
Public Hearing

before

SENATE JUDICIARY COMMITTEE

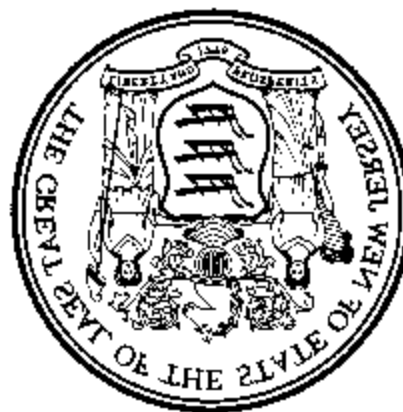
“Review of racial profiling”

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

DATE: April 2, 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.

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

Assistant Special Counsel to the Committee

TABLE OF CONTENTS

| | <u>Page</u> |
|---|-------------|
| Paul H. Zoubek, Esq. First Assistant Attorney General New Jersey Department of Law and Public Safety | 1 |
| David Hespe, Esq. Former First Assistant Attorney General New Jersey Department of Law and Public Safety | 255 |
| Debra L. Stone, Esq. Assistant Attorney General New Jersey Department of Law and Public Safety | 313 |
| Ronald Susswein, Esq. Assistant Attorney General New Jersey Department of Law and Public Safety | 314 |

APPENDIX:

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

ses: 1 - 21 ses: 306 - 330
lmb: 22 - 41 hw: 331 - 342
rs: 42 - 60
hw: 61 - 78
lmb: 79 - 95
rs: 96 - 114
ses: 115 - 134
rs: 135 - 156
ses: 157 - 200
lmb: 201 - 219
hw: 220 - 239

rs: 240 - 258
lmb: 259 - 283
rs: 284 - 305

SENATOR WILLIAM L. GORMLEY (Chairman): The hearing will come to order.

Before we proceed with the witness, who has previously been sworn, by the end of today we'll announce the two dates for the hearings for next week. And talking with members of the Committee, we are obviously going to focus on trying to complete a report with recommendations by the end of the month, and hopefully, following the two days of hearings next week, we can commence preparation of the report and the recommendations as they pertain to racial profiling. We'll have those dates for the public, hopefully, at the end of the day.

Mr. Zoubek's been previously sworn.

Mr. Chertoff.

MR. CHERTOFF (Special Counsel to the Committee): I just have three or four very brief things to cover with you before I'm done, Mr. Zoubek. I just want to make sure--

I want to focus your attention on 1999, and in particular, on the period of time in late April when you were anticipating that there were going to be hearings with respect to racial profiling and with respect to Justice Verniero's confirmation.

Do you remember that period of time?

FIRST ASST. ATTY. GEN. PAUL H. ZOUBEK: Yes.

SENATOR GORMLEY: Is the red light on? (referring to PA microphone)

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes.

MR. CHERTOFF: And is it fair to say that in anticipation of those hearings, you prepared Mr. Verniero for his testimony?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I participated in preparation of the Attorney General.

MR. CHERTOFF: And in connection with that, you focused, among other things, on the issue of when information about statistics and consent to search data was first conveyed to Mr. Verniero, correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I believe I previously testified with respect to my discussions with Attorney General Verniero on that subject matter, yes.

MR. CHERTOFF: But I want to be more specific. I want to ask you whether, in fact, you focused on the issue of statistics and consent to search data and when that was first conveyed to Mr. Verniero in anticipation of the hearings.

ASSISTANT ATTORNEY GENERAL ZOUBEK: As I testified previously, I think you have to keep in mind that I had my own direct contact with the Attorney General, as well as, I believe I testified, probably the Friday before the racial profiling hearing, which was on April 26th, there was a mock session, if you will, with respect to preparing for that hearing in which some subject matters were discussed.

In my recollection, I can't break it up, necessarily, between my discussions I had with the Attorney General and in the preparation session. I'm happy to break those down for you, if you wish.

MR. CHERTOFF: I don't care. I don't think we need to break it up. I just want to understand or ascertain or be clear that before the testimony

on the 26th, and before the testimony on the 5th and 6th of May, you had focused with the Attorney General on when statistics and consent to search data was first conveyed to him.

ASSISTANT ATTORNEY GENERAL ZOUBEK: That's correct.

MR. CHERTOFF: All right.

And now, in connection with that, you had informed him about the fact that there were documents found in Mr. Rover's files that related to statistical analyses back in 1996 and 1995, correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I did inform him that I had found documents in Mr. Rover's files that related to some of the statistics that we had believed had not been previously produced.

I can't sit here today, Mr. Chertoff, and say I specifically recall it was '95 and '96.

MR. CHERTOFF: Well, you know you specifically told Mr. Verniero that you had found information relating to the Gilbert data in Rover's files, correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I believe the way I put it to the Attorney General was that I had found in Mr. Rover's files copies of some of the documents and some of the underlying data that I had believed did not come over before.

MR. CHERTOFF: And that included material back in '96 and '95, because that's what the Gilbert data included, correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: That is what the Gilbert data included. As I said, I don't know if I specifically said that to the Attorney General.

MR. CHERTOFF: And-- Well, did you report to him that some of the Gilbert memos were found in Rover's file?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes, with a caveat. I think as I testified, it was not the undated Gilbert memo that said, to the effect -- or words to the effect that we're in a very bad spot, but it was some of the underlying data.

MR. CHERTOFF: Okay.

You also, again in the period before the hearing, told Mr. Verniero that you had spoken to either Mr. Rover or Mr. Fahy, and that they had confirmed that there was some discussion of numbers at a meeting in 1997 as it related consent to search data.

ASSISTANT ATTORNEY GENERAL ZOUBEK: Well, I think what I had testified before was that I had -- I informed the-- I had the one discussion with the Attorney General regarding my conversation with Lieutenant Colonel Dunlop where we talked about that sometime prior to the hearing.

And I think I've testified that I don't recall exactly when the conversation took place, as to whether it was before the interim report came out or after the interim report came out, that I had a discussion with either Mr. Fahy or Mr. Rover. I didn't recall who it was, and I discussed with the Attorney General that I was hearing, again, that there had been a meeting at some point in time in which there may have been some discussion of numbers.

MR. CHERTOFF: And particularly, you said to him that you'd been told that in this meeting there was discussion about the fact that the numbers did not look good, right?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I informed him that that was-- I was hearing there was some discussion of numbers that in the current context could be considered "bad numbers."

MR. CHERTOFF: And he acknowledged that there was a meeting at that point?

ASSISTANT ATTORNEY GENERAL ZOUBEK: He acknowledged the meeting. No, he didn't-- He acknowledged-- He said to me-- I've testified to this both in my deposition and last week that what he said to me was he didn't specifically recall the meeting, and if there had been any discussion of statistics, it was in the context that didn't mean that racial profiling was occurring.

MR. CHERTOFF: So he said to you, "I don't remember a meeting, but if there was a meeting this is what was said?"

ASSISTANT ATTORNEY GENERAL ZOUBEK: I think what he said to me doesn't specifically-- He didn't specifically recall a meeting. If there was any discussion with respect to statistics, the context in which that discussion would have occurred was that the advice he was receiving was that it didn't mean there was racial profiling.

MR. CHERTOFF: I want to take it step-by-step, and let me see if I can refresh you by referring to your, I guess, your deposition at Page 222.

The question was: "Well, so he acknowledged that he had been told the numbers did not look good, right? He acknowledged that? That's final at the end of the day?"

Your answer: "He acknowledged that there was a meeting."

Question: "Right, and that the bad numbers were discussed at the meeting, right?"

Answer: "That numbers were discussed at the meeting."

Question: "And then he said, 'But I got advice that the numbers were not determinative, because you could still say it's not -- it doesn't equal racial profiling,' right?"

Answer: "That's what he told me."

Is that correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: And I think that's just what I've testified to just now.

MR. CHERTOFF: And did he also tell you in this discussion that he remembered getting some advice in the meeting about why it was that the numbers, although they looked bad, did not necessarily indicate that there was racial profiling?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Again, I don't think he said it, necessarily, "at that specific meeting, I received the advice." He told me that the advice that he was receiving during the period of time was that any discussion of numbers was in the context that racial profiling was not occurring.

If I could, Mr. Chertoff, we have the benefit, now, of documents. I had not seen documents that reflected that there was a May 20th meeting. So I didn't have that ability, at that time, to specifically inquire as to what the Attorney General asked at that specific meeting.

MR. CHERTOFF: Well, here's what I'm getting at. The question I'm getting to is, without-- Recognizing that you didn't know back in 1999

what you know now, you'd agree with me that in the period right before the hearings, you had clearly focused with Mr. Verniero on the fact that the timing of receiving information was an important issue to be prepared for in connection with being questioned by the Senate?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes.

MR. CHERTOFF: And in that regard, you had also made him aware of the fact that there were documents related to Gilbert's numbers that had been found in a file belonging to the Office of the Attorney General, correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Specifically, I'd informed him that I had found documents in Mr. Rover's files.

MR. CHERTOFF: And you had also had discussion with him where he at least acknowledged that there was some kind of a meeting that dealt with the issue of numbers and consent to search data back several years earlier, correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I believe I've answered that question, Mr. Chertoff.

MR. CHERTOFF: And the answer was, "correct," right?

ASSISTANT ATTORNEY GENERAL ZOUBEK: With all due respect, I think I've answered that question 10 times. The record's clear what I said on that issue.

MR. CHERTOFF: So then, going into the hearings, it's fair to say that at least Mr. Verniero had been prepared for the fact that there would be questions about this issue and that you had, at least preliminarily, determined that there were documents related to statistics in the files, and that there had been a meeting at some point talking about numbers.

Is that fair to say?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Consistent with that general characterization of what I've specifically said on that, that's fair to say.

MR. CHERTOFF: Okay.

Let me move just to one final area then. In connection with the draft of the interim report, there's a draft that was produced on April 16th.

ASSISTANT ATTORNEY GENERAL ZOUBEK: I believe, Mr. Chertoff, there's two drafts that were on that day, if you have -- if you're able to show me a copy.

MR. CHERTOFF: All right. Let's give you Z-19.

ASSISTANT ATTORNEY GENERAL ZOUBEK: Thank you.

I have it in front of me, Mr. Chertoff.

MR. CHERTOFF: All right. Now, if you turn to Page OAG-3027, is that the last draft of April 16th or the latter draft of April 16th?

ASSISTANT ATTORNEY GENERAL ZOUBEK: If you could bear with me just a second.

MR. CHERTOFF: Sure.

ASSISTANT ATTORNEY GENERAL ZOUBEK: I have 3027, which is -- it says, "draft as of April 16th, 1999." And I have 3149, draft as of April 16th, 1999. I don't-- Let me see if I'm able to tell which one is the last.

Based upon the sampling of the pages -- there are only five or six pages that you have here in the Z-19 -- I'm not able to sit here and determine which one is the last.

MR. CHERTOFF: All right.

Well, let me ask you, with respect to 3034 -- there's language on Page OAG-3034, which is from one of the April 16th drafts, that 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, one not previously disclosed to the Attorney General's Office or the Division of Criminal Justice."

That's language that you determined to delete after April 16th, correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Correct.

MR. CHERTOFF: And that's for reasons you previously testified to, correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Correct.

MR. CHERTOFF: Was this the language that was discussed when you had your meeting with the Governor on the Saturday, April 17th?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I discussed previously that there were a number of issues that were discussed with the Governor. I had gone through the entire report, so this is among some of the items that were focused on.

MR. CHERTOFF: And at the meeting with the Governor, is it your memory that, in fact, this was focused upon and questions were asked about how it can be the case that the State Police didn't disclose something important to the Attorney General's Office?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Generally, yes. I don't know if it was with respect to specifically Page 3, but there was a general

discussion as to the issue of production and what had been received by the Attorney General's Office.

MR. CHERTOFF: Is it fair to say the Governor expressed concern about the notion that the State Police withheld something from the Attorney General?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes.

MR. CHERTOFF: So that, again, was an issue that was certainly, fair to say, front and center in the latter part of April, based on that conversation with the Governor, right?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Front and center, primary, it was focused.

MR. CHERTOFF: All right.

Now then, let me turn to one other page of this. If we go to Page OAG-3189, this is, again, from one of the April 16th drafts, and it talks about another source of information regarding motor vehicle stops. And it talks about the 30 sample days.

Now this-- Do you have this passage in front of you?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes, and if I may, Mr. Chertoff, and just for the Committee's reference, if you check the other April 16th draft, if it does not have Table 2 in it, then it is the latest draft.

MR. CHERTOFF: All right. So this would be the next-to-latest draft.

ASSISTANT ATTORNEY GENERAL ZOUBEK: I believe that it might be in inverse order in Z-19.

MR. CHERTOFF: Okay.

But it's fair to say, at some point, this language in the draft involving the motor vehicle stops that had been provided in response to a request by the Department of Justice, that was dropped out, right?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Correct.

MR. CHERTOFF: And that was dropped out at the direction of the Attorney General?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Correct.

MR. CHERTOFF: What was your recommendation about whether this language ought to be dropped out or not?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Well, my initial reason for having it in was, it provided historical perspective with respect to statistics and racial profiling. And, as I believe I previously testified, the Attorney General requested that I remove that because of the confidentiality of the specific information that had been requested by the Justice Department.

MR. CHERTOFF: Now, when you said the confidentiality of the specific information, were you aware of any request by the Department of Justice in Washington that their specific requests be kept confidential?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I believe at that time that all there had been was identification by the Justice Department -- for the first time sometime in February of 1999 -- that they had an investigation, but there was not any specific discussion of the underlying request with the underlying data involved in that.

MR. CHERTOFF: Well, so the fact of an investigation was public knowledge as of April 1999, correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes.

MR. CHERTOFF: Did the Department of Justice ever make -- in Washington -- ever make a request that the content of their requests, such as this contained on this page, be kept confidential?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I believe at that point in time, Mr. Chertoff, they did not make a request, but I believe there had been press inquiries both to -- in fairness -- both to the Justice Department and to our office. And I think both offices took the position at that time that they were not going to reveal the underlying nature of the investigation.

MR. CHERTOFF: But again, just to be clear, the determination that the underlying information requested by the Justice Department, that that should be kept confidential, that was the Attorney General's suggestion. That was not your suggestion.

ASSISTANT ATTORNEY GENERAL ZOUBEK: That's correct.

MR. CHERTOFF: And it was not based, as far as you know, on any rule, regulation, or request by the Department of Justice asking that it be kept confidential?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Not a rule or regulation, but according to the Attorney General, the nature in which that investigation had been handled.

MR. CHERTOFF: According to which Attorney General, the one in Washington or the one in Trenton?

ASSISTANT ATTORNEY GENERAL ZOUBEK: The one in Trenton.

MR. CHERTOFF: Okay.

So the Attorney General in Trenton said to you that based upon his understanding of how the Department of Justice investigation had been conducted, this ought to be kept confidential?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Correct.

MR. CHERTOFF: Nothing further.

MS. GLADING (Senate Democratic Staff Counsel): Good morning.

ASSISTANT ATTORNEY GENERAL ZOUBEK: Good morning.

MS. GLADING: Mr. Zoubek, did you ever ask, in the course of reviewing the *Soto* case, ever ask why a population survey had never been done?

ASSISTANT ATTORNEY GENERAL ZOUBEK: During the course of my review team work, yes, I did ask that question.

MS. GLADING: Did you receive an answer?

ASSISTANT ATTORNEY GENERAL ZOUBEK: We're talking population survey at this point?

MS. GLADING: Well, we can talk either population survey or violator survey, whichever you asked about.

