem.

The *Soto* case was on appeal, and a lot of these numbers, if you will, or at least the *Soto* record was on appeal, and we thought it was inconclusive in terms of any definite conclusion of profiling. So there was no

basis at that point in time, in our judgment, to go beyond the steps and the actions that I've already described.

SENATOR MATHEUSSEN: So, in spite of the fact that there were some 20, 21, 22 memos, the fact that we had *Soto* and there were some concerns about the appeal, the fact that we had Justice taking a look, at least, if not breathing down our throat a little bit about this issue, there was no proactive stance at this point in time to do anything about profiling, up through May of '97?

JUSTICE VERNIERO: Well, I guess I would agree slightly, Senator, because some of the steps that you've described are, in essence, proactive. Our cooperating with the Justice Department, furnishing data and information, was a proactive step.

The fact that *Soto* was on appeal was one of the reasons why we didn't look further into the issue, because we were convinced, at least at that time, that the *Soto* record was flawed and so forth. And I don't want to repeat myself, but it was a combination of reasons why we took the actions that we took and no more.

SENATOR MATHEUSSEN: I guess when I think of proactive, though, I think more in line of the interim report, more so than anything else. Why not a discussion of an interim report back in 1997? Why not something more proactive like that?

JUSTICE VERNIERO: Again, the -- the turning point in my mind was the falsification. That was something that you did not need a lot of discussion or debate over whether that was right or wrong or valid or invalid.

The numbers, the statistics were discounted. They were open to question. We were getting contradictory conclusions in the early years of my tenure.

It is one of those areas, however, which I will say again, I wish that I had done more. I wish that I had been more proactive in this earlier phase, but I wasn't for the reasons that I've enunciated.

SENATOR MATHEUSSEN: Last, let me ask you some questions that some of your critics have been saying, and that is: What, if anything, did the election of 1997 have with regard to the decision of racial profiling on any action that was being taken?

JUSTICE VERNIERO: Politics did not affect any of my decisions as Attorney General. I can say that as a blanket rule.

SENATOR MATHEUSSEN: And I guess the follow-up question, too: What, if anything, did the impending announcement that Governor Whitman had made to move your nomination to the bench of the Supreme Court have on your decision with regard to the interim report on profiling?

JUSTICE VERNIERO: Same answer. I've made no conscious attempt to skew any action or to take any action because of my nomination.

SENATOR MATHEUSSEN: I have nothing further.

JUSTICE VERNIERO: Thank you, Senator.

SENATOR GORMLEY: Senator Girgenti.

SENATOR GIRGENTI: Thank you, Mr. Chairman.

Justice.

JUSTICE VERNIERO: Good evening.

SENATOR GIRGENTI: Good evening.

I just have-- I know the hour's late, but I just have some questions I'd like you to answer if you could. You say that you considered among the many duties you had as the Attorney General was the duty of maintaining confidence.

SENATOR GORMLEY: Excuse me.

Whose phone is that? (referring to cell phone ringing)

SENATOR GIRGENTI: Okay.

You say that you considered among the many duties you had as Attorney General was the duty of maintaining confidence in law enforcement, correct? Was that one of your--

JUSTICE VERNIERO: Yes.

SENATOR GIRGENTI: And you said that this interest weighed into your decision to seek the falsification indictment prior to seeking the shooting indictment?

JUSTICE VERNIERO: It weighed in my decision to proceed with an investigation that I was informed was completed and ready to be prosecuted.

SENATOR GIRGENTI: All right.

See, I'm not an attorney, but I think I have a basic grasp of this. You testified that you were aware of the risk involved in pursuing the falsification indictment first. Is that correct?

JUSTICE VERNIERO: I was made aware of those risks, yes.

SENATOR GIRGENTI: Would you characterize that risk as a calculated risk? Were you, in any way, able to quantify or weigh the risk that the shooting investigation could be jeopardized?

JUSTICE VERNIERO: Well, I was able to weigh against the steps taken to remedy against prejudice, but I wasn't able to quantify it. At least, that was not my -- that was not my recollection, that we were quantifying the risk.

SENATOR GIRGENTI: In the worst case scenario, to what degree should the shooting investigation have been jeopardized had those risks been realized?

JUSTICE VERNIERO: My understanding, the worst case would have been, we would have had to represent to a separate grand jury.

SENATOR GIRGENTI: It seems evident to me that the public would have a far greater interest in the fair pursuit of the shooting investigation, than in the maintenance of a comfort level with the perceived confidence of the Attorney General's Office.

Do you think I'm wrong in this estimation, or what is your feeling?

JUSTICE VERNIERO: Well, my feeling was, as I said, at worst it could have meant we needed to reconvene a new grand jury. We would not have lost the investigation. It might have been delayed. I had confidence in the judicial system and our ability to address any potential prejudice. And I was willing to take that risk, and as I said in retrospect, as it turns out, we were able to guard against any taint or prejudice. So the decision was a correct one in my judgment.

SENATOR GIRGENTI: Okay.

Jack Fahy, he worked in your-- John Fahy.

JUSTICE VERNIERO: Mr. Fahy. Yes.

SENATOR GIRGENTI: He worked in your office. He testified that he first discussed the racial profiling issue with you at a meeting regarding the DOJ inquiry. Is that accurate? Is that your recollection?

JUSTICE VERNIERO: That sounds accurate. Maybe we had a conversation beforehand, before the formal inquiry, as part of any kind of *Soto* briefing that I might have had, but I'm fairly certain we would have had a conversation in advance of the DOJ investigation.

SENATOR GIRGENTI: I believe that you went to Washington on December the 12th? I think it was sometime in the period of the week before, December 9th or somewhere in that area, that you had a meeting with Fahy and a couple of other individuals in your office.

And when he testified before us the other day, he said that at the meeting when he mentioned the racial profiling problem, you made a comment or a quote something to the effect that New Jersey is the worst state in the nation regarding racial profiling.

Do you recall discussing that point? Or was that just a-- He kind of said it was like something that he said like an offhanded remark. You made that remark. Was that your feeling at the time?

JUSTICE VERNIERO: I don't recall that remark.

SENATOR GIRGENTI: Were you concerned about New Jersey's rank among other states in regards to severity of selective enforcement? Was that a concern at that point?

JUSTICE VERNIERO: At that point, I was concerned that the DOJ should treat New Jersey fairly. I obviously knew about the *Soto* case and wanted to ensure that we were prosecuting that appeal appropriately. I don't

know if my thinking had advanced in that early stage much beyond those concerns.

SENATOR GIRGENTI: Well, he made that remark, and that's why I even questioned him on it. He said it might have been just something of an offhanded remark or something?

JUSTICE VERNIERO: I might have been asking him to put this in some sort of national perspective, since we were going down to Washington to speak to the national government.

But I just don't recall, Senator. That's a speculation on my part.

SENATOR GIRGENTI: Now, in the testimony before the Committee on May 5th, 1999, your confirmation hearing, I had asked you a question at that point, which went as follows, and it's on page--

JUSTICE VERNIERO: Do you have the page, Senator?

SENATOR GIRGENTI: Yes, Page 202, I believe, in the transcript. Do you have it?

JUSTICE VERNIERO: Yes, I do.

SENATOR GIRGENTI: All right.

I said-- At that point I asked you: "I understand that you inherited the *Soto* case from the previous attorney general; however, you continued to pursue the case with vigor, from my understanding, considering the severity of the allegations involved. Did you not think it would be in the best interest of the people of New Jersey to conduct an investigation into the matter before pursuing the case any further?"

And your response was: "Well, as I indicated last week, the decision to appeal that case had recently been made. Perhaps if it had -- that

decision had been made sometime earlier, I might have done things differently, but it had just been made a few months earlier, if not a few weeks earlier. And given that circumstance, no I did not believe I should have second-guessed the prior attorney general. It was not until, as I said last week, the Turnpike incident in April of 1998 where the issues and allegations of racial profiling crystallized in my mind. And at that point forward, I took very aggressive steps, I believe, at all the appropriate times.”

Now, you remember that discussion that we had at that point?

JUSTICE VERNIERO: Yes.

SENATOR GIRGENTI: Now, I’ve come to understand in looking at the time line of events during that time period, that during the 10 months which lapsed between the shooting and the formation of the review team, the only significant steps that were being taken were the investigation into the Hogan-Kenna incident and the conduct of the Troop D audit, which by the time of your testimony was in limbo and on the verge of being shut down, basically.

What aggressive steps were your referring to at that point?

JUSTICE VERNIERO: Well, I didn’t know at that point in time that the Troop D audit was in any sort of limbo. And as I testified earlier, I was unaware that it had been concluded or terminated.

As I started in an answer to a previous question, there were several steps that we were taking not solely related to collection or retrieval of data, because I viewed the issue of racial profiling broader than that. It was an issue of culture. It was an issue of whether there was sufficient diversity and public confidence in State Police, whether their internal review, IAB system was

proper and in place, and we were taking steps on all of these fronts to ensure that State Police was updated and had the best IAB system in place that it could have, was as diverse as it could be, and those were many steps that we were taking. It was not just in the perspective of an audit or an analysis of a particular piece of information.

And then there was also the review team itself, which was a major step which occurred after April 1998.

SENATOR GIRGENTI: Again, referring to that May 5th testimony at your hearing, I questioned you on the following:

It's on Page 205-206.

The statement I mentioned-- I said to you: "The media, and other interested organizations, seem to have little difficulty finding statistics which would lend validity to the accusations of racial profiling. Statistics such as arrest records, stop and search records. I'm still interested in the percentages of minority troopers and minority troopers in supervisory positions, which you promised at last week's hearing. I have not yet received that. It's still not been forwarded to me.

"In light of the *Soto* case, did your Office review any of these statistics while appealing the *Soto* decision? And have you yet?"

And your answer to that was: "We are continuing to conduct audits of the various barracks. Whether that touches the exact same statistics or not, I'm not sure. I'm not doing the specific audits. But the investigations are continuing. We're now going into the second phase of that investigation and review. As to the minority representation, I will see to it that we forward that to you. I apologize for not getting that to you sooner."

First of all-- You followed that, right?

JUSTICE VERNIERO: Yes.

SENATOR GIRGENTI: First of all, you didn't answer the question if your office had reviewed these statistics while appealing *Soto*, but putting that aside, you replied that you were going into the second phase of the investigation and review.

The audit being conducted by Lieutenant Sachetti was done in three phases, as you have mentioned, the second of which was being conducted at the time. I take it that's the investigation you were referring to?

JUSTICE VERNIERO: Yes. I don't recall whether I knew it was being done in phases.

SENATOR GIRGENTI: You mentioned that earlier today, I believe.

JUSTICE VERNIERO: I knew it was being conducted. I don't recall whether I knew it had specific phases.

SENATOR GIRGENTI: Lieutenant Sachetti's audit was a study of falsification of records, correct?

JUSTICE VERNIERO: That is correct.

SENATOR GIRGENTI: You understand why I take exception to how you answered my question in your hearing? I want to know what arrest, stop, and search records you'd reviewed in light of the *Soto* appeal, data which the State Police did have in its possession.

In retrospect, do you think that reply was appropriate?

JUSTICE VERNIERO: I do, because at the time I gave that testimony, I was not aware to the extent that there might have been data--

Well, strike that. This was after-- This was in May, so it was after the discovery of the blue binder, so I would have knowledge at that point that there might have been statistics.

I believe I have answered the question with respect to why we didn't conduct our own, independent review in the aftermath of *Soto*. We were waiting on the results or the completion of a violator survey, which we thought was appropriate, before we engaged in or at least had the ability to analyze any ongoing statistical analyses.

With respect to the conduct of audits at the various barracks, I believe it was accurate then, and still is accurate, when I said that those audits were continuing. And I wasn't sure of the exact nature of them, what specifically were being looked at. I had a general understanding that it was tied to falsification, but depending on whether it was stop data or consent to search data, I just wasn't sure, and I believe that was reflected in my answer.

As to the minority representation, I had apologized to you, because you apparently had asked for information which my office did not submit to you.

So I believe the statement was accurate.

SENATOR GIRGENTI: All right.

So you were still waiting for a violator survey? You were working on it?

JUSTICE VERNIERO: We were, and then at the point where we issued our report, we had indicated that a population survey might be more appropriate. And of course, there was a point in time -- and I don't know where that was exactly -- where we had a pretty good sense that we were going

to withdraw the appeal in *Soto*. So there would have been no need to have a specific study done as to whether or not to withdraw that appeal.

SENATOR GIRGENTI: Okay.

Let me ask you another question: Just post-*Soto*, earlier time frame than what we were just talking about, I think it was probably about the time that you came in as Attorney General or close to that, there was the Littles committee -- was created. I don't know if you were involved in the creation of that committee, or was that your predecessor?

JUSTICE VERNIERO: I don't recall being involved in that.

SENATOR GIRGENTI: Colonel Val Littles. There was, like you said, there were a couple of people--

JUSTICE VERNIERO: Yes. I know Colonel Williams -- Colonel Littles. I don't -- I don't know whether I was involved with that.

SENATOR GIRGENTI: You were-- You had representation there, I think you mentioned.

JUSTICE VERNIERO: If it was a joint committee, my office would have been represented, yes.

SENATOR GIRGENTI: Right.

But you're not aware of what went on at that? It was during the--

JUSTICE VERNIERO: I'm not specifically aware of that committee. If it's the post-*Soto* reform committee that I was referring to, my understanding was that that committee was charged with the responsibility of reviewing existing procedures and training materials and to propose additional training if they thought that was warranted and conduct additional training if they thought that was warranted.

SENATOR GIRGENTI: Do you remember how many times they met?

JUSTICE VERNIERO: I do not know.

SENATOR GIRGENTI: Do you remember if Ron Susswein was a member?

JUSTICE VERNIERO: That would make sense to me, because Ron was the person at Division of Criminal Justice who spent a great deal of his time working on training, and actually, I think he taught classes and put out bulletins, as I recall, on the latest search and seizure laws, that sort of thing. So that would not surprise me if Ron was part of that.

SENATOR GIRGENTI: Well, my understanding is, they met four times, and they met zero after '96. They just didn't meet anymore. And I was wondering, this training and the procedures they brought forth, did anything come out of it?

JUSTICE VERNIERO: I assume so, but I don't know for a fact what may have come out of that committee.

SENATOR GIRGENTI: All right. Another question I have is, have you had any conversations with anyone at OAG in the past two months about the subject of these hearings?

JUSTICE VERNIERO: I have spoken generally to individuals, like Alex Waugh, about the fact that there would be hearings. This was, as you know, a subject of great publicity, and it was very difficult to avoid at least a passing reference or a general reference to these hearings. I have been very careful not to discuss the substance of testimony with any particular witness.

SENATOR GIRGENTI: So you basically -- you spoke with--  
Well, he's no longer with the OAG, Alex Waugh, right?

JUSTICE VERNIERO: That's correct.

SENATOR GIRGENTI: Anyone that presently--

JUSTICE VERNIERO: Oh, you're referring to the present OAG.

SENATOR GIRGENTI: Right. Right.

JUSTICE VERNIERO: I have not spoken to Mr. Fahy or Mr. Rover. I have--

SENATOR GIRGENTI: Anyone else from the Department, OAG?

JUSTICE VERNIERO: That I've spoken to? I've spoken to Mr. Miller in connection with the document production. I have not spoken to Mr. Zoubek, although my office--

SENATOR GIRGENTI: Anyone else that you can think of?

JUSTICE VERNIERO: Let me just complete my response with respect to Mr. Zoubek. My office has an arrangement with his, whereby I do conflicts checks, in my current capacity, to ensure that I'm able to sit on various cases, and we have to do a conflicts check, but that's done by my secretary and his. I have-- I may have had a conversation, as I say, with Jeff Miller, and I've discussed these hearings, at least generally speaking, with the current Attorney General, Mr. Farmer.

SENATOR GIRGENTI: Nobody else?

JUSTICE VERNIERO: Not that I can think of. If you have a witness list, I'd be glad to go through it. You did say current OAG. In my recollection that would be Mr. Fahy.

SENATOR GIRGENTI: Someone not on the witness list?

JUSTICE VERNIERO: Someone not on the witness list that I may have discussed?

SENATOR GIRGENTI: Right.

JUSTICE VERNIERO: Well, sure. I mean, I have discussed this with a number of people, many of whom may not be on the witness list.

SENATOR GIRGENTI: In the Office of the Attorney General?

JUSTICE VERNIERO: In the Office of the Attorney General?

SENATOR GIRGENTI: Right.

JUSTICE VERNIERO: Mr. Farmer's on your witness list?

SENATOR GIRGENTI: Yeah.

JUSTICE VERNIERO: I've spoken to him, yes. I don't recall anyone specifically in the Attorney General's Office.

SENATOR GIRGENTI: How about in Law and Public Safety?

JUSTICE VERNIERO: In the Department of Law and Public Safety? Well, my old secretary called three days ago to wish me good luck, Elisa Hartpence. I didn't speak to Paul Zoubek. I spoke to John Farmer, generally; Jeff Miller, in connection with the production request. I'm just going down the list. It's a big Department. Is there someone in particular that you believe I might have had a conversation with?

SENATOR GIRGENTI: How about John Holl?

JUSTICE VERNIERO: John Holl called to wish me good luck, but we did not discuss the substance of the hearing. I was getting a lot of good luck calls in the last two weeks.

SENATOR GIRGENTI: How about Rover?

JUSTICE VERNIERO: I have not spoken to Mr. Rover, no.

SENATOR GIRGENTI: All right. Just the last area. In the 1996-'97 time frame, after you became the AG, were you aware of the Trooper of the Year award given by the State Police?

JUSTICE VERNIERO: Yes.

SENATOR GIRGENTI: Were you aware of the specific criteria used by the State Police for the award, specifically the emphasis on the number of drugs seized and arrests made, and so forth. Were you aware of this?

JUSTICE VERNIERO: I was aware generally that there was-- I think it was a committee, if I'm not mistaken, that made a nomination or set of nominations to the superintendent. I can't say that I recall the exact criteria that the superintendent used to select the Trooper of the Year. If I'm not mistaken, I might have attended one or more banquets where the Trooper of the Year was awarded.

SENATOR GIRGENTI: Right. Well, in light of what Senator Robertson was saying before in terms of a mind-set that was out there at that point in time, were you aware that Trooper Hogan and one other trooper, both stationed at the Cranbury Barracks, were considered for the award in 1996?

JUSTICE VERNIERO: I believe I became aware of that fact when it was reported in the newspaper at the time of the Turnpike shooting.

SENATOR GIRGENTI: But you didn't know it at the time it was going on?

JUSTICE VERNIERO: I don't have a recollection of that, no.

SENATOR GIRGENTI: Well, I, you know, I'll tell you, based on the testimony of Major Touw, who is the head of Internal Affairs and on the committee to select the Trooper of the Year, that Trooper Hogan and one

other trooper stationed at Cranbury Barracks were both considered for the award in '96, as you know. And that Major Touw, who is concerned about the number of arrests and stops of those troopers, initiated an audit that revealed the arrest rate for Trooper Hogan at 58 percent. According to the report, 58 percent Black, and an arrest rate -- 58 percent. And the other trooper had a 73 percent Black. And that as a result of this audit, those troopers were dropped from being considered for the award. I think it's the exhibit that's marked Z-3. I don't know if you had it.

JUSTICE VERNIERO: I don't think I have that exhibit.

SENATOR GIRGENTI: And I believe, just for the record, before you look at it, that this audit was contained in the documents that Paul Zoubek acknowledged receiving and reviewing in June of '98. So, at any--

JUSTICE VERNIERO: I don't recall seeing this document.

SENATOR GIRGENTI: Zoubek said he told you about it when he sent it to you.

JUSTICE VERNIERO: He may have. I don't have a recollection of reviewing this document.

SENATOR GIRGENTI: When it was sent to Zoubek, it was sent to Zoubek, and he told you about it.

JUSTICE VERNIERO: He might have described it to me generally. I don't have a recollection, Senator, of seeing this document.

SENATOR GIRGENTI: All right. At any time during your tenure, did you ever say to the State Police, don't reward troopers for the number of arrests and drugs seized, and instead reward troopers who administer the law in an evenhanded manner. Was that your philosophy?

JUSTICE VERNIERO: Well, that was a conclusion that we published in the interim report, that the Trooper of the Year award perhaps ought to be redesigned to avoid any inference or suggestion that it should be based on racial profiling or anything of the sort. That was in the interim report.

SENATOR GIRGENTI: Why did it take three years to come to that conclusion?

JUSTICE VERNIERO: Well, that's really a shorthand reference to ask why it took that long to reach the conclusions that we did in the report, and I would just reiterate all that I have said in that respect.

SENATOR GIRGENTI: Okay. Thank you very much.

JUSTICE VERNIERO: Thank you, Senator.

SENATOR CAFIERO: Senator Zane.

SENATOR ZANE: Justice Verniero, during your tenure as Attorney General, what would you list as the three biggest issues that you faced? And I'm not talking about personnel matters, I'm talking issues that faced this State. The three biggest issues, in your opinion.

JUSTICE VERNIERO: Racial profiling.

SENATOR ZANE: Number one.

JUSTICE VERNIERO: Number one issue.

The continued implementation and litigation surrounding Megan's Law was an issue that personally accounted for a lot of my time as Attorney General. So clearly, that was an issue. I don't know whether I would rank it second. I mean, it's hard to rank these issues. That clearly was an issue.

And there were a number of other issues that perhaps, singularly speaking, were not of the same par, but when combined were quite significant. The tobacco settlement that we had reached -- the \$7.8 billion tobacco settlement -- simply by virtue of its size, I would have to characterize that as a major issue. And I'm sure, if time permitted, I could think of other issues, Senator.

SENATOR ZANE: Justice, then, the three biggest issues you just gave us -- racial profiling, that you believe is the biggest issue?

JUSTICE VERNIERO: I would say that of the 33, 34 months of my tenure as Attorney General, I spent roughly a third of my time, if you were to add it all up in all of its various aspects, to the racial profiling issue. So certainly, that was a major one. Megan's Law was a big issue, to the school funding cases that I argued, and there's a whole set of issues. I hesitate to put any ranking to them, because there were so many during my tenure.

SENATOR ZANE: I checked with my office today, and we had phone calls -- people that watched this. I'm surprised the number of people that have watched. And the question that came through a lot -- and I'm not suggesting to you that there were hundreds of calls, but there were calls -- is that the people watching didn't believe you when you repeatedly said, "I do not recall," or "I can't recall." How do I go back to the people of my district and tell them that I met today with -- for nearly 12 hours now -- a Justice of the Supreme Court, former Attorney General of this State, who identified racial profiling as the biggest issue in his 34 months as Attorney General. And you may not be aware of this, but people actually counted the number of times

you said that today, and you're into the hundreds of times. At 6:00 today, someone indicated that you had said that over 300 times.