ASSISTANT ATTORNEY GENERAL ZOUBEK: All right. Yes, part of the review that I did as head of the State Police Review Team was to recommend as one of the action steps that a survey be conducted, and then, subsequently, that was the foundation of some of our discussions with the Justice Department.

MS. GLADING: Did you ask why one had not been done to date since the need for one had been identified as early as March of 1996?

ASSISTANT ATTORNEY GENERAL ZOUBEK: As it relates to the litigating of *Soto* itself, first, it was explained to me that the Attorney General's Office was brought in at the very last minute in that litigation a couple of weeks before the hearings were to begin, and that there wasn't time to have conducted that at the time. Instead, we were left with criticizing the Public Defender's approach in that particular case.

And I became aware, during my work on the State Police Review Team, that there had been some consideration in the office, during the course of their discussions with the Justice Department, of conducting a violator survey. Some contact with some experts on that had occurred, but there was no conclusion in that one was conducted by the time that I became involved in the State Police Review Team.

MS. GLADING: Who did you learn this from?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I believe that I learned it from general discussions with, probably, Jack Fahy.

MS. GLADING: Did you discuss with Fahy why a violator survey or a population survey was not conducted during the course of the *Soto* appeal?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes, and I believe I just testified as to that.

MS. GLADING: Oh, I thought--

ASSISTANT ATTORNEY GENERAL ZOUBEK: Part of that as to the *Soto* case was, it was my understanding that that was being handled out of the Gloucester County Prosecutor's Office, that there was a hearing that was upcoming, there were significant requests that were coming in for discovery in that case, and that Jack Fahy was literally dispatched a couple of weeks before

that case to go try that case. So that, as a practical matter, there was no opportunity, because I asked the question, "Why did we just criticize the Public Defender and not do something on our own?" And that was what I was told.

MS. GLADING: Maybe -- maybe my question-- Maybe I'm not asking this clearly. After Judge Francis issued his ruling in *Soto*, and part of the State's basis for its appeal was the "junk science" that had been used in the *Soto* case by the Public Defender, part of the State's basis for its appeal was that the statistics were not valid. After Judge Francis issued his opinion, there was discussion, as we know from documents now, about the need to conduct a violator survey, or ultimately, a population survey, and that was never done.

Do you know why that was never done?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I did not have any conversation with anyone that would be able to give you any information with respect to the period of time, let's say the spring of '96, while Justice Poritz was still Attorney General, as to why that wasn't done at the time. I don't know.

MS. GLADING: What about subsequent to Justice Poritz's tenure as Attorney General?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I think my understanding, based upon -- again, this is based upon the review of the record that may include recent review of the record -- was that that occurred during the course of discussions with the Justice Department. There was some consideration, I was told, that it was determined to be complex. They contacted a couple of experts, but at the time that I became involved in the State Police review, they had not done one.

MS. GLADING: And to date, the violator survey has never been done, right?

ASSISTANT ATTORNEY GENERAL ZOUBEK: We are-- To date, one has not been completed. There have been RFPs and further consideration of that issue.

MS. GLADING: The application for the 120-day extension of the *Soto* arguments was filed on March 5th. What was the basis for that application in your mind?

ASSISTANT ATTORNEY GENERAL ZOUBEK: At that point in time, I had read of the *Soto* opinion. I had considered the *Soto* case. I had discussions with Debra Stone in the Division of Criminal Justice, as well as some of the Appellate lawyers, and we were concerned about going forward with the appeal and felt that the work that we were doing on the State Police review should be completed prior to that decision being made.

So, on March 5th, I filed an application with the Appellate Division, asked for 120 days. At that point in time, we had just -- the period of time of *Soto* had just been extended, because for the first time in 1999 -- the ACLU and the NAACP filed for the first time amicus briefs, which extended the case four or five months, and I thought it was appropriate, given what we were doing with the State Police Review Team, to ask for a 120-day extension.

MS. GLADING: Anne Paskow testified that, "there was a discomfort level with what we could say at that point, with what was being learned by the people on the interim report team," and those are her direct words, and that's why the extension was applied for in *Soto*.

What specifically was being learned at that point? This is two weeks prior to the Gilbert notebooks coming over.

ASSISTANT ATTORNEY GENERAL ZOUBEK: Well, I think-- Well, I think we had already-- At that point, the Hogan and Kenna investigation had been going forward. There was some additional information that was gleaned out of the Troop D audit, and there were growing concerns as it related to the validity of continuing that position based upon some of what we were learning about racial profiling additionally, at that time, and that was the basis. Because very much the continuance of the *Soto* case got translated into a denial that racial profiling was occurring at all, and that provided, I thought, the basis to ask for that continuance at that time.

MS. GLADING: Well, what specifically did you base the continuance on?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I wouldn't say it was a-- It was a number of factors. There was the fact that I'd asked the Attorney General for the opportunity to reconsider going forward with the *Soto* case. I think conceptually, even before we had any information, if you're doing a comprehensive review on racial profiling and the *Soto* case is the primary case at issue that could set the law on that particular area, I think it was appropriate conceptually to do so.

I also think it was appropriate given some of the information that we had found in various investigations at that point in time, but I don't say that it was -- that there was only one factor that prompted that at the time.

MS. GLADING: Okay.

You testified in your deposition that it was not until you received the aggregate numbers in the Troop D audit in February that you really began to have more complete discussions with Debra Stone about dropping the *Soto* appeal. What was it about those numbers that led to those discussions?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Well, I think we had discussions, and Debra was concerned. She was always concerned about going forward with the *Soto* appeal, and some of what we had gleaned reinforced that. I think that some of it was as it relates to some of the aggregate numbers that had been seen, but not just the aggregate numbers, some of--

The record reflects that Ms. Stone wrote some very strong memos to me, dated February 22, 1999 and March 5th, 1999, as to her view as to what was happening within the State Police and the racial profiling issue.

And I think that those factored into the analysis and provided context to any data at that time.

MS. GLADING: Well, the aggregate numbers that the Troop D audit turned up are actually lower than the *Soto* numbers, weren't they?

ASSISTANT ATTORNEY GENERAL ZOUBEK: By trooper, depending upon what area you're talking about. There was a -- three or four categories of numbers in the *Soto* case--

MS. GLADING: No, I'm talking about barracks-wide in Moorestown and Cranbury.

ASSISTANT ATTORNEY GENERAL ZOUBEK: But the question is whether you're comparing it-- If you're comparing it back to what was happening in the TACPAC Units in the *Soto* case, which was in the 40 percent category, it may have been -- it may have been less. But if you were looking at

some of the radar numbers that were in the *Soto* case, which I think was down in the 18 to 19 percent, I think they were higher. I was also seeing that there was a variety among squads, a variety among stations.

So I don't think there was anything definitive or determinative out of those Troop D statistics as it related to the issue of going forward on *Soto*.

MS. GLADING: So the Troop D statistics were not part of your consideration?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Oh, they were part. I said determinative. I said there's a whole series of issues here.

MS. GLADING: Okay.

ASSISTANT ATTORNEY GENERAL ZOUBEK: And there was a variety of numbers of some of the troopers that ranged from 20 percent to 50 percent in terms of African-Americans, and that certainly had an impact on where we were going, as well.

MS. GLADING: Deb Stone's March 5th memo could not have been a factor, because that was written the day that you actually filed for the extension, right?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes, but my point is that I do not believe that Debra Stone's views of the State Police on some of these issues were entirely the result of a two-week period.

She testified that she had concerns for *Soto* for quite a period of time, that's my point.

MS. GLADING: I'm just trying to understand why *Soto* was became -- was revisited in this period of time, when it had not been for the prior three years?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Well, I think I--

MS. GLADING: She said she had concerns all throughout the *Soto* appeal.

ASSISTANT ATTORNEY GENERAL ZOUBEK: Right, but I think I've testified-- I've been given the assignment -- I'm the Director of the Division of Criminal Justice, as well -- to look anew at the issue of racial profiling. The law on racial profiling could be about to be set in the *Soto* case. If we were to engage in reforms, if we were going to be making new determinations, I did not feel it was appropriate to have my deputies up before the Appellate Division being asked general questions about what was happening in the State Police review. I thought it was most appropriate to have that done after that analysis was concluded.

MS. GLADING: Okay.

The outlines that were prepared in the course of the review team's work that you circulated among members of the review team, were those the topics that were under discussion at any given point in time?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes, and what I had done was, after I received the assignment, I tried to step back a little bit, do a little issue recognition, and identify the issues that I wanted to have considered or I thought that were touched upon by the fact that I was doing the State Police Review Team.

MS. GLADING: Do you have them in front of you? You don't?
(negative response)

Would you give them to him? (directing staff)

You've been given SJC-9 and SJC-10. SJC-9 is a February 25th version of the draft, the outlines for the review team assignments, and SJC-10 is the March 1st, 1999 version of the outline.

I note that the last item on the February 25th version -- Item No. 9 -- is, "What do we do about our position in *Soto*?" And there are three options: "Seek a continuance. Can we still reasonably take the position we have taken in *Soto*?" or "Do we enter into a consent agreement with Public Defender, ACLU, and Justice?" And on the March 1st version of this outline, that item disappears from the agenda.

Can you explain why that comes off?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Absolutely, because at that point in time I had begun a series of meetings, and my calendar actually reflects either on March 1st or on or about that time, that I met with the Appellate Bureau staff, and I had already begun the process and assigned individuals to prepare memos to complete that. And my calendar reflects a series of meetings in March in which I had asked for the analysis with respect to *Soto*.

So, as opposed to something potentially nefarious, I think the answer is because we had already taken action steps to move forward to the consideration of *Soto*.

MS. GLADING: Had a decision been made at that point?

ASSISTANT ATTORNEY GENERAL ZOUBEK: No, a decision had not been made at that point. But I had-- I think the record reflects-- There's memoranda from Cathy Foddai, the Deputy Attorney General of the Appellate Bureau. I had meetings with Anne Paskow. I had meetings with

Debra Stone, because I had asked for the analysis of all three of those factors on Roman Numeral IX, A, B, and C. And so, at that point in time, I viewed that as something that was well on its way that I didn't have in the next draft.

MS. GLADING: Okay. So, at any point, steps were taken and an analysis was under way, and the item on your outline would drop off or disappear?

ASSISTANT ATTORNEY GENERAL ZOUBEK: No. Because on that particular issue, that was an issue that was outside the work of the State Police Review Team. What happens, and you see with respect to the other outlines, is generally -- that's on other matters as to folks that are working on the review team. I had the Appellate Bureau working on that particular matter. I know there's been some focus on it, Ms. Glading, but there's nothing nefarious about the dropping of Roman Numeral IX.

MS. GLADING: Okay. When the memos to file were written by you and Attorney General Verniero, did Mr. Hespe indicate-- Mr. Verniero's memo to file cites Mr. Hespe having said that he had asked for such data and never been given it in the past. Did Mr. Hespe say to you whom he had asked?

ASSISTANT ATTORNEY GENERAL ZOUBEK: He had asked-- He had said he had asked for this material, or I think Z-16, if I can-- If I can have my memory refreshed, I think that's the March 16th memo. I think what had happened at that time was, I showed the documents. Dave Hespe said I had asked for these types of things before, and I don't think he said specifically, but I knew at that time that he would generally be dealing at the highest level of the superintendent's office, either the superintendent or someone else, but I didn't ask him specifically who he had spoken with.

MS. GLADING: After you went through Mr. Rover's files and you found the materials you've described previously in there, did you raise your concerns with Mr. Hesper about having found these materials in his files?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Mr. Hesper was then Commissioner of Education. I did not go and speak to Mr. Hesper about them. Because at the same time, I think it has to be clear that the underlying data that I was talking about was the underlying data to the Gilbert memo, but that the focus that Mr. Hesper had on March 16th was with respect to the monthly compilations of stop and search statistics that had been collected at the Moorestown and Cranbury barracks, focused up the chain of command at the State Police. It did not come over to the Attorney General's Office, and I believe, from my review of the records after the fact, there was no record that those documents had ever come over to the Attorney General's Office prior to the issuance of the interim report.

MS. GLADING: Okay. Let me ask you about those statistics. And Mr. Hesper-- You said that was the focus of Mr. Hesper when he saw the Gilbert documents?

ASSISTANT ATTORNEY GENERAL ZOUBEK: No, as I said, the focus, I believe, of Mr. Hesper's comments were more on the recent '97 and '98 data. I don't believe Mr. Hesper spoke about the Gilbert memo. That would have preceded the period of time that Mr. Hesper was in the office.

MS. GLADING: That's what I meant. Mr. Hesper's focus was on the ongoing statistical analyses that were contained in the Gilbert file?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes. And I believe that context for that, in part, was that we had just gone through a period

of time of attempting to collect some statistics for some requests for some newspapers, and I believe that Mr. Hespe had had some contact with that collection. And we had let some newspapers know that some of the material -- that material with respect to breakdown of stops and searches was not available. And now, here, on March 16th, we were seeing that it was available.

MS. GLADING: So did someone contact the newspapers, then, on March 15th or 16th and say we were mistaken? Would you have that material you had asked for?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I think a determination was made that it would be released publicly within the next couple of weeks.

MS. GLADING: I guess the representations that have been made to the Black Ministers Council about the unavailability of that information -- you also determined to not release it to them at that time when you learned of it?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Well, no. What I determined at that point in time, that I was very angry that I had made a representation to the Black Ministers Council that that kind of material was unavailable, yet I was being handed that material at that time. And given that a determination was made within a 24-hour period of that to expedite the State Police Review Team report, those statistics were all -- were going to be revealed in that report, and I thought that was an appropriate way of getting that out.

MS. GLADING: So you didn't correct yourself with the Black Ministers Council either about the unavailability of those statistics?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I did in the context when I met with them and reviewed the interim report that these statistics were there -- available.

MS. GLADING: Did you let the newspapers or the Black Ministers know after the release of the interim report or before the release of the interim report that some of this material had actually been in-house for some period of time in Mr. Rover's files?

ASSISTANT ATTORNEY GENERAL ZOUBEK: No. The material, again, that I was talking about was not the material that was in Mr. Rover's files.

MS. GLADING: The--

ASSISTANT ATTORNEY GENERAL ZOUBEK: The '97 and '98 stop and search data was not the data that I was referring to. It was the monthly compilations and the requests we had been receiving from the press that for the most part were for the more recent period. I did not take any steps, between the time I found that and the time the interim report was released, to provide that additional data to the newspapers that had requested it. It was released in the interim report.

MS. GLADING: What about the Black and Latino Caucus request that was made on March 9th, which was responded to on March 29th, that was for a period covering a broad span of years?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes. Again, I believe the determination was made that those would be released as part of the report.

MS. GLADING: SJC-8 and SJC-7.

ASSISTANT ATTORNEY GENERAL ZOUBEK: I have them.

MS. GLADING: You've seen both of these before, right?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes, I've seen-- I saw Assemblyman-- The request Assemblyman Charles made on behalf of the Black-Latino Caucus at the time, and someone else was involved with the preparation of the March 29th letter, but I believe I saw it at or around that time.

MS. GLADING: Did you have input into the preparation of the March 29th letter?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I believe I would have been shown it. I don't believe that I was-- I was not involved, at that point in time in the preparation and handling of the responses to the Legislature at that point in time, but I would have seen this document, I presume.

MS. GLADING: Your calendar reflects a March 25th meeting, and the topic is the Assemblyman Charles response review. Do you recall that meeting?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes, and that may have been the context in which-- This is a letter dated March 29th.

MS. GLADING: This letter predates-- Assemblyman Charles's letter predates the discovery of the Gilbert notebook?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes.