Now, how do I go back to tell people that the biggest issue you faced-- You went to meetings that you didn't know what they were about. You went to meetings that you didn't know who was there. You went to meetings that you didn't know what they said. How do I get back and tell them that? Please, help me. I have to go home when this is done and talk with constituents or tomorrow or the next day. How do I go home and tell them that?

JUSTICE VERNIERO: Well, what I would say to your constituents is, you're dealing with an individual who managed a 7000-plus Department, who sat in literally hundreds, if not thousands, of meetings over the course of 34 months, certainly who read thousands of pages of documents, and who, four years after the fact, is being asked to describe very specific conversations in a level of detail, which is much to ask of any human person to try to recall. And hopefully, you'll be able to conclude, Senator, that I've done the best that I could to recall that information.

SENATOR ZANE: Justice Verniero, no witness so far, in the two days of these hearings, has testified like you have. On May the 6th, 1999, when you appeared before this Committee, I said to you--

JUSTICE VERNIERO: Do you have the page number?

SENATOR ZANE: Yes. Page 28.

JUSTICE VERNIERO: Of May 5?

SENATOR ZANE: May 6th.

JUSTICE VERNIERO: Pardon me, May 6th. Okay.

SENATOR ZANE: I said to you, and just to give you a plain report, I said: "I'll have to make an observation. Yesterday, in a half hour session of questions from Senator Lynch, you either 'didn't recall, don't know, wasn't sure, had to look for it, couldn't find it,' something in the neighborhood of 25 times. Senator Lynch questioned you for 26 minutes this morning. You had four minutes left. You were 'unaware' 5 times, 'don't recall' twice, 'don't know' 4 times, 'don't remember' once, 'not sure, don't believe so, and not familiar with.'" And I went on to say to you I honestly can't believe that someone-- I guess you were 40 years of age at that time. So now I guess you're 42.

JUSTICE VERNIERO: Forty-one.

SENATOR ZANE: Forty-one.

JUSTICE VERNIERO: But growing older.

SENATOR ZANE: You can't have that big a problem with memory. And I indicated to you also at that time that I was very disappointed with that. Today, I'm also very, very disappointed.

Justice Verniero, let me ask you a question: At any time during any of those meetings were there tape recordings made, either to your knowledge or without your knowledge at that time?

JUSTICE VERNIERO: Not to my knowledge.

SENATOR ZANE: Were there any minutes kept of any of those meetings?

JUSTICE VERNIERO: I do not recall keeping any minutes. I don't know what others may have been doing in terms of taking notes.

SENATOR ZANE: Do you have any idea whether or not anyone else taped you during any of those meetings?

JUSTICE VERNIERO: Not to my knowledge.

SENATOR ZANE: My thoughts probably aren't going to flow real smoothly. What I really am hoping to be able to do is stay away from things that have already been asked of you several times. Explain this to me. Lieutenant Sachetti, S-A-C-C-H-E-T-T-I (*sic*), member of the State Police -- are you familiar with him? Do you know who he is?

JUSTICE VERNIERO: I know the name because of these proceedings.

SENATOR ZANE: He testified, sitting right in the seat you are in, that he believed your office was controlling the audit that he was doing, and that your office was in control of the audit that he was doing. Now, I'm going to ask you, was he right?

JUSTICE VERNIERO: My understanding was, the Division of Criminal Justice was working in concert with the State Police in connection with the Troop D audit. I don't know who was in control of that audit. I would assume that since the Director of Criminal Justice at the time was also the Acting Attorney General and the First Assistant, Paul Zoubek, that Mr. Zoubek would have exercised ultimate control over the outcome of that audit.

SENATOR ZANE: What was your last day as Attorney General? Was it May 15th?

JUSTICE VERNIERO: May 15th, 1999.

SENATOR ZANE: May 15th, 1999. Do you know that on May the 14th, Lieutenant Sachetti was told by then superintendent, or acting superintendent Fedorko, to sit tight on the audit that he was doing?

JUSTICE VERNIERO: I don't know that to be the case, no.

SENATOR ZANE: Do you know the following day you resigned as Attorney General, correct?

JUSTICE VERNIERO: Yes.

SENATOR ZANE: Do you know that five days after you resigned the audit was terminated?

JUSTICE VERNIERO: I don't know that to be the case.

SENATOR ZANE: You have no knowledge of any of that?

JUSTICE VERNIERO: Other than what I've learned through the course of these proceedings.

SENATOR ZANE: So, if the trooper says, who was doing the audit, who was dealing at the superintendent's level, who the superintendents said here -- and to the best of my knowledge, and it's late at night -- but indicated that the direction for that audit and the direction to terminate it came from the Attorney General's Office, you would question whether or not that came from the Attorney General's Office with your knowledge?

JUSTICE VERNIERO: It didn't come from me, Senator, so I don't know where that would have come from.

SENATOR ZANE: You said that you held all of the strings to the racial profiling issue in the Attorney General's Office. Am I correct?

JUSTICE VERNIERO: I was asked who was the person ultimately responsible, who held the reins, I think, is the way the question was posed, and I said I did as Attorney General.

SENATOR ZANE: Well, were there decisions on this issue, which was the biggest issue during your tenure, made by people other than you in the Attorney General's Office -- decisions to terminate an audit, the very information that the Justice Department was seeking a follow-up to?

JUSTICE VERNIERO: Senator, I did not direct that that audit be terminated. I do not know who made that direction. I just have to assume it was Paul Zoubek or someone -- someone under his leadership. I just do not recall. I know that I didn't do it. I don't know who did it.

SENATOR ZANE: Let me tell you another one I'm having a problem with. Do you have young children?

JUSTICE VERNIERO: I do.

SENATOR ZANE: You do. How young are they?

JUSTICE VERNIERO: Eight and three.

SENATOR ZANE: Hopefully, they believe in Santa Claus.

JUSTICE VERNIERO: They do.

SENATOR ZANE: And you don't remember what you did on Christmas Eve 1996, December the 24th? You don't know what you did in your office when you met with people?

JUSTICE VERNIERO: Meeting--

SENATOR ZANE: There isn't a person here at this Committee that hasn't commented that they have a tough time believing that -- both sides of the aisle.

JUSTICE VERNIERO: I understand that, but, as I said, meetings in my office were not remarkable to me. I had many of them. My recollection is perhaps not as good as others, because their meeting in my office was a very special occasion for them. For me, it was routine, and I had more meetings by far and read more documents by far and was responsible for more telephones by far than any one person in that office. So, within the frailties of humanity, Senator, my recollection is what it is, based on the volume of work that I was laboring under and based on my responsibilities. That's the best I can offer is the truth, whether members choose to believe it or not. I respect those members to make those judgments.

SENATOR ZANE: I told you my thoughts would not be necessarily all tied together. You indicated on a number of occasions that you relied upon the information provided to you by the State Police that racial profiling was not going on within the State of New Jersey, correct?

JUSTICE VERNIERO: I relied on their assurances, yes.

SENATOR ZANE: And those assurances, did they come from then Superintendent Williams?

JUSTICE VERNIERO: Yes.

SENATOR ZANE: And he alone provided you with those assurances from the State Police that you relied upon?

JUSTICE VERNIERO: There might have been others in the senior State Police leadership. I remember Colonel Williams specifically, because he was my principal contact person at State Police, and I remember generally the time frames in which I got those assurances. There was at least one, possibly two, assurances during the time frame in the early tenure of my

administration, when we were dealing with the *Soto* case in the Department of Justice.

There was another assurance that I had received that is actually reflected in a press release that was put out at the time in connection with the so-called *Bellaran* suit, the suit by Trooper Bellaran, in which the United States District Court found for Mr. Bellaran. And I remember we put out a statement at the time that indicated that the forms of discrimination, as alleged in the complaint, were not reflective of the current State Police. That was based on an assurance that I had from Colonel Williams at the time.

And I recall at least a third assurance that I had received late in my tenure, in February of 1999, in connection with the *Longoria* suit, in which Trooper Longoria was alleging discrimination on the part of the State Police. And I asked Colonel Williams about it, and Colonel Williams said that it was not a problem -- this was an isolated person, that it was not reflective of the attitude of the State Police as a whole.

SENATOR ZANE: Did Colonel Williams ever tell you that he was concerned about a directive that he had from the DEA regarding the apprehension of drug dealers, I guess -- went through the State. And also, a counter indication from the United States Division of Civil Rights, the Department of Civil Rights?

JUSTICE VERNIERO: I don't recall him saying that.

SENATOR ZANE: He didn't tell you that at the May 20th, 1997 meeting?

JUSTICE VERNIERO: I don't recall.

SENATOR ZANE: Did you recommend the termination of Colonel Williams?

JUSTICE VERNIERO: Colonel Williams was asked to resign by the Governor. I agreed with the decision at the time. It was not a situation, as I recall, where the Governor was necessarily looking for my recommendation. I got the impression that she had made up her mind to ask for his resignation by the time we arrived at her home to discuss the situation.

SENATOR ZANE: Did she ask you for an opinion?

JUSTICE VERNIERO: I don't think she did. I think she was very firm in her belief that the superintendent should offer his resignation. I don't recall her asking for my opinion.

SENATOR ZANE: So that we have to believe that that decision was made, to the best of your knowledge, solely by her without input by you?

JUSTICE VERNIERO: It was made by her. We met at her home for the purpose of discussing the issue.

SENATOR ZANE: Who was present?

JUSTICE VERNIERO: Myself, I recall the chief of staff at the time, Mr. Torpey, I believe John Farmer was there -- it was both the chief counsel and the incoming attorney general.

SENATOR ZANE: Was Paul Zoubek there?

JUSTICE VERNIERO: No, I do not believe Mr. Zoubek was there.

SENATOR ZANE: Anyone else?

JUSTICE VERNIERO: I'm sorry?

SENATOR ZANE: Anyone else from your office?

JUSTICE VERNIERO: No. I believe the Secretary of State was there, Mr. Soares, and if I'm not mistaken, Mr. McDonough was there. And as I said at the start of the meeting, it was fairly clear that the Governor had already made up her mind. She may have asked, you know, what we thought of the decision to ask for Colonel Williams's resignation. I just don't remember her saying, "What do you think? Should we do it? Should we ask for his resignation," as if she were undecided. She was pretty firm in her mind at that point.

SENATOR ZANE: What did you think of the decision?

JUSTICE VERNIERO: As I said, I agreed with it.

SENATOR ZANE: I hate to cover ground that somebody else did, and I'm going to try to do as little of it as possible. We've all talked today about the May 20th, 1997 meeting.

JUSTICE VERNIERO: Yes.

SENATOR ZANE: Do you, or do you not, remember Sergeant Gilbert being present?

JUSTICE VERNIERO: I don't. I understand he was present. I don't have a specific recollection of Sergeant Gilbert at that meeting.

SENATOR ZANE: I personally asked Fahy -- that's the one I'm pretty sure of -- Rover, Waugh, who was gone in 1997, maybe even Sergeant Gilbert, whether or not they felt you, long before the shooting, had a clear, in their opinion, understanding of racial profiling in New Jersey as we now know it. Do you know what their answer was to the man?