MS. GLADING: But the response does not, and that's two weeks later -- two weeks after Sergeant Gilbert comes over with his notebook. Can you explain why, when-- Well, the request that was made by Assemblyman Charles was stops -- the number of stops on New Jersey roadways delineated by date,

race, age, geographical location, reasons for stopping the motorists, the name of the trooper involved, and the state of registration of vehicle stopped. And in the response that was sent on March 29th, signed by Attorney General Verniero -- and I'm looking at Page 3 of the response in the second full paragraph -- it says, "Regarding traffic stops for the six-year period you have requested, as I am sure you can appreciate, this request would require a massive effort to produce, as the State Police does not have this data in easily retrievable form. Therefore, I cannot provide this information at this time." And then it goes on to discuss the review team's work.

Can you explain why the response did not include the data that you had available at that point -- the ongoing statistical compilations that were in the Gilbert notebook?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Well, I recall looking at the -- Page 3, the second paragraph, talks about, "Some information requested is unavailable, and the form you've requested is being gathered for use in the review of the State Police matters." At that time, it was my understanding that what we were able to gather at that point in time was going to be released publicly and that we had expedited the review and that was how that was going to be released.

MS. GLADING: Okay. But the next paragraph suggests that the information can't be produced, doesn't it?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Which paragraph are you referring to, Ms Glading?

MS. GLADING: The one I just read regarding traffic stops for the six-year period you have requested, "This request would require a massive effort

to produce, as the State Police does not have this data in easily retrievable form.” That’s not true. You had several year’s worth in easily retrievable form at this point, right?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Well, I think for the six-year -- for the entire six-year period -- and we weren’t going back that six-year period on the stops -- I think it was accurate that it was not an easily retrievable form. And the portions that were, were released in the interim report.

MS. GLADING: And portions that were, were not provided in response to the request by the Black and Latino Caucus, right?

ASSISTANT ATTORNEY GENERAL ZOUBEK: And that it’s accurate to say that what was available and made part of the interim report was not released prior to the issuance of the interim report to the Black and Latino Caucus.

MS. GLADING: So a decision was made that they could wait with everyone else and get the information with the interim report, right?

ASSISTANT ATTORNEY GENERAL ZOUBEK: That may be a fair characterization. I don’t know if there was a specific discussion in that regard. We had a number of requests that were coming in at that time for that information, from newspapers and from other sources, and I think a determination was-- We were pulling all of that together. We were gathering it together at that point in time. And the determination was that we would be getting it out publicly with the issuance of the interim report.

MS. GLADING: But this was not a newspaper request, and this was not the Black Ministers Council. This was another branch of government

making the request, right? So there's a distinction, isn't there, that's fair to make?

ASSISTANT ATTORNEY GENERAL ZOUBEK: That's accurate.

MS. GLADING: Item No. 3 in the Black and Latino Caucus letter request, requested dispatch tapes reflecting stops detailed above and any transcripts of those tapes. And the response cited both confidentiality and indicated that radio tapes were recycled every six months, but it did not address the request for transcripts, and we've seen that in redacted transcripts released subsequent to this. So that response in the letter saying--

ASSISTANT ATTORNEY GENERAL ZOUBEK: Well, but I--

MS. GLADING: --the radio tapes were recycled every six months was not really responsive either, was it?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I don't know the answer to that question, because I'm not that familiar with what is the exact storage with respect to the tapes and the transcripts. I know that that was not among the category of readily available information. I know that in the 90,000 pages of documents that have been collected over a two-year period, those have been included, but it certainly wasn't in the category of easily available information. It wasn't information that we were utilizing in the review team.

MS. GLADING: Okay. Were you aware, at this point, that -- were you or the drafter of the letter aware at this point, to your knowledge, that radio tapes for '95 and '96 had been saved because of the Department of Justice investigation, and the retention period for tapes had been increased significantly after *Soto*?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I don't believe that the scrivener of the letter necessarily would have had that knowledge as of '95 or '96, and I don't have that knowledge sitting here today.

MS. GLADING: Who wrote the letter?

ASSISTANT ATTORNEY GENERAL ZOUBEK: It may have been-- I was trying to recognize the secretary, but it doesn't identify the secretary. I believe it would have been the Attorney General, that is Attorney General Verniero, probably along with the Legislative Affairs head in the office at the time, Brian Litten.

MS. GLADING: So you think the letter was written by Attorney General Verniero and Brian Litten.

ASSISTANT ATTORNEY GENERAL ZOUBEK: The General signed it, and I would believe that it was more likely than not that the person whose responsibilities it would have fit in with that time -- have been Mr. Litten, who was Chief of Legislative Affairs at the time, but I don't have a specific recollection, Ms. Glading, of who wrote that letter.

MS. GLADING: Okay. Well, a meeting was held on March 25th, apparently just for the purpose of reviewing this letter. Who was at that meeting to your recollection?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Sometimes my secretary will put down who the attendees are at that -- if you're able to refresh my recollection. I don't recall.

MS. GLADING: Sergeant Gilbert testified that in November, early November, he and Colonel Dunlop went down to Washington to a meeting of the International Association of Chiefs of Police. And at that meeting, Dunlop

was talking with Mr. Rosenbaum from the Department of Justice about the fact that New Jersey is keeping ongoing statistics now of -- broken down by race -- of stops and consent searches. When they got back from the meeting, according to Sergeant Gilbert, he got a call from George Rover saying that -- and he had reviewed the transcripts, so I don't think I'm telling you anything you haven't read already.

ASSISTANT ATTORNEY GENERAL ZOUBEK: I'm sure you're giving me context to your questions.

MS. GLADING: But he -- Sergeant Gilbert indicated that he got a call from George Rover, and that the Department of Justice had contacted Rover, or someone in OAG, and had said, "We understand you're keeping these statistics now. We'd like to get them." And that Rover comes over and attends a meeting with Colonel Dunlop, Colonel Williams, Colonel Fedorko, and Sergeant Gilbert. Colonel Williams does not want to give them the ongoing statistics, because he thinks they're confidential. Rover says, "Well, I'll go back and take it up my chain of command."

When you started to put together the pieces of what had and had not been produced to the Department of Justice in February when you took over responsibility for responding to that investigation, did Mr. Rover indicate any part, or did anyone else indicate any part of these events had transpired in the previous two months?

ASSISTANT ATTORNEY GENERAL ZOUBEK: No. And let me put that in context. The reason I say no is that, as it relates to my discussion with Mr. Rover and those documents, I had received the February 26th, 1999 memorandum from Mr. Rover that outlined to me the documents that were at

issue with the Justice Department. In that summary document, there is no reference to that. So there was nothing that triggers my discussions with Mr. Rover about that. I did come to learn, at some point in time, from Mr. Dunlop that he had gone down to Washington. I think that was much later and may have been well after the interim report was issued.

MS. GLADING: And what did you learn from him about that trip?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Well, I think he's testified to it. That he says that there was -- that he had run into Mr. Rosenbaum from the Justice Department, and there had been a discussion about monitoring.

MS. GLADING: About ongoing monitoring activities, is that correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes.

MS. GLADING: Okay. Did he indicate to you that the Department of Justice followed it up and wanted to get their hands on those numbers?

ASSISTANT ATTORNEY GENERAL ZOUBEK: No, he did not.

MS. GLADING: Okay. Mr. Rover testified that after-- Well, he did not recall the meeting at the State Police with the three colonels and Sergeant Gilbert, but he did testify that on December 9th he attended a meeting with Mr. Hespe, Mr. Ramey, and Mr. Fahy. And the topic of the discussion was the production or nonproduction of these -- of documents that DOJ was now seeking. And if we put his testimony together with Sergeant Gilbert's, we can assume that the topic of discussion was these ongoing statistical analyses. Did Mr. Rover ever indicate to you or Mr. Hespe or Mr. Ramey or Mr. Fahy

that they had attended a meeting like this on December 9th to discuss DOJ document production of these documents?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I had not had-- When I came in to head the State Police Review Team, I was not aware that those meetings had occurred in December, and I did not become subsequently aware of those prior to the issuance of the interim report.

MS. GLADING: You did not become subsequently aware of them?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I did not.

MS. GLADING: So you learned of them in the course of the depositions for this proceeding?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes.

MS. GLADING: Okay. Did you ask Mr. Rover when you were trying to be-- In addition to the memo he wrote you about what documents had and had not been produced, when you were trying to come up to speed on the DOJ investigation, did you ask Mr. Rover when his last contact was with DOJ?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I had asked him a very simple question. My simple question was, was to advise me as to what the status was as to the Justice Department production issue. I did not recall him raising with me the recent monitoring request. And it is certainly not reflected in the February 26th, 1999 memo that he forwarded to me, which I had understood was supposed to summarize, if you would, the status of the Justice Department inquiries at that time.

MS. GLADING: So, if this meeting took place on December 9th, 1998, between Mr. Rover and Mr. Ramey and Mr. Hespe and Mr. Fahy, and the discussion was DOJ document production, and a decision at that meeting

was made to withhold ongoing statistical studies that were being conducted by the State Police, then Mr. Rover was not forthcoming in his memo to you, was he?

ASSISTANT ATTORNEY GENERAL ZOUBEK: There's a lot of ifs in that particular question, and I cannot assume the facts that you have set forth in those ifs, and I don't think I can answer that question.

MS. GLADING: Okay. Well, let me ask it this way. Mr. Rover's memo to you did not specify that ongoing statistical analysis by the State Police or one of the documents that he had not produced to DOJ, right?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes. As I testified, my information I had a request for was to be listed in a February 26th, 1999 memo, and I would have expected, if there was a pending specific request, that I would have been advised of that.

MS. GLADING: And is it your testimony that you never subsequently came to learn from any of the attendees of that meeting that DOJ had renewed its request and was now seeking something new -- the ongoing statistical analyses?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I believe that is my testimony now, and it was my testimony a couple of minutes ago.

MS. GLADING: After reviewing the transcripts of all the depositions that have been taken for this proceeding, do you think it's possible that DOJ's renewed interest was sparked by this series of incidents in November and December?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I don't think it's my role to speculate, respectfully, Ms. Glading.

MS. GLADING: Do you have any knowledge about what it was that sparked the Department of Justice's renewed interest?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I was not involved in the Justice Department review in late 1998. Therefore, I think it would be inappropriate for me to speculate as to what may or may not have happened at that time.

MS. GLADING: Mr. Rover was supervisor-- I think it was your deposition testimony that Mr. Rover was supervised by Mr. Hespe in the Department of Justice investigation matter after Mr. Waugh left, is that correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: It was my understanding that the contact person that he would have -- that would have been there was Mr. Hespe.

MS. GLADING: Did you ever have a conversation with Mr. Hespe about your concerns about the document production in response to the Department of Justice investigation?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I did have the discussion with him as it relates to the blue binder of documents on March 16th, but I-- At some point, not only was I the incoming first assistant, but Mr. Hespe had very much moved off to his transition of his responsibilities as Education Commissioner, and I did not have a discussion with him beyond my discussion with Mr. Rover.

MS. GLADING: Well, but before then, in February, when you took over the DOJ investigation, Mr. Hespe was still there, right?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes, he was.

MS. GLADING: Okay. As part of that transition, did you ever have a sit-down talk with Mr. Hesse about -- to be brought up to speed as peers, as outgoing first assistant and incoming first assistant, on the status of the DOJ investigation?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes. And what he had generally told me was that it had been principally handled by Mr. Rover. And I think to put that in context, during 1998, except for what you describe in late 1998, there was little, if any, activity in the Justice Department inquiry that would have led Mr. Hesse to have any -- much contact with them. So, other than what Mr. Rover told me, Mr. Hesse didn't have that much additional information.

MS. GLADING: Okay. And I guess from what you just testified, it's fair to say that Mr. Hesse didn't tell you that in December he had instructed Mr. Rover not to turn documents over to DOJ about an ongoing statistical analysis?

ASSISTANT ATTORNEY GENERAL ZOUBEK: That's a correct assumption.

MS. GLADING: Okay. Colonel Dunlop testified that you told him when he wanted to bring down the, I guess it was the Serrao PowerPoint presentation, that you told him you were about 16 hours ahead of a DOJ lawsuit, so if he had any new data he should bring it down immediately. And then he said he had his guys working through the night to bring that down the next day and make that presentation. Do you recall saying that to Colonel Dunlop?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I think Lieutenant Colonel Dunlop has the timing of the Justice Department discussion off. What I recall with respect to what happened on or about April 15th is, when he-- I had been telling them we were coming out with a report. We were coming out with a report that was going to conclude, in part, that racial profiling was occurring, and if they had anything to bring to my attention, please do so. He called me. He told me he had some data he wanted to bring to my attention. And because of the pending release of the interim report, I told him if you've got that, come down as soon as you can. He came down the next morning and made a presentation.

At some point later on, I told Lieutenant Colonel Dunlop that I thought that one of the things that the State Police should keep in mind in trying to move forward on racial profiling and in viewing the interim report was that we were, as it turned out, days ahead of the Justice Department's notice of intent to sue, and that the Justice Department had been focused on it, but not anything that, you know, it -- as of April 16th, that we're 16 hours away. I told him that I thought one of the things that was going to be in the long-term benefit of the State Police was that the State Police was handling this issue, as opposed to just reacting to the Justice Department.

MS. GLADING: I'm not sure I followed that answer at all. You told Colonel Dunlop at some point that in reviewing the interim report he should keep in mind that, as it turns out, we were just ahead of the Department of Justice lawsuit?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes.

MS. GLADING: Why should he keep that in mind?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Well, because--

MS. GLADING: Because let me just back up.

ASSISTANT ATTORNEY GENERAL ZOUBEK: --because, because, because I wouldn't say that it was universally well-accepted among some at the State Police.

MS. GLADING: Okay.

ASSISTANT ATTORNEY GENERAL ZOUBEK: And Lieutenant Colonel Dunlop certainly expressed that view to me. And in response to him, I had suggested to him that he should consider that, I believe, it was something that was in the long-term best interest of the State Police.

MS. GLADING: Mr. Susswein testified that he finished work on the interim report. He included in an early draft of the interim report, an April 7th draft, a reference to, "We need not wait for a consent decree before we do the right thing," essentially, but used the words consent decree. And he said he included that, because it was his understanding that a consent decree was under discussion at that point in time in early April. And he also testified that he went to work on the consent decree immediately after finishing his work on the interim report. He said he took one night off, the next day he began working on the consent decree, which would have been the 19th or 20th of April, presumably. The interim report was done on the 19th.

ASSISTANT ATTORNEY GENERAL ZOUBEK: I think Mr. Susswein has compressed his time a little bit too much. I had gone down. I had a meeting on March 19th with the Justice Department in which I opened up discussions. It was discussing production of documents, open up a discussion with respect to what reforms we were going to put in place. Before I had gone

to the Justice Department that morning, I met with the Police Foundation to review their early warning system, and I had begun a discussion with the Justice Department cooperatively of what reforms can we put in place. So that discussion had begun. I think the record reflects that there were those general discussions.

I had sent a letter on March 29th to the Justice Department in which I said here are some additional documents. We're being cooperative. I'd like to be able to avoid any litigation. But what subsequently happened was, after I appeared at the hearings on April 26th, 1999, I came back to the Hughes Justice Complex and back to the office and found for the first time a faxed-in letter from the Justice Department saying that -- it had been received late in the day -- of a notice of attempt to sue. And the Justice Department had not given me a heads up as to that. I called them and complained they haven't given a heads up to that. And so, once the notice of intent to sue was in, then I think the record reflects that Mr. Susswein and Mr. Ramey went down at some point later to have further discussions with the Justice Department.

MS. GLADING: Okay. So, just so we're clear, you're saying that in Colonel Dunlop's recollection, that you said to him at some point, this is the 15th or 16th of April, "We're about 16 hours ahead of a DOJ lawsuit," that that's incorrect?

ASSISTANT ATTORNEY GENERAL ZOUBEK: That that is the reason why I asked him to come down to the Justice Department with his data at that time. That that is incorrect, but I do believe I had a discussion with him, as I've outlined before, at some other point in time.

MS. GLADING: And it's your testimony that, and Mr. Susswein's testimony, that he included the words consent decree in an April 7th draft, because it was under discussion at that point, and that he began work on a consent decree the day after he finished his work on writing the interim report, that that also is incorrect?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Well, no, but part of his next assignment was-- He had just put together what I thought was an absolutely fantastic work product in terms of reforms and efforts. And the notion was that his next assignment was going to be working with the Justice Department to have those reforms serve as the basis of any of our discussions with the Justice Department. So, to that extent, his next assignment was working with the Justice Department, but there was no decision that a consent decree, per se, was authorized at that time, and that wasn't authorized until later in Attorney General Farmer's tenure.

MS. GLADING: So he just pulled that out of thin air when he included it in the April 7th draft of the interim report.

ASSISTANT ATTORNEY GENERAL ZOUBEK: No, I think it was logical. If you look back at some point in time conceptually, the concept of putting these reforms in place and having those reforms potentially accepted by those who might litigate against us was certainly a conceptual prospect. And I think that might have been what he was relying on all the time.

MS. GLADING: Okay. When Attorney General Verniero said that -- recounted what he indeed remembered from the May 20th meeting, 1997, he said that the advice that he had been given at the time was that the statistics did not indicate racial profiling. Did he indicate to you who gave him that advice?

ASSISTANT ATTORNEY GENERAL ZOUBEK: No, he did not.

I have-- As I think I've testified to previously, I think the record reflects some memoranda he may have received at that time -- an options memo that may have given him some advice in that regard.

MS. GLADING: I want to turn to the Troop D audit for a minute. The recommendation to conduct that audit was made by Colonel Dunlop, right?

ASSISTANT ATTORNEY GENERAL ZOUBEK: He made that recommendation to me. That's correct.

MS. GLADING: And as of February 10th, 1999, when you received a briefing on it by Lieutenant Sachetti and Colonel Dunlop, what was your understanding at that point of what the audit was finding?

ASSISTANT ATTORNEY GENERAL ZOUBEK: My understanding was that we were -- the audit was finding two categories of items, one, which was race-based discrepancies, and the other, administrative discrepancies. Our focus-- When I agreed with Lieutenant Colonel Dunlop to move forward with the audit, our focus was always to be on the race-based discrepancies.

MS. GLADING: You were-- Were you finding-- Was the audit finding widespread race-based discrepancies, or was it not finding a significant problem in terms of numbers?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I would consider one a significant problem.

MS. GLADING: Let me ask you about the magnitude of the problem it was finding in terms of the numbers, the frequency with which it was occurring.

ASSISTANT ATTORNEY GENERAL ZOUBEK: At that point of February 10th, 1999, there were 10 to 12 troopers, I believe, that had been identified for further Internal Affairs investigations. And the way that it works, just so the Committee understands this, is, Lieutenant Sachetti is in the staff audit section, which does the numbers. When they get to a level of concern, an Internal Affairs investigation is then opened. And what I was particularly focused on, at that time, was the number of Internal Affairs recommendations.

MS. GLADING: Okay. The cases that were sent down to the Division of Criminal Justice as a result of the Sachetti -- of the Troop D audit have still -- have not been acted upon to your knowledge, right?

ASSISTANT ATTORNEY GENERAL ZOUBEK: No, I don't believe that's correct.

MS. GLADING: Has there been any discipline in any case out of that audit?

ASSISTANT ATTORNEY GENERAL ZOUBEK: What your question presumes, Ms. Glading -- that whatever Mr. Sachetti sent, there was no -- nothing further happened with it. That's what I was answering.

What happened is, Sachetti identifies those out of the audit, a 251 Internal Affairs form is filled out, and Internal Affairs investigates. Internal Affairs did investigate. And from June of 1999 well into the fall of 1999, there were Internal Affairs referrals to the Division of Criminal Justice. It's my understanding what happened after that point in time was those were not

accepted for criminal prosecution. What then happens is, they go back over to State Police for administrative internals.

It's my understanding that there may have been charges lodged on a couple of those troopers, but there has ultimately not been any discipline to date. We are trying to get the Committee additional information with respect to that.

MS. GLADING: Has there been any completion of the investigations into the discrepancies found in the other 100 or more troopers--

ASSISTANT ATTORNEY GENERAL ZOUBEK: Well, again--

MS. GLADING: --identified in the Troop D audit?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Again, I want to make this absolutely clear. Those other discrepancies aren't the kind of discrepancies that go to Internal Affairs referral over to a criminal referral. What they are is discrepancies as to maybe there's not a document in the file, some stops were not called in. That would go over to an administrative inquiry. I want to make sure that those are separated.

MS. GLADING: All right. Have those administrative inquiries been completed?

ASSISTANT ATTORNEY GENERAL ZOUBEK: They have not.

MS. GLADING: So this is more than -- nearly two years after his audit stopped work in June of 1999, and those administrative inquiries have not been completed. Are you concerned about that?

ASSISTANT ATTORNEY GENERAL ZOUBEK: No, I am not. I am not concerned about -- for the following reasons. One of the things we did in the final report of the State Police Review Team was totally restructure the

way in which Internal Affairs operated. And what has been occurring is, there were other priority items in Internal Affairs that were not just administrative violations that were the focus of the restructured professional standards bureaus, particularly complaints that were coming in from the public. And it is my understanding that those administrative inquiries are moving forward.

MS. GLADING: Is it your understanding that Lieutenant Sachetti identified at least one case in which the records discrepancies were of enough concern to him because they rose to near the level of the Hogan-Kenna records discrepancies?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Well, first, I think it has to be emphasized that Lieutenant Sachetti -- very well respected trooper who's done a terrific job. He has not-- He refers matters over to Internal Affairs investigations, and the Internal Affairs investigations occur. And then they go over to a prosecution team to evaluate. And I don't necessarily suggest that he has all that information. I would also suggest that it's inappropriate for me to sit here and to make any qualitative comparisons between any other case and the Hogan and Kenna case because that, in and of itself, would require me to do some qualitative comparisons with a pending criminal case. And I think it's inappropriate to do so.

MS. GLADING: Lieutenant Sachetti testified that the work on that specific trooper who rose to the level of Hogan-Kenna--

ASSISTANT ATTORNEY GENERAL ZOUBEK: I would-- That's your characterization. I'm not accepting that characterization, nor do I think it's appropriate for me to answer questions that include those.

MS. GLADING: Let me ask it this way. Are you comfortable with the decision that was made that no other case rose to the level warranting a criminal -- pursuing a criminal indictment as the State did with Troopers Hogan and Kenna for records falsification?

ASSISTANT ATTORNEY GENERAL ZOUBEK: That requires me to do an evaluation of Hogan and Kenna versus other cases.

MS. GLADING: No, I'm asking you to do an evaluation--

ASSISTANT ATTORNEY GENERAL ZOUBEK: Those cases were--

MS. GLADING: --of the other cases that were kicked back to State Police.

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yeah, but you have to do it comparatively. You can only compare it against something else. You can only compare it back against Hogan and Kenna. Those cases-- The record reflects that those cases were referred to the Division of Criminal Justice for prosecutory evaluation. They were not-- There has been no further indictments at this time. And that's all I can really, I think, appropriately say at this point.

MS. GLADING: And are you comfortable that those cases have been justly handled and that they did not warrant indictments and they should have been sent back to State Police for disciplinary or administrative proceedings?

ASSISTANT ATTORNEY GENERAL ZOUBEK: The record reflects that those cases were forwarded back to the-- After prosecutorial

decision, they were forwarded back to the State Police. Other than that, I don't think it's appropriate for me to characterize that.

MS. GLADING: Have you received assurances from State Police that all of those cases will be handled and dealt with in a complete manner in terms of discipline if it rises to the level of discipline?

ASSISTANT ATTORNEY GENERAL ZOUBEK: That would be my expectation.

MS. GLADING: Have you received those assurances from State Police?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes. And that's one of the reasons why we have the Office of State Police Affairs headed by Director Cronin, in addition to all the reform work that we are doing. It is ultimately oversight over those kinds of matters.

MS. GLADING: Lieutenant Sachetti testified that he was concerned that Phase III was only half completed in Cranbury, and never started in Newark or Moorestown, that -- and because -- and, in fact, the majority of cases identified in Phase III in Cranbury were never identified in Phase I as problems -- never went to Phase II. They were picked up in the random Phase III part of the audit.

He's testified that his concern is about the fairness of the Troop D audit, because it was kind of stopped in midstream.

ASSISTANT ATTORNEY GENERAL ZOUBEK: Well, I think if the context is -- and there's a concern with respect to whether one trooper has a blue ticket versus administrative violation of calling a stop in or not, that that

is an issue of fairness. That should always be an issue as it relates to discipline issues within the New Jersey State Police.

I can tell you that our primary focus on the Troop D audit was fairness to motorists and the race-based discrepancy issue, and that what I learned in May or June of 1999 was the recommendation that started with Lieutenant Sachetti -- that they had reached a point that they were no longer productive with respect to the Troop D audit. And that's why on April 19th, the record reflects Lieutenant Sachetti met with Fedorko and said, "It's going to take us a year and a half to complete the rest of this. We're not finding things are being productive at this point in time." And the recommendation occurred at that point in time to not go forward further with the Troop D audit. And that's what I understand the record reflects at this point.

MS. GLADING: Actually, the record reflects that Colonel Fedorko initially said he made a recommendation to you not to go forward. And then subsequently, when he testified here next to Colonel Dunlop, he testified that the decision was made by you. So the record reflects both things.

ASSISTANT ATTORNEY GENERAL ZOUBEK: No, I think the record reflects, on Page 122 and 124 of Lieutenant Sachetti's testimony, that his calendar shows that on April 19th, he had a meeting with Lieutenant Colonel Fedorko, at which time he outlined there were 625 interviews that had occurred of motorists so far. And he estimated to complete Phase III, there would be 1400 other interviews that would have to be completed and would take a year and a half to do so. And that was the basis, ultimately, for the determination that it could take a year and a half to complete that -- would not be productive, and I agreed with that.

MS. GLADING: Okay. So are you comfortable with the fact that the Troop D audit was not completed -- all of the records falsification that existed was not identified, but some troopers will be disciplined because they happened to get caught up in the part that wasn't completed? Are you comfortable with that?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I am comfortable with the fact that it is over at the State Police now. Director Cronin is focusing on this. Superintendent Dunbar is focusing on this. And I am comfortable that the level of fairness of who has a blue ticket-- I can say that my primary focus in June, and throughout the reform process, has been fairness to motorists.

MS. GLADING: When you got back to the office on February 10th, after being briefed on the Sachetti audit--

ASSISTANT ATTORNEY GENERAL ZOUBEK: I was at the office.

MS. GLADING: Oh, you were at the office. You were briefed in your office.

ASSISTANT ATTORNEY GENERAL ZOUBEK: I was briefed in our building, yes.

MS. GLADING: You were informed by Attorney General Verniero that you were going to head up the review team at that point, right?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Correct.

MS. GLADING: Okay. He did not know-- He had not yet been briefed on your briefing of the Sachetti audit, right?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Correct.

MS. GLADING: So his decision to create the review team was not based upon what you had learned on February 10th about the Troop D audit status, right?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Correct.

MS. GLADING: Can you tell me why April 23rd was chosen for the cutoff date for the Troop D audit?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I believe this was an investigative determination by Lieutenant Colonel Fedorko -- not Fedorko, I apologize -- Lieutenant Colonel Dunlop. I think it literally goes -- the shooting goes back to the beginning of the year.

MS. GLADING: Can you tell me why the shooting date was chosen as the cutoff date? What was the -- why that would be relevant to other troopers who were being audited?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I don't think there was a specific discussion of it. But certainly, it was an event that may possibly have an impact on practices, arguably, out on the Turnpike. And that may be why, but I'm only speculating. There was no specific discussion of that. I think it appeared generally logical at the time. And I didn't necessarily question that date.

MS. GLADING: And in terms of the methodology of the Sachetti -- of the Troop D audit-- There's been testimony by Lieutenant Colonel Dunlop that you were familiar with the methodology for the audit. What was your understanding of how the audit was being conducted?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Well, I received updates from Dunlop, both in December and in February. And it was my

understanding it was being conducted in three phases. The third of the phases was to be a random audit phase that was to be -- that they had consulted with a statistician to make a determination of how many motorists stops they have to evaluate in order to get a -- in order to get a picture.

MS. GLADING: And it-- Was it your understanding that that was being done through the telephonic attempts and one certified mail attempt to reach the motorists?

ASSISTANT ATTORNEY GENERAL ZOUBEK: At my understanding of what time, during that period of time?

My understanding would be that investigators would do what they needed to do to contact. On subsequent review, I see that in the synopsis of the audit, it has a description of what that telephonic -- how the -- what the process that they were going to engage in, initially, if it was successful.

MS. GLADING: When you testified before the Senate Judiciary Committee on April 26th, 1999, about -- and I'm referring to Page 17 of your testimony. Maybe someone can give it to you.

ASSISTANT ATTORNEY GENERAL ZOUBEK: Go ahead.

MS. GLADING: All right. I'll read it to you.

You're asked by -- you're talking -- under questioning by Senator Gormley about race -- about falsification and when you began the review of it. And you said: "After the April 23 shooting -- and I also sit here as not only the author of the report, but as a signator of all the indictments that come out of the Division of Criminal Justice, so I have some limits of what I'm able to say." And Senator Gormley says: "Sure."

And you say: "After that incident, we began an intensive investigation of those two troopers. And off of that investigation, we began to audit the Moorestown and Cranbury Barracks to look at issues with respect to falsification. So that occurred after the April 23 shooting and was an intensive investigation that had more than 70 detectives out not only in New Jersey following up door to door to check on the race of motorists that were stopped, but also went to other states. So that continued all the way through well into the last couple of weeks."

Is that a discussion of the Troop D audit there?

ASSISTANT ATTORNEY GENERAL ZOUBEK: It was my -- what my understanding of what they were doing at that time--

MS. GLADING: Okay. So it was-- You had a-- You had an incorrect impression at that time, then, about what the Troop D audit did, right?

ASSISTANT ATTORNEY GENERAL ZOUBEK: It is my understanding-- I've come to subsequently learn that the door to door was in Hogan and Kenna. But I would also suggest that it would be my expectation, if the audit ever reached a point where they weren't getting responses on the letters and the phone calls that they were sending, I thought that part of what investigators do is they contact witnesses. So I thought they were out contacting witnesses.

MS. GLADING: And in fact, without divulging the Hogan-Kenna investigation, although we sort of have here by reading that-- In fact, the Troop D audit numbers of any trooper can't really be compared to Hogan and Kenna, can they, because Hogan and Kenna-- You looked at every stop for that period of time.

ASSISTANT ATTORNEY GENERAL ZOUBEK: Again, limits-- You have to keep in mind that also during this period of time, there are all these other Internal Affairs referrals. And it's my understanding on the Internal Affairs referrals, they would have done further investigation beyond the certified letter and the phone call, so there also would have been those investigative efforts there. But again, I would prefer not to compare it back to Hogan and Kenna.