JUSTICE VERNIERO: What was it, Senator?

SENATOR ZANE: Their answer was yes. They talked about your participation in meetings. They talked about things you said about it. Now--

JUSTICE VERNIERO: Did you ask them, Senator, whether they thought that racial profiling was an issue in 1997? Because I suspect if you had, they would have said no.

SENATOR ZANE: How do you know that?

JUSTICE VERNIERO: Because that was the assurances I was getting from State Police, so I assumed that Sergeant Gilbert would have reflected that, but I don't know for sure. And I have to assume that if Mr. Fahy and Mr. Rover, or any of my deputies, were that sure of the issue, they would have come to me.

SENATOR ZANE: Waugh's comment--

JUSTICE VERNIERO: Just as I can't predict or pretend to know what was going through their mind, nor can they predict what was going through my mind.

SENATOR ZANE: Again, it's late. As I recall, Judge Waugh, his comments were similar to yours, that at the time of the shooting -- he didn't use the word crystallize -- but at the time of the shooting, it became clearer to him.

Senator Gormley asked you on April the 26th, when this Committee discussed this issue--

JUSTICE VERNIERO: Do you have the page number, Senator?

SENATOR ZANE: No, I really don't. But he asked you about certain documents to produce. You were questioned about that by someone

else earlier, if you can recall, and you indicated that you couldn't, because of an ongoing investigation. Do you recall the answer?

JUSTICE VERNIERO: I don't. I would have to -- have it reflected in the testimony.

SENATOR ZANE: Can anyone help me with the Bates number? Senator Gormley's question?

SENATOR GORMLEY: One second.

SENATOR ZANE: It's at the top of page-- Yeah, it is at the top of Page 26 of the April 26th hearing.

JUSTICE VERNIERO: Page 26, yes. It has Senator Lynch, not Senator Gormley. Let's see, April 26th.

SENATOR ZANE: Yes. It's Senator-- You-- You say, at the top of the page, "I can't answer that question, Senator."

JUSTICE VERNIERO: Oh, yes, on the very top. I see it, yes.

SENATOR ZANE: Senator Gormley then says, "Okay, by the nature of an ongoing investigation," with a question mark. And your answer is, "Yes." Now, that ongoing investigation that you were referring to was the investigation that you believe was going on with Superintendent Williams, correct?

JUSTICE VERNIERO: No, that was an investigation that I had asked Director Zoubek to undertake in connection with the so-called blue binder.

SENATOR ZANE: Okay. You indicated today that you asked Mr. Zoubek to begin an investigation of Colonel Williams as to whether or not

he was involved in withholding of documents that the Justice Department had wanted, correct?

JUSTICE VERNIERO: That was not my testimony.

SENATOR ZANE: What was it?

JUSTICE VERNIERO: My testimony was in connection with the production of the blue binder. I asked Mr. Zoubek to undertake an investigation to determine the chain of custody, and so forth, that might have included Colonel Williams, but I was not specific to Colonel Williams. I did not ask Director Zoubek to go out and “investigate” Carl Williams. I don’t recall that. I recall him -- I recall asking him to investigate the blue binder. Now, that might have led to Colonel Williams, but I was not specific, as I recall.

SENATOR ZANE: How do you investigate a blue binder?

JUSTICE VERNIERO: I left -- investigate the documents that were in there, the chain of custody, and so forth, and I left it to Director Zoubek to come up with the scope of the investigation, the inquiry, and so forth. I was not that specific, as I recall.

SENATOR ZANE: If, for the sake of discussion, we assume that I am correct, and you said an investigation regarding Williams, even though I understand you’re saying you don’t--

JUSTICE VERNIERO: I don’t recall saying it.

SENATOR ZANE: I understand. How do you start an investigation of a superintendent of the State Police? Anything in particular? Do you do something formal? Do you communicate? When you use the word investigation, do you have to tell somebody they’re a target? Do you have to

determine what the scope is going to be? Do you have to write it down? Does it go into a file? What do you do?

You said, investigate. I'm saying if, hypothetically, if -- let's assume what I heard is what you did say, even though I know you're saying it's not. What do you do when you investigate a Superintendent of State Police? Do you have to do anything formal first?

JUSTICE VERNIERO: Well, he wasn't the superintendent at the time. He was a private citizen. I don't know how to answer that question, Senator, because it is a hypothetical question.

SENATOR ZANE: At a time earlier, a question was asked last night, and Mr. Zoubek testified that there were rumors that Colonel Williams was being investigated. Are you sure of the date, when you said about investigating regarding the blue book that you mentioned here today, or could it have been while he was still Superintendent of the State Police?

JUSTICE VERNIERO: I don't think that would be possible, because he resigned as superintendent in February, as I believe.

SENATOR ZANE: I understand that.

JUSTICE VERNIERO: And the blue binder was produced, according to my memo to the file, in mid-March. So my recollection is that I was not specific with respect to Colonel Williams.

SENATOR ZANE: You went in the Attorney General's Office in 1996, correct?

JUSTICE VERNIERO: July, yes, of that year.

SENATOR ZANE: And it didn't crystallize -- racial profiling, until 1998, after the shooting incident on the Turnpike, correct?

JUSTICE VERNIERO: The Turnpike event marked a turn of my thinking for the reasons that I've enunciated.

SENATOR ZANE: And that's really when you got a grasp of the scope of the problem. Am I correct?

JUSTICE VERNIERO: That's when I'd begun to realize the scope of the problem.

SENATOR ZANE: I'm having difficulty believing that. Tell me why I should, when, from 1996 through 1998, you dealt with and you were briefed on the *Soto* case. You had staff meetings -- numerous staff meetings. There were memos, documents, letters, correspondence, reports, meetings in Washington, talks with Janet Reno, statistics, requests for radio logs, the Maryland order, a letter that you edited in April of 1997. How do I grasp and understand that none of these events made you understand the significance of the problem until the Turnpike shooting? I find that incredible.

JUSTICE VERNIERO: First, I don't believe I spoke to Attorney General Reno prior to 1998. Second, with respect to the reasons why we might have discounted the data and information or discounted the result in *Soto*, I've already described, and I'll be pleased to repeat that answer, Senator, if you wish, but--

SENATOR ZANE: No, just answer that question. All those items there -- I don't want to go through them piecemeal -- answer them in concept.

JUSTICE VERNIERO: I can't.

SENATOR ZANE: How do all those things happen in one person's life, in 34 months, when the biggest issue you faced as the Attorney General of this State, and you still, two years later, are still saying, "Profiling?"

What do you mean, profiling? Oh, wait a minute, somebody gets shot, we have profiling.” That’s how you sound.

JUSTICE VERNIERO: I wasn’t saying “Profiling? What is profiling?” I obviously understood what profiling meant. What we did not fully appreciate prior to 1998 was the scope of the problem on any sort of wide scale basis.

The reason for that, and I will review it. It’s not a sound bite answer, Senator. I can’t answer it in one sentence. It was four or five things that I described earlier, both things of -- of sort of negative things, things that we were discounting, and positive things, assurances that we were getting.

But I will review it for you again, if you like. In the early--

SENATOR ZANE: No, I would just like that question answered.

JUSTICE VERNIERO: I will answer it, then, for you. In 1996 and 1997, our working definition, for lack of a better term, the focus of racial profiling was on stops, and therefore, stop data, such as the kind reflected in the *Soto* record. At that point in time, we did not fully appreciate that consent to search information would also, indeed, be an indicia of racial profiling. We came to realize that later.

I testified that had I -- had I -- were I to do it all again, I would have treated consent to search in a far different way. During this period of time, we got repeated assurances from the State Police, myself and possibly others on my staff, that there was no racial profiling occurring in State Police on any significant or systemic basis.

SENATOR ZANE: What did you do to check to make sure that was true or not, just take their word for it?

JUSTICE VERNIERO: I trusted the State Police.

SENATOR ZANE: Do you believe that if it walks like a duck, acts like a duck, talks like a duck, eats like a duck, smells like a duck, it's probably a duck?

JUSTICE VERNIERO: Nobody saw a duck at that time, Senator.

SENATOR ZANE: I don't think that's absolutely true.

JUSTICE VERNIERO: Well, I'm--

SENATOR ZANE: Didn't you have--

JUSTICE VERNIERO: My testimony--

SENATOR ZANE: Didn't you have -- didn't the blue book indicate that people knew there was a duck out there?

JUSTICE VERNIERO: The blue book was not brought to my attention until March of 1999. You're asking what--

SENATOR ZANE: That's what you say.

JUSTICE VERNIERO: That is my testimony, yes.

SENATOR ZANE: That is what you say, but it's not what others have said, here in this room.

JUSTICE VERNIERO: I can't account for that. My understanding -- and again, I did not go through every document in the blue binder, so I want to be clear what my testimony is. At least insofar as the documents that were shown to me by Director Zoubek and described to me, the existence of certain of those documents occurs for the first time in March of 1999.

SENATOR ZANE: Justice Verniero--

JUSTICE VERNIERO: In terms of the May 20, 1997 meeting, which has been the focus of this Committee, at no time in my recollection -- and I think the record is uncontroverted here, Senator -- at no time, to my recollection, did anyone in that meeting stand up and shout, "We have a problem with racial profiling."

So I was relying on our view of statistics, our appeal in the *Soto* case, the assurances that I had received from Colonel Williams that racial profiling was not ongoing to any systemic way. We did not have a traffic violator survey by which to judge and assess the data that may have been available. All of that changed. My thinking changed after the Turnpike shooting event. And then it evolved and developed to the point where we issued our April 20th report.

I respect your prerogative not to believe that. That is the truth. That is what occurred. That was my mind-set, and therefore, that remains my testimony before this Committee.

SENATOR ZANE: Just one or two final questions. The document that Sergeant Gilbert had prepared, which you say you saw for the first time when Mr. Zoubek presented you with "the blue book," if you saw that document in December of 1996, or if you saw that document and read it on May 20th, 1997, would you have believed then that there was pretty good evidence that racial profiling was going on in this State?

JUSTICE VERNIERO: I would have asked more questions, probed more deeply, had I been aware of that document, is my assumption. Since I wasn't, I can't predict, for sure, how I would have reacted. I have already acknowledged to the Committee that the area of consent to search and

the fact that I was receiving assurances was something, if I had to do it all again, I would not have relied on those assurances. And I would have asked more probing questions of the State Police and others on my staff. I've described to you the reasons why I didn't ask those questions, and I reiterate the testimony that I've already described.

SENATOR ZANE: Justice Verniero, you testified today to a number of questions that made references to documents, where you said, almost to the letter, "I only read the cover page." You may have indicated, "I perused some of the other documents." Do you recall saying that, time after time today?

JUSTICE VERNIERO: I recall that I would normally read the cover page. I might or might not have reviewed or studied any of the attachments -- I may have. I believe that was my testimony. It depends on the document, the size of the document, whether any particular focus or attention was brought to any of the particular appendices. That was my testimony. It was a document-by-document response that I gave.

SENATOR ZANE: And had those documents been read by you, you also would have had a better clue as to what was going on, long before the Turnpike shooting in 1998, would you not?

JUSTICE VERNIERO: Well, it depends on the document. If I--

SENATOR ZANE: I understand that.

JUSTICE VERNIERO: Well, but it's--

SENATOR ZANE: But those documents that made reference to reports--

JUSTICE VERNIERO: But it's--

SENATOR ZANE: --had you read them, you would have known something about racial profiling long before the shooting on the Turnpike, wouldn't you?