MS. GLADING: Can you tell me whether any trooper who was looked at as part of the Troop D audit was investigated to the extent of Hogan-Kenna in terms of analyzing every stop that was made during that four-month period?

ASSISTANT ATTORNEY GENERAL ZOUBEK: What I can tell you is what my understanding is currently. Just like Hogan and Kenna was forwarded over to Internal Affairs, what would have had to-- What the expectation of what would have happened -- the other Internal Affairs investigations-- They would have been able to just rely on the numbers, if you will, that were developed by Sachetti. There would be an expectation that there would have to be follow-up to ensure that the evidence, as it relates to those discrepancies, occurred. And I would presume that that would include face-to-face discussions with witnesses when necessary.

MS. GLADING: I just want to ask you about a couple of items in your calendar.

On Monday, March 1st, you reflect a meeting -- eighth-floor point -- AG confirmation hearings -- Caccese, O'Reilly, Jeff Miller, Senior Staff is what it looks like under it.

Can you explain why a meeting was scheduled about the confirmation hearings that early in time?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I think what had happened was the announcement of the Attorney General appointment to the Supreme Court was probably the 25th or the 26th of February. Remember how February works -- it would have been the following Monday or Tuesday. And I think it was a meeting to identify what might need to be prepared to assist the Attorney General.

MS. GLADING: So that--

ASSISTANT ATTORNEY GENERAL ZOUBEK: I think, for example, there's reference to a Caccese there. And he's in the Office of the Attorney General, and he's in the administrative side.

MS. GLADING: So that was not a mock hearing.

ASSISTANT ATTORNEY GENERAL ZOUBEK: No.

MS. GLADING: At that point in time, do you recall whether or not the hearings were still expected to take place in March?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I don't know the answer to that question.

MS. GLADING: On March 9th of 1999, your calendar reflects a meeting with Chris Boyle and Susswein. Is that the meeting at which Chris Boyle indicates that she should go to look at the boxes in Mike LoGalbo's office to see what statistics were in there?

ASSISTANT ATTORNEY GENERAL ZOUBEK: It was partly that, but you'll also see that there's a memo that I received March 9th, with respect to the ability to collect data off our computer systems.

One of the things that I also learned in the State Police review was that I thought State Police had a very traditional view of how you would collect information, and they weren't using some of the updated computer systems to pull off some of the information. So that meeting that began on March 9th also resulted in -- because there's a discussion of being able to pull off -- arrest information off of computer databases. And I think that information, ultimately, became Table 3 in the interim report.

MS. GLADING: Right, but Chris Boyle's testimony was that at that meeting, she was told there were boxes of information in LoGalbo's office that had been the Rover boxes, and she should go look through them and get the stuff she needed to start doing her own statistical analysis. Does that sound right to you?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I think that's probably right.

MS. GLADING: She also testified that she really didn't get very far in her own analysis, because four days later -- five days later, the Gilbert notebooks came over, and the analyses that she needed had already been conducted.

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes -- and because I think one of the things originally expected was that we were going to have to pull in the '97 and '98 stop and consent data. And then, lo and behold, we find out that those had been compiled on a monthly basis and then going up to the superintendent for a period of about 18 months.

MS. GLADING: Okay. And your calendar also reflects on -- well, it doesn't reflect, I should say, on March 16th, 1999 -- the day of the *Soto* case

-- the *Soto* extension was argued. Mr. Ramey's calendar reflects a meeting with Department of Justice and with you. But your calendar does not reflect anything like that. Do you recall why Mr. Ramey would have -- had scheduled a meeting in Washington on March 16th.

ASSISTANT ATTORNEY GENERAL ZOUBEK: No, we had a meeting on March 19th in Washington. We went down to-- Maybe Al Ramey-- Maybe he and I had a discussion about going down to the meeting on the 19th. But there-- I also note, on the original -- on my calendar, it just has the *Soto* appeal date. But we did go down on the 19th. He and I could have had a pre-meeting of some sort.

MS. GLADING: You went down on the 19th to meet with the Department of Justice?

ASSISTANT ATTORNEY GENERAL ZOUBEK: That's correct.

MS. GLADING: Your calendar for the 19th only reflects the meeting with the Police Foundation at 9:30 -- Robert Williams. Is that a Department of Justice individual?

ASSISTANT ATTORNEY GENERAL ZOUBEK: It's about four blocks away from the Justice Department. And after I had a meeting where I had a presentation on early warning systems to see if that's what we're going to use, I then went and met with Steve Rosenbaum, Kelli Evans, and Mark Posner for approximately three or four hours on March 19th.

MS. GLADING: Okay. But it's not in your calendar, apparently.

ASSISTANT ATTORNEY GENERAL ZOUBEK: Well, that may have been redacted inappropriately on that page, but there was a meeting at that time.

MS. GLADING: And the topic of discussion at that meeting was what?

ASSISTANT ATTORNEY GENERAL ZOUBEK: The topic of the meeting was-- I introduced myself. I told them what was going to be happening with the State Police review, that I was doing an entire evaluation of the documents production so far. I reviewed with the Justice Department that I had a great deal of difficulty recreating what their requests were, because there was not that much correspondence, and most of it was orally. I also discussed with them early warning systems. We had some general discussions of ideas in terms of comprehensive programs to identify and prevent racial profiling. And it was really the beginning of a discussion that I had with the Justice Department as to where we were going and what some of these issues were and what positions they were going to be taking.

MS. GLADING: Did anyone at the Department of Justice at that point in time, or around then, indicate to you that they had learned recently that the State was keeping ongoing statistical analyses of stops and consent searches?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I don't think-- I don't know if that was specifically discussed at that point in time. What we said that we were going to do was, we were going to be looking at all the documents. If there were any documents that they didn't have that they wanted to identify or renew requests for, please do so. Let's identify to ensure that there -- you have what you're looking for.

MS. GLADING: Did it ever come to your attention from anyone at the Department of Justice that they had, in fact, learned that New Jersey was keeping ongoing statistics?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes, I eventually heard the other side of the Bob Dunlop conversation at the IACP meeting from Steve Rosenbaum at the Justice Department.

MS. GLADING: And what did you hear?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I heard that there was some discussion as it related to the keeping of those documents or that the monitoring issue-- But I don't recall whether it was in that meeting or whether subsequently they made specific request for that with me.

MS. GLADING: Okay. So that-- In your view, would that tend to lend some credence to what Mr. Rover testified to about his meeting in early December with Mr. Hespe, in which you said the Department of Justice had learned they were keeping these documents and wanted them?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Reach your own conclusions is what provides credence. I don't have an answer for that.

MS. GLADING: Did Justice indicate to you that they had not been provided these documents that they had requested?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Which documents?

MS. GLADING: The ongoing monitoring statistics.

ASSISTANT ATTORNEY GENERAL ZOUBEK: No. As I said, what we have-- I don't recall a specific discussion as to those documents, but it was a basic bottom line, which is, "I've tried to recreate exactly what you want. I haven't been able to create that, because so much of it was oral. We are going to be in a process of providing you additional documents. If there's

anything else that you believe you haven't received and should receive, please identify it for me."

MS. GLADING: And they identified--

ASSISTANT ATTORNEY GENERAL ZOUBEK: We did not drill down, so to speak, into those numbers of that meeting. It was a-- There were a lot of subject matters that were discussed at that meeting, and we were beginning that cooperative relationship.

MS. GLADING: Okay. And they identified for you, at that point, that they were not getting -- they had not gotten the ongoing statistics that they had learned about. Is that correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Ms. Glading, you've asked me that question before. I've answered it before. And I said that did not-- I don't recall that specifically coming up in discussion.

MS. GLADING: But you do recall some discussion as to their knowledge about New Jersey keeping ongoing monitoring statistics, right?

ASSISTANT ATTORNEY GENERAL ZOUBEK: At some point in time, but not necessarily at that particular meeting.

MS. GLADING: Okay. And at some point in time, you heard the other side of the Dunlop conversation in which -- which is how they learned that New Jersey was keeping ongoing statistics, right?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yeah. And the genesis of that conversation was more as to how opposed the IACP was to the Justice Department doing anything. It was not a discussion with respect to documents.

MS. GLADING: But it's fair to say that there's knowledge by the Department of Justice, by early 1998, that New Jersey is keeping ongoing statistical analyses, right?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Ms. Glading, are you asking me as to what the knowledge of the Justice Department was in the Spring of 1999?

MS. GLADING: In early 1999-- Excuse me. Based upon your conversations with people at the Department of Justice--

ASSISTANT ATTORNEY GENERAL ZOUBEK: I've answered those questions the best I can. I cannot sit here and presume to discuss what the Justice Department's knowledge was on the subject matter.

MS. GLADING: Did you-- Just a couple of quick questions. Did you provide your calendar through May 20, I think -- is the cutoff date-- Is that right? Did you provide your calendar through the date of the confirmation hearing with relevant dates?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I think it was May 10th, wasn't it -- what the cutoff date was. And I think I did provide with some redaction. There were some other issues going on in the Department at the time it was redacted. I think I have. I will go back and confirm that.

MS. GLADING: Did you use a law diary for 1998, also?

ASSISTANT ATTORNEY GENERAL ZOUBEK: There would have-- I would have used a law diary for 1998. I transitioned from the fifth floor, director of Division of Criminal Justice, to first assistant in 1999. And I did not retain, I believe -- or my secretary did not retain the '97 and '98 calendars that I had from the Department. But I attempted to go back and

identify whether I could glean any of that from our computer system, but they wiped me clean when I left as the director of Division of Criminal Justice and became first assistant.

MS. GLADING: Did they give you a new identity?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I took on a lot of new identities at that time.

MS. GLADING: So your law diaries from 1997 and 1998 were inadvertently or intentionally thrown out as part of the move, or--

ASSISTANT ATTORNEY GENERAL ZOUBEK: Are you asking me whether I intentionally got rid of my law diaries?

MS. GLADING: No, no, no, no, no, sir, no. Was it your practice to hold on to your law diaries?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I've been practicing for 18 or 19 years, and the answer is no.

MS. GLADING: Okay. And the calendar days that you did give us reflect that in the 50 workdays that followed the formation of the review team on February 10th, 75 percent of those days were partly or almost fully with racial profiling, and that subsequent to the testimony before the Judiciary Committee on the 26th, racial profiling occupied part of one day for the next couple of weeks. So it pretty much dropped off your agenda at that point in terms of your day-to-day business, didn't it?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Absolutely not, Ms. Glading. Racial profiling and reforms of the State Police have consumed 150 percent of my time, 60 to 70 hours a week for the last two years. We were looking for a superintendent at that time. There is something which I believe,

in these questions, has been forgotten about. We issued a 161-page reform report on July 2nd, and I moved into the rest of the State Police Review Team report.

So I frankly take a little offense at the suggestion that after these hearings, the racial profiling issue and reform dropped off my calendar.

MS. GLADING: No, I'm just looking at the calendar, the dates that we received. And presumably, we received anything relevant to racial profiling. And the last date that we received anything for was the 28th of April.

So is it fair to assume that over the three weeks that followed your testimony before the Judiciary Committee, racial profiling did not occupy much of your time?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I believe what you will see on that calendar is weekly meetings with respect to the State Police Review Team. You'll also see meetings with Lieutenant Colonel Fedorko. We were searching for a new superintendent of the State Police at that time. We were doing--

MS. GLADING: I'm just talking -- I'm just asking questions about what we received. We received, presumably, what was responsive. And I don't see them on the calendar, because we don't have them.

ASSISTANT ATTORNEY GENERAL ZOUBEK: And I'm responding to the clear implication of your question.

MS. GLADING: Okay. No further questions.

SENATOR GORMLEY: Senator Martin.

SENATOR MARTIN: Thank you.

It's not the day for it, but I think -- I just have to observe that in one of the conversations earlier that -- about the State Police radio tapes, that the response was, the radio tapes are not public records, but are generally considered confidential investigatory materials, released only by court order produced by a prosecutor. We had discussions about such things like that, and the point here is, even though these were recycled every six months, the State Police would still take the position that they're confidential materials, even though they're no longer being used and would be closed investigations. And it still raises some issues about what should be open, what should be closed. But as I say, that's another day. But you and I have talked about those kinds of things, though.

ASSISTANT ATTORNEY GENERAL ZOUBEK: On a few other days -- on a few other days of my calendar.

SENATOR MARTIN: The other thing, I'd like to commend you on your recollection. It's refreshing.

I am interested in a couple of points you made, and I'm trying to get a sequence of timing in April. If I understood your responses to Ms. Glading, there was a period of time where Colonel Dunbar, as she referred to it, made his, I guess, PowerPoint presentation.

ASSISTANT ATTORNEY GENERAL ZOUBEK: Colonel -- Lieutenant Colonel Dunlop.

SENATOR MARTIN: Excuse me, Lieutenant Colonel Dunlop. And that was a time where he had testified before us that he had pulled an all-nighter. He wanted to make sure he had this material available to you. And if I understood what you were saying before -- I'm just trying to sum it up -- you

had told him, or at least he was -- the Department had said that the interim report was coming out, and if they wanted to have the most recent data, that they would have to produce it real soon, because the interim report was going to be released. And whether he got maybe -- whether he had a day or two days or something like that, he was under this short period of time to try and get that into the interim report, which was released on April 20th. Is that correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes.

SENATOR MARTIN: And did you also not say that you were sort of a step ahead of the U.S. Department of Justice, at that time, under some concern that they might take further action to you at that time?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I certainly believed at that time that one of the prospects was that the Justice Department was expediting their review. I believe on March 8th or March 9th, certain representatives of New Jersey stood with Eric Holder and other representatives of the Justice Department, who announced at that time that they were expediting their review.

So I believed that the prospect of the Justice Department moving forward quickly was real at that time.

SENATOR MARTIN: And when you issued the interim report on April 20th, was it your testimony today, or did I get this wrong, that you said that on that day there was a notice of intent to sue by the Department of Justice?

ASSISTANT ATTORNEY GENERAL ZOUBEK: No, actually, Senator, I believe I testified that when I came back from the hearings on April 26th, there was a fax that's been provided to the Committee that came in late

that afternoon, which was a notice of intent to sue, from the Justice Department, which was the first correspondence I had received from the Justice Department in quite some time.

SENATOR MARTIN: I thought you had said April--

ASSISTANT ATTORNEY GENERAL ZOUBEK: It was the afternoon of the 26th. If I did, I apologize, but I thought I had said, "when I came back from the hearing," which would have been April 26th, 1999.

SENATOR MARTIN: When you -- you indicated that you were trying to get the report out because there was -- you were a step ahead of the Feds, did you have any indication that they were going to shortly issue some kind of directive to you?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Absolutely not. As a matter of fact, when I received that letter, I called and complained to the representatives I had been dealing with in the Justice Department, because they had given me no specific indication that any such letter was forthcoming. So I was surprised when I actually received that letter at that time.

But I still say that I did it -- did know that they were expediting their investigation.

SENATOR MARTIN: And was -- would you have some indication, either through past practice or something, that they had indicated that the likelihood would be either that they would sue or they would seek to have a consent search, (*sic*) as they had had some 20 years earlier? I mean, what would be the potential scope of the downside of them deciding to take some affirmative action?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Their affirmative action, as I understand under the pattern and practice of Federal statute, would be that they would come in, they would sue, and any consent decree would be based upon the filing of a complaint, based upon their pattern and practice, Federal civil rights legislation.

SENATOR MARTIN: But by actually filing a lawsuit, that gives them the basis, then, to give you an alternative, which is to agree to some consent agreement, which would then -- they would then either postpone or dismiss the suit.

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes.

SENATOR MARTIN: Is that -- that's what happened?

In line with this questioning, this letter from the Department of Justice obviously was not good news. I think you indicated that it came in at -- after 5:00, on the evening of April 26th.

ASSISTANT ATTORNEY GENERAL ZOUBEK: That's what I saw.

SENATOR MARTIN: Did that -- that was the letter that came to -- directed directly to the Attorney General, or was it to you? Do you recall?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I don't recall. There's a fax machine right out -- next to both of our offices. I think it's addressed to Attorney General Verniero.

SENATOR MARTIN: A letter of that import would be, obviously, made known to the top people in the Department.

ASSISTANT ATTORNEY GENERAL ZOUBEK: It was made known to me.

SENATOR MARTIN: It's actually addressed -- somebody just handed it to me -- on April 26th, and we have seen this before -- we've heard testimony. But it was directed to Mr. Verniero, and you had a copy on your desk in the afternoon.

When you made the calls to express some displeasure with the fact that you weren't previously notified, was that on your own initiative, or was that done by the Attorney General?

ASSISTANT ATTORNEY GENERAL ZOUBEK: That was clearly on my own initiative. My expectation, when I'm dealing with a lawyer on the other side, is that if I'm dealing in good faith with them, that a major matter like that, I would receive some notice of before it went. And I expressed my disappointment that I had not received that notice.

SENATOR MARTIN: You must have had some immediate discussions with the Attorney General about this crisis, did you not?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I spoke to him about it, yes.

SENATOR MARTIN: There's some testimony that indicates that when Mr. Verniero came before us on May 5th, 1999, Senator Zane asked him a question. He said: "So we just established that you were aware of a Federal investigation. How far back were you aware of the Federal investigation, the U.S. Justice Department's investigation of profiling?"

And he remarked: "It's been at least two years, maybe longer. I don't know the exact date that they began. I'm not sure that they informed us of the exact date. You know this -- the unit down in the Justice Department under the Federal -- You know this -- the unit down in the Justice Department,

under the Federal statute, open up a file or begin a review in many jurisdictions. The review may mature into an actual investigation. I really can't be precise. That's really a question that the Justice Department would be able answer" -- I guess that's, to answer -- "as to when they actually began, and so forth.

"They certainly began requesting information over the last two years, and maybe even a little bit longer. We furnished information in accordance with this request."

And then there was one more question, just so you're aware of the sequence. Senator Zane asked: "Could you give us a quick synopsis of what that cooperation is that you gave the Justice Department?"

"Basically, it was responses to information requests that the Justice Department would make either to my office or to State Police."

Would a question like Senator Zane asking about an investigation, on May 5th of 1999, if that question were posed to you, could you not answer the status of an investigation without talking about the fact that they had sent you a letter indicating they're suing?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Well, if I can, before that, I believe there was some correspondence by the then Attorney General Verniero to this Committee, and its Chair, with respect to the receipt of some notice from the Justice Department, I believe. And your question, as to how I would have answered the question?

SENATOR MARTIN: Well, you know -- here's what I'm getting at, Paul. It just seems that this is a major factor that comes into play at the same time we're issuing an interim report. It's an historic report, talking about the positive steps that New Jersey is doing. And it's all pretty much positive.

Somehow what seems to be not discussed -- or at least discussed in any open way -- is the fact that the Federal government now has seen to it that the action that we've taken up to that date is such that they feel that they have to step in and force some specific action taken.

It just seems to me that, in the course of this, and you were -- you know, since you were the Number 2 man, I'm just asking you, at this stage, wouldn't it be appropriate to also discuss this negative in a sort of an open context, when somebody like Senator Zane asks about an investigation?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Well, again, I think -- there was a letter, I thought, April 29th, that was sent to the Committee that identified that this April 26th letter had come in, or that we had been notified. And I thought that it was a matter of some public record that the Justice Department had gotten to a point where there had been some notice, prior to the hearing.

Again, as to the issue of the specifics of the findings of the investigation, I don't know how I would have responded at that point.

SENATOR MARTIN: But being put in the position of either a suit or a consent decree, both of those were really something that the Department, given its choice, would have avoided at all costs, would it not?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Are you asking what my view was of that, at the time?

SENATOR MARTIN: If I ask you somebody else's, you won't care to speculate on it.

ASSISTANT ATTORNEY GENERAL ZOUBEK: No, no, no.
(laughter) No, I -- thank you. Thank you, and I appreciate that kindly.

I myself thought there were benefits, in the long run, to potentially working this out by way of a consent decree to the State of New Jersey.

SENATOR MARTIN: Although, just up to that, you had called expressing your displeasure, saying, you know, why -- please don't--

ASSISTANT ATTORNEY GENERAL ZOUBEK: No, that was a matter of pure and simple professional courtesy in terms of, look -- I think I said, "Look, I just came out of a hearing where I was asked questions on racial profiling for a period of time and made a presentation, and I'm coming back and I'm getting this letter that I had no notice of. I didn't think that was the nature of our relationship." That was the context that I had at that time.

SENATOR MARTIN: I'd like to ask you some questions specifically about racial profiling. I know we've been over this with some other witnesses, and I ask the Committee's indulgence. I am interested in some of the process, and I think you're probably the appropriate person to ask, especially since you did head up the review team.

And it's really a question -- my understanding about these searches and what you understand to be permissible and not permissible activity of the police to try to make stops, and my understanding of racial profiling, and just the investigative stops along the State Police. First of all, you made a comment earlier about it, and I asked John, and we couldn't figure out what you said. You either said a TACPAC or an attack pack?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I'm sorry, a tactical patrol unit I think is also referred to as a TACPAC. In the *Soto* case, I believe they were looking at three different groups. There was the general patrol, radar, and the TACPAC. And each of them had -- I think it's referred to in the

interim report -- they had varying percentages of minority stops that, as we observed in the interim report, seemed to be tied to the amount of discretion that they had.

SENATOR MARTIN: And this TACPAC, were they the ones who were more directed to specifically try to complete the interdiction?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I believe my recollection of *Soto* is that the TACPAC did have -- the radar had the lowest, and I think the TACPAC had a higher, and that was because they appeared to be very focused on drug related activity.

SENATOR MARTIN: So the tactics behind this tactical team were to devise strategies to try to interdict the transport of drugs through New Jersey on the Turnpike?

ASSISTANT ATTORNEY GENERAL ZOUBEK: That's one of the assignments they received. I understand that they also can respond to a large -- a major accident or something like that.

SENATOR MARTIN: When the State Police, whether they were in a TACPAC or in the other modes of interruption, when they make the stop, the stop is based first upon, as I understand it, there must be some motor vehicle violation to at least initiate the ability to go to the second step of actually pulling over a motor vehicle. Is that right?

ASSISTANT ATTORNEY GENERAL ZOUBEK: A perceived motor vehicle violation, of which I understand there could be upwards of 150 to 200 violations.

SENATOR MARTIN: And we've heard testimony, it could be speeding; it could be moving from one lane to another impermissibly; it could

be too closely following; all the kinds of things that I think most of us have seen on the Turnpike at one time or another.

That being done -- now we've heard testimony that the racial profiling element was an identity by positioning a vehicle such that you would see the face, even if just a short glimpse, but enough of a face of the driver of the vehicle to be able to at least guess or estimate what race that person was. Is that -- was that -- is that what you would understand?

ASSISTANT ATTORNEY GENERAL ZOUBEK: There was a practice that we referred to in the interim report known as spotlighting, which would be, at night, setting your car in that direction. I believe that Colonel Williams had issued an edict prohibiting that practice. But that was a practice that was reported at times.

SENATOR MARTIN: Which is the real crux of this whole hearing about racial profiling. But what I'm -- one of the things that I'm interested, from a corrective point of view, but also trying to deal with allowing the State Police to engage in their jobs, other types of profiling, some of which are permissible, and some are not, I think, such as -- maybe you could just help me. I wrote down a few.

If you did that sort of spotlighting on the basis of sex, that would be as impermissible as racial profiling?

ASSISTANT ATTORNEY GENERAL ZOUBEK: That would be my understanding.

SENATOR MARTIN: How about some other so-called indicators of maybe fitting into a profile of running drugs? The number of persons in a vehicle, is that -- would that be permissible, as opposed to racial profiling?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Well, I think as we discussed, the prohibited class discrimination, in terms of race, gender, religious as well, I think one of the areas that I think the Committee can certainly learn from is where the problem starts occurring is when you're looking at some of these other factors that officers may be using as indicators as to whether or not they're -- they may be race neutral on their face, but the question is as to whether any of those other factors have any sort of disparate impact.

SENATOR MARTIN: So, as an example, if you had a profile of vehicles, and let's say certain vehicles, maybe older vehicles of a certain type maybe fit a profile that somebody claims might lead to greater success as far as being able to ascertain drugs. It could also perhaps be shown that people who have these types of cars have lower income, which could also then be -- you know, also show that perhaps certain minorities, also, because of their income status would tend to fall more predominantly into that type of status, which would lead them to have those kinds of vehicles. Is that the kind of things?

ASSISTANT ATTORNEY GENERAL ZOUBEK: That's among some of the considerations.

SENATOR MARTIN: So, just to wrap up this little part of it, if we were going to look at racial profiling, we'd probably have to look at some of these other substitutes that could -- that would have a disparate impact as -- that could serve as benchmarks for racial profiling, or could lead to racial profiling?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Absolutely. I think one of the things in the interim report, and certainly in the reforms of the State Police, is to make sure we're equipping the troopers with adequate training

to recognize that shortcuts that may appear to be, in some respects, possibly linked to some question of drug profiling, to be aware of those that actually have a greater nexus to drug trafficking in terms of the way the vehicle is set up, as opposed to necessarily appearance issues.

SENATOR MARTIN: So, when we talk about racial profiling, there may be a lot of areas of profiling that are neutral on their faces, may actually cause either -- let's say unintentionally the possibility of a heightened degree of racial profiling?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I think that's correct, and something certainly we tried to bring out in the interim report. And certainly as part of the reforms, there is a use of information with respect to trends. But when there's -- and one of the things we try to take head-on in the interim report is, how can you say -- if you say there's no racial profiling, there's no racial profiling that's occurring, but minorities are more likely to be transporting drugs, then that attitude then translates back into decisions that are not race neutral decisions. And it's that, I think, what has to be taken head-on, if these reforms are going to succeed.

SENATOR MARTIN: Has there been any attempt in developing reforms to consider trying to come up with a priority as far as the discretion in terms of the egregiousness of an offense? I mean, you talk about the fact there's so much discretion. It would seem like you would want to pull over the people, I guess, speeding the most, weaving the most. But when I asked that question, I think, a couple of weeks ago, there really was no indication that that was at least a factor. It may be an intuitive factor, but it was not expressed in any way to identify those who get pulled over.

ASSISTANT ATTORNEY GENERAL ZOUBEK: Well, I think one of the things that's occurring, and certainly the Federal monitors have praised some of the recent training that's been put into the State Police. It's not only individually of the troopers, but we've just completed a lengthy process of weeklong trooper coach training, as opposed to the very cursory training that the trooper coaches received in the past. Because there is a lot of discretion that a trooper has, and we want them to exercise that discretion in the best interests of public safety, but to make sure that perhaps shortcuts that may have developed over the years, to results, that are inappropriate, are eliminated.

SENATOR MARTIN: At the stop, we have heard testimony about consent searches and articulable suspicion type searches and probable cause searches. My short, limited understanding of criminal law was that if you stop somebody for, let's say, a speeding violation on the Turnpike, probable cause -- seeing some drug paraphernalia in the vehicle or some other obvious thing, perhaps the strong smell of marijuana -- that would absolutely allow you to search without seeking the permission of the motorist. Is that right?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes, probable cause searches, based upon appropriate indicators, whether it's smell, sight of a -- plain view sight of a package, would give the trooper, and has given troopers, the ability to conduct probable cause searches.

SENATOR MARTIN: Now, here's a part I'm a little fuzzy on as far as procedure. My understanding was, the U.S. Supreme Court had ruled that you could conduct a search without permission if you had an articulable suspicion. The State Police had a policy of conducting consent searches. They

seemed to indicate that their consent searches had some level of -- they used the term reasonable suspicion. I think they're synonymous--

ASSISTANT ATTORNEY GENERAL ZOUBEK: Right.

SENATOR MARTIN: --articulable suspicion, reasonable suspicion. But is there some differentiation that's made, and if there is, is there some basis for it that you're aware of?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Well, I think New Jersey has gone beyond the Federal requirements and even the State requirements -- the State Police -- for a number of years, even back when Colonel Dintino issued the new SOPs in 1990, requiring that reasonable suspicion before -- an articulable suspicion before request for consent is made. And that -- there is no legal requirement for that.

What we have done is, we identified in the interim report -- was that you could ask for consent, but you could only ask -- you couldn't use race, unless it was related to some identifiable criminal activity. I think what we've tried to focus our reforms on is, when that determination is being made on that lesser standard for consent, to ensure that we know it's not a probable cause standard, but we're still using race neutral factors to do so.

SENATOR MARTIN: Because it seemed to me you sort of lumped together these two different standards -- not the probable cause, but under existing Federal law, you could have conducted a search if you had an articulable suspicion, even without consent. But you're saying that when you ask for a consent search, you had to at least advise the troopers that they had to have an articulable suspicion in order to do that, but still sought the consent

of the person. So, in effect, you are seeking consent of a level of reasonable suspicion.

ASSISTANT ATTORNEY GENERAL ZOUBEK: And not only that, the requirements have been -- the practice has been in place that you are to advise the motorist that they have the right to refuse the request for a consent to search, which was also not required by law. So we have had additional protections in New Jersey, beyond what the Federal requirements are.

SENATOR MARTIN: And are these -- are these reasons, short of probable cause in this consent form or in the notes that the State Police make at the stop, are they articulated on to papers to be able to--

ASSISTANT ATTORNEY GENERAL ZOUBEK: Well, not only has there been reform in terms of articulating that on paper, but we have to keep in mind that one of the great benefits we have in the New Jersey State Police right now, for both the motorists and for the trooper, are the videos. So what we have encouraged troopers to do is, in essence, not only do it on paper, but to articulate their reasonable suspicions right then and there as they have the audio flipped on on their videotape.

And we believe that has been, and will continue to be of great assistance for troopers, because sometimes the paperwork is a difficult element, and we are going to try and use the videos to assist them in that.

SENATOR MARTIN: Since you didn't have to reach the level of an articulable suspicion to get -- for a consent search, if, in fact, it's later determined -- somebody contests the charge, and it doesn't rise to that level, but it's still shown as being consensual, would the State Police dismiss or ask for a dismissal of the case?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Depending upon the circumstance, but I also identify there's been some development in the New Jersey Supreme Court as it relates to reinforcing, in essence, the State Police requirement in case law.

SENATOR MARTIN: Are you aware of any practice that suggests that the consent searches, if one does not agree to a consent search, there's informal ways of discouraging, not agreeing to a consent, such as the idea you may be held -- not held -- but may take a long time to process your ticket, or some other sort of unfriendly acts to suggest that it is not as consensual as it would appear to be? I mean, there seems to be that sense among some motorists that there's a negative consequence. It's not completely their free will to do so.

ASSISTANT ATTORNEY GENERAL ZOUBEK: Well, I think that one of the things important to recognize is that that encounter is an encounter on both sides of the encounter that involves potential tension. The trooper has to be ready -- and ready and aware for safety purposes, and any motorist who is stopped is going to be tense of circumstances. So there could be an inherent aspects of potential coercion there, but we believe that the practices are in place, and certainly now we have multiple cross-checks that are available that will be able to support the vast majority of troopers who are doing that appropriately.