JUSTICE VERNIERO: Allow me to answer the question, sir. If it were the July 1997 Waugh memoranda, with the data and information attached, assuming I had read it, there was contradictory information contained in the documents themselves. Specifically, in the July 1997 memorandum, there was a conclusion by the author of the report of the complaint that there was no profiling going on with respect to nonminority troopers.

So even within the document, there was contradictory information. The data that was attached to the July 1997 Waugh memorandum was pre-*Soto* data, which would have been discounted for the reasons that I've already described.

So I can't answer the question any more precisely than I've answered, and I'm not in a position to speculate or guess at what my reaction might have been. I acknowledge to the Committee that I should have asked more probing questions of State Police, particularly with respect to the consent to search information. I didn't. I regret that.

SENATOR ZANE: Final question: You indicated that at no time did politics enter into your thinking in any decision that you made while you were in the Attorney General's Office. Is that correct?

JUSTICE VERNIERO: Politics never affected my thinking.

SENATOR ZANE: Okay. It has been said, and clarify it, and if it's not true, please tell us that it's not. Did you, while you were the Attorney

General, ever hire a political consultant during the period of time that you were the Attorney General?

JUSTICE VERNIERO: No.

SENATOR ZANE: Never?

JUSTICE VERNIERO: Never.

SENATOR ZANE: Okay.

SENATOR GORMLEY: Senator Martin.

SENATOR MARTIN: Justice.

JUSTICE VERNIERO: Good evening.

SENATOR MARTIN: I've tried to talk, and I admire your ability to sit through this -- I guess ordeal would be an appropriate term.

Just a couple of questions. I have sort of -- gathering information and just listening to others talk about the performance of the Attorney General's Office during the almost three years that you were in office, and with the increased problem of racial profiling during that time, I've heard the problems of performance described in several different ways. And I'm just going to go through a few adjectives. And I would ask you to think whether any of these, at least from your perspective, accurately reflects the problems of racial profiling, as you saw them during that time such as whether during that performance of your office, were there errors in judgment being made at that time? Were problems based upon inattention? Was it a question of negligence? Was it a problem of gross negligence? Was it a problem of avoidance? Was it a problem of ignorance of the problem? Was it a question of too little, too late?

I'll stop there, but I mean these are the kinds of descriptive terms that at least some people have said. Would you ascribe any of those as being accurate?

JUSTICE VERNIERO: Well, certainly there was ignorance of a problem. We were not aware of the scope of the problem until the events occurred that I have described. But it was not intentional ignorance. It was not intentional avoidance.

In hindsight, we should have asked greater questions. I should have asked greater questions, and we should have educated ourselves. I think that's a fair -- a fair description. I don't -- I don't see gross negligence. I don't see intentional wrongdoing. I don't see malice. I don't see bad motive. I don't see ill will.

I see a group of professionals in my office, and I include within the State Police -- they were grappling with a very difficult issue, as well. I make the presumption that everyone involved was working in good faith. But for a number of reasons, we missed the issue in my early tenure. We caught the issue in my later tenure.

And I'll leave it to the judgment of others whether that was too little or too late.

SENATOR MARTIN: I think Senator Lynch had alluded to a question I had asked during the racial profiling, on April 26th, 1999.

JUSTICE VERNIERO: Do you have a page number?

SENATOR MARTIN: Yes, it starts at 53 and goes over to 54. I won't read all of it.

JUSTICE VERNIERO: Okay.

SENATOR MARTIN: But I'll just take some of it.

At the bottom of Page 53, I said, "I'm interested to know that you've been the General for three years, or almost three years -- July of 1996 to May or late April of 1999. Has your office done the best that it could do throughout -- throughout this, from the *Soto* case, which preceded your assignment to AG? Has the office been doing the best it could, under all circumstances? I know hindsight is easier to make predictions."

So those are my comments. And I go on to ask about blame and finger-pointing. Your response is, as Senator Lynch, I think, indicated earlier, you've suggested there might -- there was no attempt to provide finger-pointing or placing the blame on others. You go on to say, at the bottom of Page 54: "So, I have been very committed to these issues" -- meaning, we're discussing the racial profiling issues -- "and I believe we have acted appropriately, given all those facts and circumstances. And I think, when history ultimately gets written, this will be the time when we look back and say we took definitive action. We started a process that will finally end."

Then I say, "I know where we are now. Let me just say, I'll end with one simple question. You assume no personal responsibility for problems that have developed up to this time?"

And your response to my final question in that session was: "In all honesty, I do not, Senator."

I would just ask you again, in light of your reflection, at least at this stage, is it still your view that there is no personal responsibility that you would take, as far as the problems that arose during this period?

JUSTICE VERNIERO: I accept responsibility. I understood your question, wrongfully, perhaps, that you were suggesting personal liability in a litigation sense. And that's why I responded the way I did.

Of course, I have responsibility for all of my actions and the actions of those under me during my tenure.

SENATOR MARTIN: And with respect to, although it was not stated, but since you brought it up, as far as personal liability, your response would be different?

JUSTICE VERNIERO: Yes, it would.

SENATOR MARTIN: And how would you respond to that?

JUSTICE VERNIERO: That I have no personal liability in any litigation sense, because I acted in good faith in the discharge of my official duties. And I believe that's the position of the Attorney General's Office in connection with many pending lawsuits, and that remains my position. And I believe it to be true.

SENATOR MARTIN: Do you accept blame?

JUSTICE VERNIERO: I accept responsibility. I think we all have to accept our share of blame in connection with this issue, but I don't -- I don't like the word blame, because that suggests that I, myself, am pointing fingers at others.

I wish I had done more. I know, now, I could have done more. But I'm only human.

SENATOR MARTIN: When I read that question, just predating that last question, there was some reference that you had made about taking definitive action. And I know that you had told us at that time about the

interim report that you had taken -- we know that that's the action you had taken. I guess the problem I'm still having, trying to square the action -- that definitive action, is that on the very day you were testifying before our Committee, you had received the letter from the Feds -- from the Department of Justice -- indicating that there was a very serious problem, to the point where they were conducting a serious investigation. It did lead to a consent order, something you had said, at least a couple of years earlier, was something you didn't want then and would hope would never happen for a lot of reasons.

So I would ask you now, again, upon reflection, is it your view that the definitive action being taken at that time was such that we were making -- we were making such progress, when, in fact, it seems to me there was an indication at exactly the same time that the problem was a lot worse than any of us suspected, to the point where the Feds would, in fact, step in?

JUSTICE VERNIERO: I stand by the testimony. I thought we were taking definitive action, and the Justice Department had reached, basically, the same conclusion that we had reached, at basically the same time. And their letter and the ultimate consent decree that resulted from their action is itself a definitive step in the form of progress.

My thinking, with respect to the consent decree, changed and evolved just as my thinking changed and evolved with respect to the profiling issue as a whole.

SENATOR MARTIN: Well, by that time, you really had no choice, as far as -- a consent decree was better than having Federal litigation.

JUSTICE VERNIERO: Well, once--

SENATOR MARTIN: I mean, that was sort of the way it was posed to you, wasn't it? If you had -- if you provided certain information, and entered into a consent decree, you would avoid an absolute civil case, involving Title 42 -- I guess it's the Omnibus -- what is it, the Criminal -- the hour is late. I can't even -- but it's that section of Federal law, under Title 42.

So, at that point, that was probably the less of the -- the less difficult of a very difficult situation we were now caught into, right?

JUSTICE VERNIERO: Well, it's clear, from the result of the April 20th report, that a consent decree would be something that the Federal government would assert. I don't think there was any question in our minds, at that point in time, what would result.

We had withdrawn *Soto*, in light of the report -- at least in part. And I'm sure at that point -- I don't recall exactly what our thought was -- but I'm sure we just presumed that there would be some sort of consent decree.

SENATOR MARTIN: When you, in the following month, transitioned to Attorney General Farmer -- you had indicated that there was a transition period of short order between then General Poritz and yourself. There's some, I guess, some difference of emphasis, perhaps even recollection, about what she may have suggested as far as giving you some warning signs about racial profiling. What is it that you were able to tell General Farmer as far as, in the transition that you had in turning over the office to him, about the status at that time?

JUSTICE VERNIERO: Well, there wasn't much that I think I knew that wasn't already public, or that John Farmer had known, by virtue of the fact that it was a fairly extensive period in which I was a nominee and

which he was a nominee. As I recall, he and I were both nominated in February. I was confirmed in May. So that was a period of several months where John knew he was going to be the incoming Attorney General.

So I'm -- without recalling specifically -- my assumption is that we would have had a number of discussions in that extended transition period such that when he began his service as Attorney General, he was fairly up to date on the racial profiling issue.

SENATOR MARTIN: I'm still a little puzzled by the fact that there's this indication that there was this -- as part of the interim report, and part of your definitive action, that we were now at least going to have this audit of Troop--

JUSTICE VERNIERO: Troop D.

SENATOR MARTIN: --Troop D, the one in South Jersey, on the Turnpike. And somehow that investigation just seemed to dry up shortly after you left. Is there any communication that you had? I know you testified before that you don't know why that happened. But in the transition, would there be anything that would -- that would give some indication why this shouldn't go forward because of the switch in leadership.

JUSTICE VERNIERO: No. I really can't recall. Now, I do remember that Mr. Farmer swearing in as Attorney General, as I recall, was sometime later that summer. I left the office in May, and if I'm not mistaken, he was confirmed -- this is really just relying on my memory -- the following month, in June. Don't hold me to that. But I think it was sometime later. And then he himself was sworn in over the summer.

So, in that interim period of two or three months, May to whenever AG Farmer was sworn, Paul Zoubek would have been the Acting Attorney General. So perhaps he can shed some light on this issue. I just don't have any information.

SENATOR MARTIN: To the best of your knowledge, you gave no signals to reduce this--

JUSTICE VERNIERO: No.

SENATOR MARTIN: --this plan. In fact, you were supportive of conducting this further.

JUSTICE VERNIERO: I was supportive of it, yes.

SENATOR MARTIN: Last question, sort of a general one. When I became a municipal prosecutor, I was advised, even in that small role, about who a prosecutor represents. And I was told that I -- this was in Parsippany, a town you well know. I was told I didn't represent the police, necessarily. I didn't represent the town, necessarily. Above all, I had to account for the people of the State of New Jersey, even though I was rather low on the law enforcement, legal, totem pole. And that directive sort of flowed through -- I know in some meetings we had at the county prosecutor's level, and I think it flowed up through the Attorney General's Office.

You have talked about the fact that you have multiple assignments and missions when you were AG. And I understand that. But is it fair to say that ultimately, beyond the State Police and beyond the State-- You've described the State in several of the examples you've used today, and the State seems like it's New Jersey vs. the Feds in some cases. But it's not necessarily the citizens of New Jersey, the residents of New Jersey, the potential victims,

the potential people who are -- who have to live under law enforcement, but ultimately would you agree that that is, perhaps, your -- the party that you have to answer to most, as a position of Attorney General, or am I missing something?

JUSTICE VERNIERO: Ultimately every attorney general and every public official in the State has to act in the best interests of the citizens as a whole. And I tried to do that, Senator.

SENATOR MARTIN: If there were, perhaps, a conflict even between the governor or the so-called State of New Jersey to the -- in some way that differed from the best interests of the residents of New Jersey, you would feel committed to place the residents at the highest level of obligation to represent?