SENATOR MARTIN: I'm not sure you exactly answered my-- Have you, in your review, have you been made aware of any indications that there would be some extended time or other kinds of negative consequences to those who exercise their right not to engage in a consent search?

ASSISTANT ATTORNEY GENERAL ZOUBEK: During the course of our work, we have noted that there are times in which we believe troopers need to be retrained at times as to how long the motorist can be questioned, based upon what their underlying violation might have been.

SENATOR MARTIN: Thank you.

SENATOR GORMLEY: Senator Robertson.

SENATOR ROBERTSON: Good morning, Mr. Zoubek.

ASSISTANT ATTORNEY GENERAL ZOUBEK: Good morning, Senator.

SENATOR ROBERTSON: I want to follow-- Actually that's true, good afternoon. I want to follow up a little bit on what Senator Martin began to talk about, and that is the changing face of law. We live in a society or in a system, I should say, where we rely a great deal on case law. So the standard today may not quite be exactly the same standard the next day, and we have to keep up with that as attorneys.

You had indicated before that you had spent an awful lot of time in the last two years -- 150 percent of your time, I think, I believe you said -- dealing with the issue of racial profiling. Do you consider yourself relatively conversant in the law of racial profiling, as well?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Relatively so. It's evolving, but relatively so.

SENATOR ROBERTSON: Well, that being the case-- And that wasn't a rhetorical question, because I want to take you back because of a line of questioning that Mr. Chertoff had this morning about the state of Attorney

General Verniero's knowledge or advice with respect to statistics that had been gathered. I want to go back first to the *Soto* case.

We've heard a lot of testimony about stop data. We've heard a lot of testimony about consent to search data. In the *Soto* case itself, what was the court, at the trial level at least, in *Soto* looking at with respect to coming to a conclusion about the absence or presence of racial profiling or selective enforcement?

ASSISTANT ATTORNEY GENERAL ZOUBEK: The *Soto* decision by Judge Francis focused primarily on stop data -- the analysis of the stop percentages of troopers compared to a baseline population survey that the Public Defender's Office had done -- and then made a determination based upon a statistical analysis of the differential between percentages of the stops and the baseline and made a determination on the statistical issue that that was reflective of some sort of racial profiling.

SENATOR ROBERTSON: Now, at that point in time-- Well, let me back up for a second. As you took a look at whether or not to proceed with an appeal, was it your sense from what you know now of looking back -- I know you weren't personally involved at that juncture -- but was one of the questions that you were being asked throughout the decision-making process and whether or not to take an appeal, whether or not you felt that that sort of data actually established racial profiling? That wasn't something that you were quick to admit, was it?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I think that was one of the concerns. I think one of the other concerns, with respect to the *Soto* case-- If you look across the country, the *Soto* case is one of the -- stands in and

of itself in terms of, if you will, importing civil statistical analysis, what you typically find in civil cases and importing that into a criminal context, because most of the Supreme Court precedent on the State and Federal level usually requires an individualized analysis of each of the cases. And I think that was one of the substantial concerns that led to the appeal of that case, was that-- I mean, a perfect example is that if there are percentages, but there is a specific stop in which a trooper did absolutely nothing wrong, and he did absolutely everything appropriate, you want to make sure that there is that sort of individualized analysis. But that's not what occurred in the *Soto* case.

So I think certainly the thinking at the time, as I understood it in terms of the appeal, was that that was a unique decision and that particularly as it relates to some of the legal conclusions, and that they were the bases to appeal that at the time.

SENATOR ROBERTSON: Okay. And that's what you meant before when you said one of the concerns we had was that *Soto* was about to establish the law, and we wanted to be very careful as sort of an Appellate court-

ASSISTANT ATTORNEY GENERAL ZOUBEK: I think that's correct. Hindsight for me isn't necessarily 20/20, perhaps, going back to that, but when -- the time that I came in-- I came in, in a point in time in 1999, when the record in the *Soto* case was developed from 1988 to 1991. The vast majority of those stops were made prior to Colonel Dintino and Attorney General Del Tufo's new SOPs. And I think one of the factors that we were looking at in 1999 is, given that we're going to put these reforms in place, do

you want to, at that point in time, have that -- the record on racial profiling be determined based upon a record that is now in some instances 11 years old.

SENATOR ROBERTSON: Now I-- This bears repeating even though it may seem obvious to people. I take it that the Department's position with respect to Mr. Soto specifically was that he was guilty of a crime. Is that correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: That's correct.

SENATOR ROBERTSON: And that all 19 defendants were building defenses, correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Correct.

SENATOR ROBERTSON: So that irrespective of whatever statistical compilations that might have been done, it was the position of the Department that all these defendants had committed crimes and were worthy of prosecution, correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: That's correct. And that position is still a position, certainly, that, as chief law enforcement officer through the Attorney General's Office, it's -- we are very concerned about the prospect that you would only make this analysis based upon statistics alone without an individualized analysis in each case.

SENATOR ROBERTSON: And in fact, isn't the role of the Attorney General's Office, through the prosecutors, to be the people's attorneys, to be, in the adversarial process, the advocates for the people and for the prosecution?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Absolutely. And I think one of the things that happened differently in New Jersey than happened

in other jurisdictions is that ours developed in a criminal context, as opposed to some of the civil cases that were filed in other jurisdictions. There was no comparable civil case that was filed in the 1990s until the late 1990s. And in the criminal context, the notion that if someone-- If it's a good stop, if someone has drugs on them, then you want to be in a position to, as a prosecutor, to follow your obligation to protect that case as much as you can.

SENATOR ROBERTSON: Okay. So you have a situation in 1996, with the articulation of the *Soto* decision, where the court is focusing on stop statistics as being reflective of whether or not there's uneven enforcement. Now, what about the Justice Department at the same time? What was the state of the law, generally, with respect to the Department of Justice's review of state procedures around the country? Was that also stop oriented?

ASSISTANT ATTORNEY GENERAL ZOUBEK: It was my understanding at the time as it related to the -- under the pattern and practice statute that's available federally -- you can go in and look at civil rights patterns and practices in a particular state. I think, certainly, they were here in New Jersey in part because of the *Soto* decision, and that focused on stops, and a lot of the requests from the Justice Department were with respect to stops. There were some -- eventually some requests, I understand, with respect to consents, but it was certainly initially focused on stops.

SENATOR ROBERTSON: Well, you were asked some questions before about the Maryland case and asked to -- about what Attorney General Verniero had told you about the state of his knowledge going back to 1997 to the area around May 20th. There was a meeting on that and the discussion of

what sort of statistics he knew about or didn't know about. You remember that line of questioning?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes.

SENATOR ROBERTSON: What would you-- In your own words, what would be a fair characterization of what the Attorney General told you with respect to the knowledge of specific versus general statistics, trends versus absolutes?

ASSISTANT ATTORNEY GENERAL ZOUBEK: He-- My conversations with him were as it relates to identifying that the individuals who had told me there had been some meetings or discussions, that they were very general discussions, but that it was always in the context that it didn't mean that there was racial profiling. I think one of the things that has to be focused on, and I think some of the State Troopers have testified to this, is there had been a focus that racial profiling meant stops and stops alone and a stop based upon race in and of itself.

I think one of the things we tried to do with the interim report is to add additional focus and additional analysis to say, troopers, in addition, what you need to focus on is each of the decisions you make during the course of a stop, particularly in terms of a search, should be analyzed and looked at in terms of making sure whether it's race neutral. And that was a new approach.

SENATOR ROBERTSON: Okay. Let's take exactly what you just said. And I'll direct your attention-- I'll just wind up reading from it, but just so the record is clear, I'm referring to what had been marked W-27. That's OAG-000865, which is a memorandum to the Attorney General, a handwritten memorandum from Mr. Waugh, which attaches to it an April 22, 1997

memorandum from George Rover to Jack Fahy and Alexander Waugh talking about the Department of Justice's request for consent to search and other data relating to stops. I'm going to read one paragraph from that.

Do you know the memo I'm talking about?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I'm familiar with it. I'm familiar with it.

SENATOR ROBERTSON: At one point, on Page 7, Mr. Rover says: "Although the U.S. DOJ, Department of Justice, has been noticeably silent on the consent to search issue in our discussion, they are continuing to press for these documents," referring back to a variety of documents having to do with stops. "At some point, we will be forced to turn them over. Prior to that, I would like to begin educating U.S. DOJ of our position on these documents and what conclusions can be drawn from them. It is my opinion that they are irrelevant to the inquiry of whether law enforcement officers are engaging in selective prosecution. This information has nothing to do with the reason why a motorist is stopped initially, which is the basis of the U.S. DOJ inquiry."

Now, that language that I've just read, is that consistent, in your opinion, or inconsistent with what you were being told by the Attorney General with respect to the state of his knowledge at that time?

ASSISTANT ATTORNEY GENERAL ZOUBEK: That's consistent with what the Attorney General told me that the approach taken in the interim report, the approach that we were taking with respect to consents, was different than the approach that he had been advised of previously.

SENATOR ROBERTSON: Okay. Now, I want to refer to something that's been marked W-31, which is OAG-1045. This is an October

31, 1997 memo from Alexander Waugh to the Attorney General, Peter Verniero, and it attaches to it a draft of a letter -- a potential letter to Mr. Posner of the Justice Department. But the cover memo says, from Mr. Waugh to Mr. Verniero: "The Department of Justice has now requested copies of consent to search forms for the stations on the southern end of the Turnpike at which they have been looking. These forms have no direct relevance to stops, since they reflect post-stop activities. However, they do indicate the reason for the initial stop, and for this reason, I don't believe we should resist their production." With respect to the observation that Mr. Waugh made on the issue of relevance to stop versus post-stop activities, is that observation consistent or inconsistent with your understanding of what Mr. Verniero told you?

ASSISTANT ATTORNEY GENERAL ZOUBEK: That is consistent with what Mr. Verniero told me, and it's also consistent with what my understanding is of the position that the Department was taking with respect to consents. That the issue with respect to racial profiling was, were motorists being stopped on race and race alone? And at the subsequent part with respect to what was happening after the car was stopped, those were a series of law enforcement decisions that were being made at the time, and it wasn't relevant to the original reason for the stop. What I think that we tried to do with the interim report, again, is say, well, there is more that you need to look at in the search.

SENATOR ROBERTSON: And on that precise point, I'll take a look at the transcript of the April 26th, '99 hearing on racial profiling that you attended with the Attorney General. And in Page 20, there is an interchange between Senator Gormley and Attorney General Verniero which talks about that

Page 23 of the report, and we'll get to that in a minute. But after citing the language on page 23-- Well, I'll just read what Senator Gormley said, General, on Page 23 of the report, first paragraph under A: "In mid-March the review team began to receive documents from the State Police" -- that's mid-March of this year -- "pertaining to audits, compilations, and data and analysis of data about the racial characteristics of detained motorists, some of which had not been previously provided to the Office of the Attorney General of the Division of Criminal Justice."

Senator Gormley goes on to say: "One, I'd like an explanation of that sentence, which I think is at best disheartening, but also the next question that would follow after that is, how long did that occur? Do we have any concerns regarding the availability of information that we might have provided through Judge Francis in the *Soto* case? And once we did get this information, did we uncover information that should have been provided at an earlier date?"

The response to that from the Attorney General is: "Let me answer the first question first. We did get certain documents in mid-March for the first time as a result of the inquires resulting from this review. And in those documents there were certain statistics that we were seeing, that I was seeing for the first time of the time frame, the April to November time frame, that is part of this report, and with respect to such data, the consent to search."

Is the Attorney General's response to that question accurate?

ASSISTANT ATTORNEY GENERAL ZOUBEK: If the extent to which the Attorney General is referring to -- April of 1997 to November of 1998 -- which was what I believed at the time, that refers back to-- I believe that it referred back to the documents and the Gilbert memo, which were the monthly

compilations that were taken for stops and consents from Moorestown and Cranbury that were forwarded up the chain of command at the State Police which had not been received at the State Police. And that's what I thought that he was referring to at the time.

SENATOR ROBERTSON: And in fact, he goes on in his answer to draw the very distinction that you were just talking about, the stops versus consent to search data. The Attorney General said: "It's interesting to note that in the *Soto* case the focus in that case was not on searches, it was on stops. And it's also interesting to note that one of the basis of our findings in this report is, yes, in part on stops, but more on the searches. So we've actually developed a record, as part of this report, that is an enhanced record over and above what the record was in *Soto* in terms of what the judge really focused on in the *Soto* case." Now, is that consistent with your understanding as well, as you just articulated?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes, which is, the interim report went beyond the analysis in *Soto* and what I thought was that -- just the direction on what's the reason for the stop, can you see the person, and that that was really the focus of the racial profiling debate at the time. I think we moved to a different focus.

SENATOR ROBERTSON: Okay. Let me switch gears just a bit and talk a little bit about the preparation for the hearings back in April and May of 1999. And I take it there were mock hearings and prep sessions for both the-- Were there mock hearings and prep sessions for both the racial profiling hearings and the confirmation hearings?

ASSISTANT ATTORNEY GENERAL ZOUBEK: My recollection is, as it relates to the racial profiling hearing, that report was completed on the -- Tuesday the 20th. And that on the Friday of that week, my calendar reflects that there was a profiling hearing meeting. I had a PowerPoint presentation that had been prepared. I went through that. There were others present in the room that asked the Attorney General and myself questions with respect to it, and it was very much getting ready for the presentation and questions that may occur at that time.

SENATOR ROBERTSON: And how about with respect-- What preparations, if any, did you attend or participate in with respect to the confirmation hearings?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I believe my calendar reflects that prior to the first hearing, which I think was on May 4th, I believe -- 5th, thank you -- that there was a meeting in which the full array of issues regarding General Verniero's tenure in the Department were discussed. And I think that focused more on non-racial-profiling issues.

SENATOR ROBERTSON: But did it also focus on racial profiling?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I believe in part it did, but the main focus was on other issues.

SENATOR ROBERTSON: With respect to the confirmation prep sessions, were there any questions or issues that could be -- that were discussed that could be fairly characterized as being in the nature of what did you know and when did you know it?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes, I think the question was in preparation: Attorney General Verniero, when did you first

become concerned about the issue of racial profiling? And that was a focus of the discussion.

SENATOR ROBERTSON: Well, with respect to any substantive knowledge of statistics, compilations, or facts in any way, were there any questions with respect to what did you know and when did you know it?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I think that was more in terms of -- his answer in terms of that it crystallized after April of 1998. That based upon the information -- that what he had been told, it was something that was after the shooting that galvanized his attention. We may have had some follow-up questions, but there wasn't a drill down, if you will, on the underlying statistics of the report. It was more general.

SENATOR ROBERTSON: Was there anything said in your presence at those sessions or at any other setting that was in the nature of a concern by anyone to the effect that we don't want -- we have to make sure that we don't discuss the Department of Justice inquiry?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I don't think so. And again, as it relates to the confirmation, I believe there's an April 29th letter in which some aspect of having been -- a notice to sue having been received, and that aspects of that were communicated to the Committee. So I think that was -- I don't know how much it was out in the public domain, necessarily, but I thought it was information that had been provided to the Committee, because it was a "change in circumstance" in some respect after the April 26th hearing.

SENATOR ROBERTSON: Well, was anything said in that nature with respect to the April -- with respect to the preparation of the April 26th

hearing? You know, that we should tread lightly on anything we say about DOJ, that we shouldn't bring out that information, or anything of that sort?