JUSTICE VERNIERO: Yes.

SENATOR MARTIN: Thank you.

SENATOR GORMLEY: Senator Furnari.

SENATOR FURNARI: Thank you.

JUSTICE VERNIERO: Good evening.

SENATOR FURNARI: Good evening.

Looks like I'm last. I hope you don't consider me least.

JUSTICE VERNIERO: Not at all.

SENATOR FURNARI: I'm going to try to avoid questions that all my colleagues have had a chance to ask. But there are some things that still concern me. And I don't want to lose the opportunity to consider the adoption of lasting legislative reform. I think one of the most important things

we can do here is look to see if something went wrong in the past, and make sure that things don't go wrong in the future.

Justice, before, you said that some of the most important data to you was when you found out that there were falsifications of reports. And I think you probably agree with me, it was back in 1996, and you were dealing with the issue of *Soto* and at the same time you had information relating to those falsifications on reports, that your whole approach to this might have been somewhat different.

JUSTICE VERNIERO: It might very well have been, yes.

SENATOR FURNARI: And somehow -- it wasn't just your testimony, but the testimony of members of your staff, Judge Waugh, and Mr. Rover -- I believe it was Mr. Rover -- who somehow feel that in dealing with the Department of Justice, that there was something going on with them that was going to make sure that the State of New Jersey didn't suffer from the problems of racial profiling. Is that right?

JUSTICE VERNIERO: Well, I -- my feeling at the time was that New Jersey ought to be treated fairly by the Federal government. That was our sentiment at the time.

SENATOR FURNARI: But I think it was your testimony that cooperation with the Department was proactive. I think your words were, "They were the experts."

JUSTICE VERNIERO: Oh, in many -- I see. In many instances, for example, on the issue of the violator survey, we looked to DOJ for expertise.

SENATOR FURNARI: And so long as you were cooperating with them to the degree that you were, you felt that the issue -- you felt at least somewhat more secure that the issue of racial profiling was being handled.

JUSTICE VERNIERO: Well, it was another agency, an important agency, reviewing the issue from their perspective, so there was a comfort level, for lack of a better word.

SENATOR FURNARI: Now, I had a chance to review through the documents that have passed from the Attorney General's Office to the Department of Justice. And it appears that the last letter that you're copied on was -- it was November 5th. The next time your name appears on a document, it jumps up -- I'm sorry. (discussion with panel member off mike)

The next time your name appears on a letter is in February of '99. It's the Bill laden -- the Bill Lee (phonetic spelling) letter. Now, do you have any recollection of those 11 months -- you know, were documents coming to your desk?

JUSTICE VERNIERO: I don't, other than as I described earlier. There was a period of time, as I recall, where there was not much activity between my office and DOJ. And I don't recall why that was, whether the DOJ had not made recommendations or requests, or whether the requests were not coming to me. I just don't recall.

SENATOR FURNARI: You see, I think that you not having had the benefit of some of the testimony that we heard from Sergeant Gilbert and from Mr. Rover, that you would be somewhat surprised.

Documents were going, and they were leaving from Mr. Rover a couple of documents at a time.

JUSTICE VERNIERO: That doesn't surprise me as I sit here, because as I indicated, I was not involved with the day-to-day turnover of documents.

SENATOR FURNARI: And yet Mr. Gilbert -- what was his -- it's sergeant. Sergeant Gilbert indicated that all of the documents, that you -- State Police had supplied those documents to Mr. Rover by the fall of '97. So what's actually happening in your office during this period of time is that the documents have been collected, the State Police have turned them over, and they're just being, in dribs and drabs, turned over to the Department of Justice.

JUSTICE VERNIERO: Well, I can't speak to the conversations or what might have been turned over from Sergeant Gilbert to Mr. Rover. The best I can do to explain that, Senator, is my understanding that when the Justice Department made a specific request for documents, it was provided. I do recall Mr. Zoubek's deposition testimony, in which he said there was, perhaps, a period of time when we weren't real sure or clear as to what the document request actually was, or what documents should be produced.

And this actually may go back to a question -- as the night goes on, I'm recalling something that perhaps I should have mentioned earlier. There was a point in time where Director Zoubek did go down to DOJ, and it might have been to supply them with Troop D audit information. I have a recollection of that in Mr. Zoubek's deposition testimony. So that would have closed the loop, if you will, which I think was a question posed earlier by Mr. Chertoff.

I would have to consult Mr. Zoubek's deposition testimony.

SENATOR FURNARI: Yeah, I think you're talking about Mr. Zoubek going down in '99.

JUSTICE VERNIERO: Yes, but if I'm not mistaken, Paul went down to DOJ to fill in any gaps that there might have been in the production request. And again, I can't swear to this. I have a recollection that it's in his testimony. It was to also furnish or discuss the Troop D information.

SENATOR FURNARI: Right. But that all takes place in 1999. What I'm really focusing on here is this period of time when we all understand--

JUSTICE VERNIERO: But the Troop D audit only began sometime in 1998.

SENATOR FURNARI: Right. But in May, we understand -- of '97 -- what documents it is they want.

JUSTICE VERNIERO: Pardon me?

SENATOR FURNARI: The documents. We decide, in May of '97 is when we decide -- or when you decide and agree with the Department of Justice on what documents they're looking for. And then--

JUSTICE VERNIERO: As I said, I don't recall personally signing off on day-to-day turnover information. It was throughout this period, document requests would come in, and my office would attempt to satisfy -- at least I thought that's what was occurring.

SENATOR FURNARI: But you have no personal knowledge of actually a request for documents coming into your office in the form of a document, right?

JUSTICE VERNIERO: Other than what's already been discussed at this hearing, where Mr. Waugh may have sent a memorandum into my office, and so forth, I don't have a recollection--

SENATOR FURNARI: Because we have--

JUSTICE VERNIERO: --of actually sitting down with Mr. Rover and inspecting all of the documents prior to their going to Washington. If that's your question, I just don't remember doing that.

SENATOR FURNARI: Well, it certainly appears, from a review of the documents, that during this period of time, the Attorney General's Office -- your office -- through Mr. Rover, is responding to the Department of Justice's requests, none in writing, but according to Mr. Rover sometimes by telephone, in discussions. And there are quite a number of -- quite a number of separate occurrences where documents are being sent.

However, from the testimony that we've heard, it seems that all of these documents were in the possession of Mr. Rover early on, in -- by October of '97. So there's -- and if we couple that with some other testimony that we heard further, I think as Mr. Rover describes it, he wasn't not supplying the documents, but he wasn't also supplying the documents with any great speed. He understood the direction of his superior. He said he was to take his time in supplying these documents. And from the record that we have here, Mr. Justice, he did.

JUSTICE VERNIERO: I'll have to accept your representation of that. I have no personal knowledge of what may or may not have been in the Rover file, other than what has been described to me by Mr. Zoubek, what I've learned through the course of these hearings.

I certainly, at no time, directed Mr. Rover to conceal information from the Justice Department. I assumed, perhaps mistakenly, but I assumed that all documents were being furnished in an appropriate fashion.

SENATOR FURNARI: Well, there's also this -- there's a -- strike that.

Mr. Zoubek, though, once he got involved, actually had a conversation with you indicating he was concerned about the manner in which documents had been supplied -- that's right.

JUSTICE VERNIERO: As I testified, I don't recall exactly what Paul may have said, but I knew that he had gone down to Washington to ensure that we had supplied all appropriate documents. And if I'm not mistaken, I think this is in his deposition testimony, the Department of Justice was ultimately satisfied, and it was not -- it was not an issue as far as I know.

SENATOR FURNARI: Now, at a certain point there's -- we had a discussion yesterday, a cross-examination with Judge Waugh, where he indicates that Mr. Rover may have misinterpreted his direction to supply the consent documents -- the consent search documents. Did you have an opportunity to review any of that transcript?

JUSTICE VERNIERO: No.

SENATOR FURNARI: If I may, maybe I can characterize it. There's a request from the Department of Justice, looking for the consent search documents. And the -- apparently the State Police don't want to release those documents. So the direction is, "If they ask for them again, we'll send them."

Now, the Department does -- the Department of Justice does ask for them again, and they eventually are sent, but if they hadn't asked for them, they weren't sending -- they weren't going to send the documents down.

JUSTICE VERNIERO: I can't speak to any conversation that Mr. Waugh may have had to Mr. Rover, any misunderstanding that might have occurred.

SENATOR FURNARI: You see, the problem that I'm having from the testimony, and I know it's been a long time and there's many things that you don't remember, but even some of these things that I'm not sure you even knew about-- But this sense of security, with an issue of racial profiling that's going on, that we're cooperating and working together with the experts, doesn't seem to be borne out by the testimony of those people responsible to give those documents to the Department of Justice.

And I'm, again, looking toward the future of how do we make sure things like this don't happen. Do you have a comment on what we can do, as a Legislature, for the next Attorney General -- the current Attorney General -- to make sure these kinds of problems where, for example -- I said 11 months before, but 14 months go by, but apparently there's no verification up the line, where there's a person who's charged with dealing with an issue as important as racial profiling with the Department of Justice, who has no experience in criminal law, or for that matter, discovery rules-- How do we, as a Legislature, address those kinds of issues?

JUSTICE VERNIERO: In terms of legislative recommendations, I don't think I can improve upon what I proposed in the April 20, 1999 report. So I would invite you, and the Committee, to look at the report to see which

of those reforms could be fortified by legislation. Many of the reforms were self-executing, but I'm sure if we went down the list, we could take one or more of these reforms and actually codify them in statutory law. I think that would be helpful.

SENATOR FURNARI: Well, these are mostly directed toward the State Police. Is that correct, the ones in your report?

JUSTICE VERNIERO: The State Police, but also there's a heavy emphasis on reporting of data and information. If I'm not mistaken, Senator Gormley had, many months ago, when these issues were really coming to the fore, had proposed legislation that would require published reports -- I think it was -- it might have been complaints -- which I endorsed at the time. I thought that was a very good piece of legislation.

So I'm sure there are things in this report that if you reviewed it from a legislative perspective, you could use it as a stepping-stone for legislative enactments.

SENATOR FURNARI: I'm -- I've got a little bit of background in criminal law, in the past. And I'm very concerned about this indictment process, and the direction to seek an indictment on the falsification documents, during the period of time while there was a pending grand jury investigation for shooting issues. And I'd like to just go over the information that you had at that time.

It's my understanding that you had around you some lawyers with criminal expertise.

JUSTICE VERNIERO: Yes.

SENATOR FURNARI: And one of the things that I'm sure that they told you is that -- for example, never before had any State Police officer ever been indicted for falsification of his reports. Did they--

JUSTICE VERNIERO: I don't recall that at the time. It might have been. It was a significant charge, obviously -- official misconduct, falsification.

SENATOR FURNARI: Well, did they talk to you about the -- that official misconduct associated with the falsification of documents? Did they say that might be a stretch to get to official misconduct on the basis of the filling out of a report?

JUSTICE VERNIERO: I don't recall that, and even if I did, I would not be able to comment, qualitatively, on the indictment.

SENATOR FURNARI: Did they raise any questions to you about whether or not -- or about the viability of those indictments, again, that there might be a problem?

JUSTICE VERNIERO: Again, that would run toward the qualitative aspects of the indictment. My testimony was, I was advised that the investigation was complete, that we were ready to present to the Grand jury. That presumes a presentable case, but beyond that, I'm not at liberty to discuss the qualitative aspects of the indictment.

SENATOR FURNARI: Okay. Without discussing the qualitative aspects of the indictment, and by that I assume you mean the facts and whether or not that case can be proven. But we can still go into the procedural issues that were associated with the decision to move forward. All of those are

matters of public record, as far as I understand. But let's ask my questions, and if you have an objection, I'm sure you'll make it.

They told you that that could seriously affect the other Grand jury that was currently empowered.

JUSTICE VERNIERO: I don't recall the word seriously or significant. I recall that there was an outline of the risks and how to remedy the risks. I do not recall anyone at that meeting saying, "Don't do it. It shouldn't be done." I recall a discussion of the risks and how to remedy them. And I made the best decision that I could make.

SENATOR FURNARI: Okay. Well, the risks -- some of the risk they told you was that-- Well, first of all, did anyone even ever hear of an indictment being -- or for example, a *Brooks-Murphy* hearing being done because there was a second Grand jury empaneled while the first Grand jury was considering other charges?

JUSTICE VERNIERO: I don't recall a discussion of that. I recall the discussion focused on risks. And there really was only one main risk. I say, only, but there was the one risk--

SENATOR FURNARI: Well, let me just--

JUSTICE VERNIERO: --which was the taint to the Grand jury.

SENATOR FURNARI: Okay, so there could be a taint to the Grand jury, and they told you that you'd have to go through a process, right?

JUSTICE VERNIERO: Correct.

SENATOR FURNARI: If there was a taint, you'd have to have a *Brooks-Murphy* hearing.

JUSTICE VERNIERO: Well, we would probably have to go through that process to determine whether there was a taint. And we did.

SENATOR FURNARI: And what did that -- what does that process entail?

JUSTICE VERNIERO: It's generally the Assignment Judge questioning the Grand Juries -- the grand jurors, to determine any prejudice. There may be other aspects to the process that I'm not familiar with as I sit here. But generally it's to ensure that there is no taint or prejudice to the defendants. We invoked that process. We worked with Judge Feinberg, as I recall, and she, you know, basically gave us a clean bill of health.

SENATOR FURNARI: Well, let me see if I understand. The Assignment Judge had to come in, right? And then all the grand jurors in the second Grand jury had to be interviewed to see if they had learned or found out through the media, received any information relating to the second indictment. That was the first step.

JUSTICE VERNIERO: I believe that's generally the process.

SENATOR FURNARI: And then, after that, some of those jurors would say that maybe they had a problem with those, and those jurors had to be removed from the panel, right?

JUSTICE VERNIERO: I don't recall how many jurors were removed or whether jurors were removed. I think there was maybe one, as I recall.

SENATOR FURNARI: If I said there were two that had to be removed, would that refresh your recollection?

JUSTICE VERNIERO: Yeah, that would sound right.

SENATOR FURNARI: And then, after that, they had to interview the rest of them to see if they would admit or not admit if they were somehow prejudiced by the fact that they learned of a superseding indictment, or the secondary indictment.

Now, did they indicate to you that, in fact, after that process was all done, that the defense would be very likely to make a motion to dismiss both the indictments?

JUSTICE VERNIERO: They might have discussed it at the time. I don't -- I don't recall.

SENATOR FURNARI: Well, that happened in this case, right?

JUSTICE VERNIERO: It did. And it's not unusual for a motion to dismiss to happen in every -- every or many high-profile cases. So a motion to dismiss is not so unusual that I would have characterized that as an extraordinary risk.

SENATOR FURNARI: Well, in this case it was granted, right?

JUSTICE VERNIERO: Pardon me?

SENATOR FURNARI: It was granted. They dismissed both indictments.

JUSTICE VERNIERO: It was granted, and then reversed on appeal.

SENATOR FURNARI: So the next process is that there was a legal procedure. Both indictments were dismissed, not just one. And then we had -- then an appeal was taken from there.

Now, if the appeal was not granted, what would the process have been next? What if it were denied?

JUSTICE VERNIERO: Well, my understanding is, the Attorney General could have represented to a new Grand jury. I don't think there are double jeopardy issues attached, if that's your question.

SENATOR FURNARI: Well, if it's an allegation of prosecutorial misconduct, could it have risen to that level?

JUSTICE VERNIERO: I don't want to speculate, because there was no finding or suggestion of that in the Appellate Division's reversal. It was just the opposite. The Appellate Division had--

SENATOR FURNARI: Would you agree that if it was prosecutorial -- if the court were to find, at a particular time, prosecutorial misconduct, then the indictments -- you would not be able to simply represent it to a Grand jury?

JUSTICE VERNIERO: I was confident that there was no prosecutorial misconduct. I was very comfortable and had great confidence in Prosecutor Gerrow and his supervisors in my office. That was not a realistic risk in my view. The risk was the possible taint due to publicity to the Grand jury. And that's the risk that we essentially focused on in the March 1999 meeting.

SENATOR FURNARI: Now, since that day, did the criminal experts tell you at the time, when you were making this decision that even if they were to get this indictment, it would be extremely unlikely that that first indictment would be tried or resolved prior to the second indictment?

JUSTICE VERNIERO: I don't understand your question, Senator.

SENATOR FURNARI: In other words -- in other words, there was a decision that we needed to go out for an indictment now, right, so there would be an indictment. But did anyone talk to you about the resolution of the indictment?

And what I'm trying to suggest to you is, no one said to you, after this indictment takes place, "We'll be able to move this indictment, resolve it, and see justice on the basis of that falsification indictment."

JUSTICE VERNIERO: Well, we always--

SENATOR FURNARI: Strike that, prior to the second indictment coming out, there being a resolution.

JUSTICE VERNIERO: We always seek to do justice in all of our indictments. My recollection was the issue on the table, if you will, was whether to proceed with the completed false filing investigation, bring it to the Grand jury level, and then release it in the normal course, which is ultimately the decision that I made.

SENATOR FURNARI: But you would agree that if it isn't resolved before -- if it's not resolved before the next indictment is brought--

JUSTICE VERNIERO: I'm sorry, what is--

SENATOR FURNARI: The shooting indictment.

JUSTICE VERNIERO: What is being resolved? I'm having trouble--

SENATOR FURNARI: If the first case is not tried or pled, there's not a guilty finding--

JUSTICE VERNIERO: In the false filing.

SENATOR FURNARI: --in some way. In the false filing, it's kind of a hollow victory to bring -- to say, "We brought an indictment."

JUSTICE VERNIERO: Well, I wasn't looking to strike a victory. I was looking to bring closure to a completed investigation and release it in the normal course. My motive was not to attempt a victory.

SENATOR FURNARI: Closure -- closure is at the end of the case, right? It's not--

JUSTICE VERNIERO: Well, no. The investigation was closed. I say brought closure, that's really not the proper term. The investigation itself was completed. So it was closed in that sense. The decision that I had to make was whether to bring it to Grand jury and then to release it in the normal course. And I decided to do that.

SENATOR FURNARI: But, in fact, both indictments, to this very day, have not been resolved and are still open and pending indictments.

JUSTICE VERNIERO: Those are pending indictments, yes.

SENATOR FURNARI: Okay. So what social -- what state interest -- what state interest, in any way, was advanced by bringing that indictment, causing a motion to have it dismissed, having it dismissed, argued on appeal, and two years later being in no different position than we would have been had we simply waited and processed that indictment in due course?

JUSTICE VERNIERO: Well, working backwards, in terms of the dismissal -- again, this is a pending case, but I believe this is public information -- the shooting indictment was dismissed by virtue of alleged flawed instructions by the prosecutor to the Grand jury. That was unrelated to the false filing.

The point being, Senator, that, as I said, it's not unusual for motions to dismiss to be made, and to be granted, and then reversed on appeal. So that was a risk. That was -- that was, in the course of a criminal case. But it was not a risk specifically tied to the false filing.

With respect to the false filing, I reiterate my prior testimony. We were at a point in time in my office where cynicism was high. There was great debate in, at least I thought, in the public mind, as to whether or not we were in a position to police ourselves and to bring closure to an important investigation. Once I was advised that the investigation was completed and ready to go to the Grand jury, I weighed the risks and I made the decision I had, always with the public interest in mind.

I thought it was an important concern and consideration -- public confidence in my office and law enforcement, in general. And it was on that basis that I acted.

And, as I say, the Appellate Division, in reversing the trial court's dismissal, in essence, agreed with those issues as legitimate issues for me to consider.

SENATOR FURNARI: But at that same time, I -- you know, I have a document here that says it's the statement of the Attorney General, Peter Verniero, re: *State vs.* -- it doesn't say Hogan, but Hogan and Kenna. I'm just-- If you don't mind, I'm just going to hand it to you.

JUSTICE VERNIERO: Sure.

SENATOR FURNARI: It says -- I believe it says, "draft" on the top.

Was that actually your statement? I'm not even -- and I apologize. I'm not sure where, in the morass of papers, where I received it.

JUSTICE VERNIERO: I'm not sure, either. It says draft statement. I have no way of telling whether this was something that I ultimately made as a statement.

SENATOR FURNARI: But if you just happen to read through it, in there it's clear to me that there's a statement being made by you, or someone intending it to be made by you, where you know exactly -- you say there was 10 other troopers who may have -- I think the words are, "An investigation is still pending, and you're not at liberty, at that point, to say when it will be complete, but who have participated in the same conduct as Hogan and Kenna."

JUSTICE VERNIERO: As I testified earlier, my recollection was that there was at least 10 other persons. This seems to corroborate that.

SENATOR FURNARI: And to your knowledge, those individuals have never been indicted. Is that right?

JUSTICE VERNIERO: I, obviously, lost track of this issue when I left the Attorney General's Office, so I can't speak to what may have happened to those 10 other individuals.

SENATOR FURNARI: Mr. Justice, I call your attention to the May 6th confirmation hearing -- 1999.

JUSTICE VERNIERO: Do you know the page, Senator?

SENATOR FURNARI: Sure, Page 6. In it there's -- Senator Lynch asks you: "Along these lines you were aware, were you not, that for some two years now, then Superintendent Williams was supplying information to

the Justice Department in Washington, ever since the *Soto* case determination, with knowledge -- with your knowledge and approval.”

And your answer is: “I don’t know if it was in *Soto*, because that occurred in July of 1996. It may have been as far back as then. We had been supplying information, at least in excess of two years to the Justice Department, or whether it started rightly -- right at that point at *Soto*, I don’t know.”

And then Senator Lynch asks you, “What information were you supplying?”

At the bottom of that, you say: “Information that was requested by the Justice Department, and even some information that they had not requested. The requests ranged from standard operating procedures, copies, and so forth. And they asked for some dated information, as well, I believe, on a random basis. I don’t know exactly what the basis was as I sit here.” And then, the last sentence says, “But much of it did go from the State Police to the Justice Department.”

Now, that doesn’t seem to comport with all the information that we have received from your testimony and that from the State Police. Am I correct in that all of the information went to the Department of Justice, directly through the Attorney General’s Office?

JUSTICE VERNIERO: That’s my understanding. When I said State Police to Justice Department, I believe I was referring to the fact that it was State Police dated information, collected by State Police, that went from State Police to Justice Department. But obviously, that would have been through the conduit of my office.

Let me also just state for the record, *Soto* did not occur in July of 1996. It occurred in March of 1996, and I became Attorney General in July of 1996.

And with respect to the information that was requested, and even some information that had not been requested, as I recall, after my initial meeting with DOJ, we had included SOPs and some training material and some other documents that we thought was helpful, just as background to the State Police, that the DOJ specifically had not requested.

SENATOR FURNARI: So -- however, that information is not correct, at the end, where it says--

JUSTICE VERNIERO: Well, it's--

SENATOR FURNARI: --information went directly from the State Police.

JUSTICE VERNIERO: It's, again, literally it may be correct in that it was State Police information that went to Justice Department, but I think the unstated assumption in that sentence would have been, of course, it would have to go through my office. And I may have said that elsewhere in my testimony. I just don't recall.

SENATOR FURNARI: It seems to me, Mr. Justice -- and I know that you've said on numerous occasions that, you know, things are taking place in retrospect. We look back, and hindsight is 20/20. And I know that your office has many duties and responsibilities. And it's hard, because when we look at this -- this is my first time on this Committee, and I'm not really looking -- I'm looking at it all for the first time. But much of this evidence of racial profiling seems to jump right out at you. And it seems to me that had

we -- and I've said it before -- but had we had a modicum of immediate attention, had there been experienced lawyers around the Attorney General-- As I indicated to Judge Waugh, you know, the highest ranking law enforcement officers were sitting together with the State Police, and a policeman says, "I don't think we should turn over these documents." And they say, "Well, all right. If the Department of Justice doesn't ask for it again, we'll not give it."

These are -- this is very disconcerting. And I'm not sure I know if there's a legislative response. But I'm going to give you one last chance on it. You know, not -- maybe not your recommendations on how we handle the State Police office, but how do we handle what obviously was a failing, and apparently a failing that took place right away on the highest position in the State.

Is it -- do we say that that Department should be reorganized? Is it too busy?

JUSTICE VERNIERO: I wouldn't characterize it as a failing, Senator. It was a situation where the reason things didn't jump out at us -- to use your term -- was the context and the basis by which we viewed that information in a given time frame. When our mind-set changed, when we began to view things in a different light, issues began to jump at us -- or jump up at us.

In terms of the organization of the Attorney General's Office, I think, in my current position, it's more appropriate for me to leave that to the current Attorney General to describe any legislation that might run toward the office as an institution.

SENATOR FURNARI: I have nothing further.

SENATOR GORMLEY: Well, I think I'll ask a couple of questions.

JUSTICE VERNIERO: Sir.

SENATOR GORMLEY: This won't be lengthy. Aside from Hogan and Kenna, did you have occasion to have any other public relation indictments?

JUSTICE VERNIERO: I do not accept the characterization, Senator, that they were public relations indictments.

SENATOR GORMLEY: That's all they were. Next question.

You were asked questions earlier by Mr. Chertoff. He specifically asked a question regarding a question asked by Senator Matheussen. Senator Matheussen had asked, in 1999, as to whether or not you had been -- whether or not data had been gathered in '96, '97, before '98. You indicated--

JUSTICE VERNIERO: Do you have a page, Senator?

SENATOR GORMLEY: Okay. What happened is, you had indicated that you had qualified in your mind -- you had qualified in your mind what you think Senator Matheussen had meant, even though that was not his question. And you had indicted in your response that you may have been mistaken when you referred to the data in that sense in that when he asked the question, you -- well, it was Page 65, May 5th.

“While the underlying data that was used to support the report we had actually begun to collect a year ago, thereabouts, as a result of the Turnpike incident that occurred in April of last year. So the report itself,

although it may have been written in a period of weeks, some of the data behind it had taken quite some time to gather, collect, and analyze.”

And what had happened is that you related this earlier. You said, “I may have been mistaken, because you had referred to the data in a restrictive sense.”

Do you recall that? That was earlier testimony.

JUSTICE VERNIERO: Yes, I recall that testimony.

SENATOR GORMLEY: Okay. Now, you said you were mistaken.

JUSTICE VERNIERO: I may have been mistaken, and then later on in the evening Senator Robertson pointed out that perhaps I had in my mind at that time an indication by Jack Fahy that there was some data retrieval or collection begun in 1998, and perhaps that’s what I was referring to.

SENATOR GORMLEY: Well, if I had to look at it, which I have to, because I have to make recommendations.

JUSTICE VERNIERO: Yes.

SENATOR GORMLEY: Based on its face, what -- it could be construed that it was misleading, because--

JUSTICE VERNIERO: I--

SENATOR GORMLEY: Let me finish. You took your own definition and your own restrictions to a question asked by Senator Matheussen. You later today said it was a mistake.

Now, the question that I would have is, was it misleading, or was it a mistake? What’s the difference?

JUSTICE VERNIERO: Well, there's a big difference. Misleading suggests some intentional decision on my part to mislead the Committee, which I assure you, I did not have.

SENATOR GORMLEY: If I may ask -- if I may ask, then, why would you-- You know, we've had some discussions today about whether it's Christmas Eve, how important a day might be. That was a pretty big day in your life. And as you've talked about, you are Peter Verniero. Everybody was watching you. Everybody was watching you that day. So to unilaterally qualify in your mind a question of a State Senator, on such an important date, doesn't that seem to you to be an extreme use of license on your part?

JUSTICE VERNIERO: My understanding, at the time Senator Matheussen asked me that question, was that my office, from the period of 1998 forward, had begun collecting data in a manner in which it had not done previously.

SENATOR GORMLEY: That's not what -- excuse me. That's not what he asked. You said you were mistaken.

JUSTICE VERNIERO: No, I'm trying to answer your question, Senator.

In my understanding, at the time, was accurate -- at least I thought it was accurate -- that we had begun the process of collecting data, after the 1998 shooting, which was being helpful, which was forming the basis, which was contributing toward the conclusion of the April 20th report.

SENATOR GORMLEY: But -- excuse me.

JUSTICE VERNIERO: I believed that was accurate at the time.

SENATOR GORMLEY: Excuse me. I'll interrupt you.

JUSTICE VERNIERO: I'm sorry. I cannot hear you.

SENATOR GORMLEY: That wasn't -- that wasn't the question that Senator Matheussen asked. You took license to qualify his question -- no doubt about that. You indicated earlier you were mistaken. And I'm saying to you, it can easily be construed by someone, given the weight of the day, the importance of the day, that that was misleading, because there were two or three other questions in which you gave similar responses, that, in effect, you were qualifying in your own mind the question of the Senator.

Why should I not believe that that was misleading?

JUSTICE VERNIERO: Because I did not intend it to be misleading. I was laboring under the belief, at that time, that there was data that my office had begun to retrieve and collect as a result of the April 1998 Turnpike shooting -- or at least that period of time.

I understood it to be principally Troop D data and information. There are references to falsified data in the report. Although I agree with you now, looking at the report as I have, there is no delineation of the Troop D audit data. But the underlying Troop D audit is very much reflected in the conclusions of the April 20th, 1999 report.

So it was my good-faith understanding, at the time, I indicated that response.

Secondly, I believe Senator Robertson has refreshed my recollection with respect to a memorandum that I received from Jack Fahy, in which he also refers to data that is being collected, or at least reviewed, post-1998. And I might have had that in my mind. I cannot say to you, as I sit here. I can only assure the Committee, and assure you, personally, Senator,

that I did not intend to mislead the Committee in any way, shape, or form at any time in my prior testimonies. I was doing the best I could under some fairly stressful circumstances. I may have misunderstood a question. I may have been mistaken in my own belief as to what was included in the April 20th report. I believe, as I indicated on prior occasions, I was not the scrivener of the report. I did not sit down and actually write the report, and perhaps I should have been more intimately familiar with the report to fashion as accurate answers as I could have fashioned.

But there was no intent to mislead this Committee, never.

SENATOR GORMLEY: As of right now, based upon -- and I -- this is just my individual reading of what we read from earlier, and what your testimony was today. It is-- I just find it hard to comprehend, and I'll tell you why.

I wish I was the detail person you are. I mean, you're very focused, very bright -- very bright. And you were paying, I thought, very close attention that day at that hearing. You were very well prepared.

Now, it didn't happen with just one question. It happened with approximately three or four questions that day -- that same compartmentalized answer, that answer that was based upon a conclusion that only you drew -- not based upon Senator Matheussen's question or the other questions that were asked that day. And on its face, it's misleading. It still is misleading. And I don't know how you get around that.

Now, I want to give you the opportunity to clarify it. Is there any other additional information? You've indicated you had a refreshed

recollection, after a question by Senator Robertson. I'll look at that. Is there anything else?

JUSTICE VERNIERO: The only other thing I could think of, as I sit here, was that Dave Hesse was also looking into certain aspects of State Police practices, and he himself was gathering information or data specifically tied to the Internal Affairs Bureau of the State Police. And recall that when I initially authorized a review of State Police practices, IAB was intended to be included in the scope of the report. Later on, we had pulled out the racial profiling piece of it and decided to devote the entire report on racial profiling, given the *Soto* deadline. It is quite possible that what I had in my mind at this time was that data, as well, running toward not specifically this report, because this was racial profiling, but the larger State Police practice report.

SENATOR GORMLEY: But then again, that wasn't the question that Senator Matheussen asked.

JUSTICE VERNIERO: I understand that.

SENATOR GORMLEY: Now, we all -- you're right, we all make mistakes. But again, we get back to that point in time, in history, a day that you'll never forget, like today.

JUSTICE VERNIERO: I think I'll remember today, yes.

SENATOR GORMLEY: I don't -- and obviously, you remember those other days that you were in front of this Committee. And to say that at that time you decided that you were going to apply a criteria, a subjective criteria to a question asked by Senator Matheussen, then repeated in other forms by other senators, is far more than a mistake.

JUSTICE VERNIERO: Well, I--

SENATOR GORMLEY: I mean, that's my interpretation.

JUSTICE VERNIERO: I understand that, but the fact--

SENATOR GORMLEY: Now, what I'm going to do is--

JUSTICE VERNIERO: Senator, the fact that it might have been repeated could be no more than I repeated the mistake. If I misunderstood what was in the report as underlying data, and I was mistaken in the first time I answered the question, it would be a natural human reaction to simply repeat the mistake. I can assure you, there was no design on my part to mislead the Committee.

One thing I could suggest, if the Committee is unconvinced on this point, is to give me the opportunity to go through my recollection, and perhaps supplement with sworn testimony, an affidavit, which I could submit to this Committee to perhaps give a fuller explanation.

SENATOR GORMLEY: That's why I brought it up now. So we have other days of hearings scheduled. I wanted you to know, between mislead and mistake, at this moment in time, I fall to mislead.

But obviously, I would want to afford you, before the end of these hearings, the opportunity to clarify, by additional testimony if you should choose, after you refresh your recollection, to provide whatever other facts that would -- that would demonstrate why this wasn't the case.

JUSTICE VERNIERO: That's fair enough. I would ask the Committee to consider, as opposed to a repeat performance, sworn written testimony--

SENATOR GORMLEY: I'll have -- I will have to take that--

JUSTICE VERNIERO: --and then you could review it and decide whether you still had questions.

SENATOR GORMLEY: Oh, no. I will take it up with the Committee as a whole. But--

JUSTICE VERNIERO: My suggestion is, see the written submission, and then decide whether you require live testimony.

SENATOR GORMLEY: Well, I'll take it up with the Committee, but I can only tell you, my vote would be that you have to come back in. That's it for today.

**(HEARING CONCLUDED)**