ASSISTANT ATTORNEY GENERAL ZOUBEK: No. I don't think so. I mean, frankly, one of the things we were doing before April 26th -- I know I was doing before April 26th, was getting to a point where this report that had been expedited that we had been working literally around the clock on for a couple of weeks to get prepared to make the presentation to the Committee to explain the report and explain the reforms, but not as much on, you know, will there be questions as to the Justice Department inquiry or not -- and going into that meeting, all that we had had at that point-- As I had had a meeting with the Justice Department, and I was working with them on documents, but I had not received anything with respect with notice to sue yet.

SENATOR ROBERTSON: Was there anything said during the course of these preparations, for either type of hearing, that really pointed to the question of why were you so slow, Mr. Attorney General or Mr. Assistant, at prosecuting the notion of racial profiling as an issue?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I think generally, yes. I mean, those questions had been swirling around for a number of months at that point, and that was part of it. Why, you know -- why did it take a shooting, if you will, and the answer was, you know, until after the shooting, crystallized, galvanized, changed his focus, and that was consistent with what he told this committee.

SENATOR ROBERTSON: But during the course of those discussions there was nothing that edified or no question had been raised as to well, Mr. -- in the mock presentations -- well, Mr. Attorney General, Mr.

Assistant, what was the state of your knowledge back in 1996 or 1997, did it get that specific at all?

ASSISTANT ATTORNEY GENERAL ZOUBEK: No, it didn't get that specific. I mean, it-- The general question included in its response that -- would include in the response that information for the Attorney General to identify what his knowledge was, what his reasoning was for why there wasn't an interim report or a State Police Review Team earlier than that, and that was the nature of the discussion.

SENATOR ROBERTSON: Okay. Because the reason that I'm asking this is that one of the questions that has arisen since Justice Verniero's testimony is the extent to which it will all -- he was engaging in a pattern of misdirection during the course of his answers in his previous testimonies, so as to refocus attention, focus attention away from those periods of time, '96 and '97, in an effort to draw attention away from that. And I guess what I'm asking is, during the course of the preparation for those hearings, did you see anything that would lead you to believe that his intent was to embark on such a course?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Certainly not. All I had was discussions with him with respect to-- We tried to ask him certain questions in preparation for the hearings. I think I've testified as to what my discussions with him were and what my knowledge generally was as to what his level of belief was, as it relates to when did you become focused on any racial profiling and act on it. And he answered those questions.

SENATOR ROBERTSON: Are you familiar with the Justice's testimony the other day? Have you reviewed it or did you watch it live?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I've reviewed portions of it, and I've listened to some portions of it. I don't believe I've read every single-- I haven't read every single word.

SENATOR ROBERTSON: From what you have seen, from what you were exposed to, was there anything there that you would characterize as a substantive difference of recollection from what you knew to be the case in terms of what you were told by Mr. Verniero previously?

ASSISTANT ATTORNEY GENERAL ZOUBEK: In fairness, Senator Robertson, I don't know that I went through and did a comparison of each. I can say that based upon what the -- Attorney General Verniero told me with respect to the advice that he had received as to what racial profiling is, what it means, and how you make that determination, his conversations always with me were going into those hearings. And until the State Police Review Team work was done and the approach that was taken by the State Police Review Team was done, that he had not received advice in the past that had translated into that racial profiling was occurring, and that he had received representation from the State Police that it was not. Generally, that is consistent with my recollection of what happened, but I don't know that I'm in a position to have cross-compared every bit of testimony.

SENATOR ROBERTSON: No. And I'm not suggesting it. But it was generally consistent with what he had told you when he first started dealing with you on the issue of racial profiling?

ASSISTANT ATTORNEY GENERAL ZOUBEK: It was consistent in what he had told me prior to going into the hearing.

SENATOR ROBERTSON: Prior to going to which hearing?

ASSISTANT ATTORNEY GENERAL ZOUBEK: To, ultimately, his confirmation hearings.

SENATOR ROBERTSON: And the racial profiling hearing in April of '99?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes, in terms of what he told me, in terms of what his state of knowledge and reasoning was, that's consistent.

SENATOR ROBERTSON: All right. Switching gears again, I wanted to take a look a little bit at what has happened since April of 1999. We had-- At that hearing, you and I had an exchange of questions and answers with respect to the value of a violators' survey, the value of consent search data, which could be cross-tabulated against find rates, and a review of articulable suspicion and things of that nature. What specific steps have been taken in the last two years with respect to establishing a violators' survey?

ASSISTANT ATTORNEY GENERAL ZOUBEK: One of the things-- As I said, there are currently RFPs out, and there's some work progressing on a violators' survey. The discussions that we had with the Justice Department-- The Justice Department's position was that there would only be a population survey. A population survey, which was recommended in the interim report, was concluded in cooperation with the Justice Department. I believe the results of that were released sometime late this past year. And there is some movement forward to see if more information can be learned by having a violators' survey and the potential necessity for that in the long term from -- in litigation. But there--

And I know there's been some reporting that's been a violators' survey that the Justice Department funded down in North Carolina that has not been concluded at this point.

SENATOR ROBERTSON: Well, let me -- from a policy point of view, and obviously as a Senator, as we get involved in policy discussions, perhaps more than the ins and outs of particular litigation, one of the things that struck me is that so much of the Office of Attorney General's response to this problem has been aimed at whatever litigation they're involved in, whether it's the *Soto* case -- and I understand that to a degree -- or the Department of Justice.

What we were being told in April of '99 is: "Fellas, we've transcended that. We are now jumping in with both feet on this issue. We're now not just responding to the Department of Justice or to the latest happenings in the *Soto* case, we're going to get to the bottom of this ourselves."

Why then, hasn't a violators' survey been put together since--

ASSISTANT ATTORNEY GENERAL ZOUBEK: I think the recommendation in the interim report was, do a population survey. I think one of the issues with respect to a violators' survey is whether or not there are controversial aspects to a violators' survey in which it doesn't imply that there's some differential -- inherent differential by race on how someone drives. And I think that that's -- you have to look long and hard before you adopt that, necessarily, in any way, shape, or form as a position. The population survey was done. That's provided some guidance. And I think what we've tried to do--

SENATOR ROBERTSON: What does that mean, a population survey? I don't mean to interrupt.

ASSISTANT ATTORNEY GENERAL ZOUBEK: The population survey is the racial breakdown of who's traveling -- just traveling the Turnpike. And what was done, in cooperation with the Justice Department-- We literally have people at toll booths checking. And there was an analysis that showed what the numbers generally were. There was some variation between time of the day and part of the week. And that has served as a basis. And we're now making a determination, in terms of what value, if any, there may be to a violators' survey. But it's been part of the process of trying to find out more information to complete these reforms.

SENATOR ROBERTSON: I mean, you've reviewed some of the other testimony to date in these proceedings. It's almost the same thing that Jack Fahy told us -- went up a couple of years to the Attorney General's Office.

ASSISTANT ATTORNEY GENERAL ZOUBEK: No, I don't-- Respectfully, Senator, I don't think so, because what we did was we decided that a survey would be done. And what we did was the population survey first. And we have completed that. There was no population survey at all done ever before. And we have got information from the process. And we have a process of a violators' survey under way. So that has occurred as part of these reforms over the last 18 months or so.

SENATOR ROBERTSON: Well, do you have a written report from a statistician or other professional and consultant about what should or should not be in a violator or population survey?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I believe that Director Cronin's office has been -- has had communication with experts on

that. It's been designed. And it is being constructed at this point in time. It is planned to be done.

SENATOR ROBERTSON: I mean-- But you understand why we'd be concerned if it's two years later?

ASSISTANT ATTORNEY GENERAL ZOUBEK: No, I agree. But the-- That's after a population-- I think it would be a different record on that, Senator, if there hadn't been a population survey done first so we can learn more information about traveling on the highway, and then we've done the violators' survey. Frankly, the violators' survey comes -- has, frankly, been more in response to litigation -- has been the request for the violators' survey. The population survey was something that was called for in the reforms. And we did that in the reform effort.

SENATOR ROBERTSON: Well, you have to be very careful how you construct it in any event, because you're going to be involved in litigation on an ongoing basis. And I'm not insensitive to that. That's what you have to be careful about.

In fact, from a layman's point of view, as we sit here and think about this, it's not just a question of who's traveling on the highway at 55 miles an hour, presumably, which we know is only about 2 percent of those on the Turnpike, but how many folks are going at 60 and 65 and 70 and 75 and 80 and 85.

We had Mr. Buckman here the other day, who was-- Actually, I spoke to him, I guess, in between sessions. And I said, "Well--" I said, "Well, what about the notion that stops are being made on the basis of speeding -- that everybody's speeding. How do we know that everybody who was stopped

wasn't doing 85 miles an hour?" And his response was, "Well, in most cases, in the consent to search data, the folks were written up." I mean, I don't know if this is true, but the folks were written up for warnings only and citations.

Well, that suggests to me that one of the things that we need to know is, are you pulling people over who are doing 65 miles an hour in a 60 zone if they're one color and 85 miles an hour before they get pulled over if they don't fit the profile.

ASSISTANT ATTORNEY GENERAL ZOUBEK: And this violators' survey that is being designed and planned will get to the answers to some of those questions in, we think, a technologically advanced way, as opposed to initially having people stand by the highway and try to observe them. So we are-- And I understand that. I don't dispute that we're sitting here in the year 2001 -- there's been discussion of a violators' survey at this point. But the record is, we did go forward with the population survey, and we are moving forward with a violators' survey.

SENATOR ROBERTSON: When will we have the methodology for a violators' survey in place?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I believe that it is imminent, and I can report back -- I can find out more specific information with respect to-- I know there's been-- RFPs have been sent back. There's been design. And I'm not sure as to whether it's physically under way at this point in time, but I can learn more of that for the Committee.

SENATOR ROBERTSON: But not to be a wise guy, but imminent in terms of what we all would understand the word imminent to be, or imminent with respect to how things happen in racial profiling reviews?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I can tell you that it is more a matter of a couple of months than it is that we'll be back here in two years having the same discussion.

SENATOR ROBERTSON: Now, with respect to consent to search data, we talked about that, too. I mean, one of the -- consent to search and find rates and whether or not reasonable articulable suspicion is being exercised properly. One of the things that I said the other day that I think bears repeating is that, if you have find rates that are similar among the races, why is the suspicion rate four times greater with certain groups? Which leads me to ask, what is the find rate? What is the consent search rate? All of those sorts of things that served as early red flags are, in fact, still the case now as potential red flags. And the question is, what specifically has been done, even with the data that we have the ability to process now, in terms of providing you with management reports on these very questions?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Well, with your indulgence, Senator, we were in this weekend preparing General Farmer, who will be appearing, I believe, tomorrow. And I know that that data would be part of the information that he provides to this Committee.

SENATOR ROBERTSON: All right. Well, just alert General Farmer that I intend to question him rather specifically on the timetable that that particular survey had involved.

ASSISTANT ATTORNEY GENERAL ZOUBEK: Right.

SENATOR ROBERTSON: We acknowledge, thinking back to the timetable from the April 26th hearing--

ASSISTANT ATTORNEY GENERAL ZOUBEK: What I can say is, one of the important things in -- that we've -- been put in place is a system where you can go back and do all the multiple cross-checks. And you can now go back and pull the videos from the consents, which we have done, and then do an analysis, with respect to what was found during those, what the racial breakdown of those is. And he will be able to provide that tomorrow.

SENATOR ROBERTSON: Okay. Now, just a couple of little questions on a couple of miscellaneous matters to wrap up.

Mr. Buckman testified last week with respect to what he believed the discovery obligations were that the State had with respect to the data that was assembled subsequent to the *Soto* decision -- post-trial -- post-judgement data. You almost got into that during the course of your direct testimony, but then the line of questioning went into a different direction.

Let me ask you: What is your opinion as to the discovery obligations that the State had, post-trial, in the *Soto* matter?

ASSISTANT ATTORNEY GENERAL ZOUBEK: As it relates to when the-- Once the record is closed, if there was any information relating to the time period at issue that had been requested, that should be produced. I do not believe, though, that everything, for example, that happened in 1997 and 1998 would be required under *Brady* or other ethical obligations to be provided back on a record from '88 to '91.

I did testify that generally, the concerns that I had ethically, as it relates -- it was the translation of the position being taken in *Soto*, in essence, that there was no racial profiling occurring whatsoever. And there--

I don't know the answer to all of the documents that may have been requested in '94 and '95 and whether or not there were some documents that may have not been provided.

I think one of the things that we've learned in this process, and we've tried to correct in this process, is that it is to improve the document collection and production systems, both at the State Police and the coordination with the Attorney General's Office.

SENATOR ROBERTSON: Okay. On the issue of the interim report and the language on Page 23 that had to do with that which had not been previously provided to the Office of the Attorney General at the Division of Criminal Justice, you're familiar with the earlier drafts that stated the matter much more pointedly?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I certainly am.

SENATOR ROBERTSON: Did you make the deletions in that -- of that language from the draft?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes, I did.

SENATOR ROBERTSON: And why did you make that deletion?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Because, in going back and cross-checking the report and identifying that I had gone back to see what was in Rover's files myself, I made a determination that some of the underlying data for consents in the '94 and '96 period of time -- in Rover's files that were collected as part of the Justice Department review, if you will-- And so therefore, the impression that all of the data that was in the report had never been received before, which was in the prior drafts, I thought was inaccurate. So what I went back to do was to change that, because, as I testified to before,

there were documents, as it relates to 1997 and 1998, with respect to stop and consents, which were not received, and I still know that -- believe that to be the case. But some of the earlier documents had been. And I thought it was appropriate, and I was attempting to make it as accurate as I possibly could.

SENATOR ROBERTSON: And you conducted a review of what had and had not been produced, I take it, during that period of time. You had testified to that. When did you conclude that review as to what may or may not have been produced by the State Police?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Well, what I had done, in terms of my physically looking, as of -- I looked before the issuance of the interim report. The Attorney General, on March 16th-- I think the document reflects that I was asked to look into this matter. And at the time of the hearings, it was "an open matter" if you will. But subsequent to the hearings, two things happened.

One, we moved into the Justice Department sending us a notice of intent of a letter to sue at that point. So the document production issue with the Justice Department really wasn't -- discovery really wasn't an issue that much anymore.

And secondly, I think I previously testified that I was contacted by Colonel Williams at some point, who had asked me or told me or complained to me that he received a call from a reporter as to whether or not he was subject -- an obstruction of justice investigation. And at that point in time, I made a determination not to do any further review or investigation. I didn't interview Carl Williams further with respect to it or others with respect to it.

Instead, what I attempted to do was try to remedy the AG-State Police production problem through, in part, the creation of the Office of State Police Affairs that would have direct and complete communication and oversight over the State Police, in a cooperative fashion, to make sure these kinds of things didn't happen in the future.

SENATOR ROBERTSON: Just to remind us, the language on Page 23 that ultimately -- the toned-down language that ultimately appeared in the final draft said, "In mid-March, the review team began to receive documents from the State Police pertaining to audits, compilations of data, and analyses of data about the racial characteristics of detained motorists, some of which had not been previously provided to the Office of the Attorney General or the Division of Criminal Justice."

Now, one of the things that I'm concerned about is the extent to which it was fair or unfair to the State Police to make any reference to documents that had not been produced by them, leaving the reader -- which clearly it did leave the reader with the impression that the State Police were not being forthcoming with respect to this data. Certainly, you had several questions from the Committee here. Certainly, the earlier drafts seemed to suggest that the suspicion was that much greater. At the time you appeared before us on the 26th, and at the time that you released the interim report, what data or compilations did you believe had not been produced by the State Police, even though they were requested?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Based upon my understanding, I testified before this Committee on April 26th, 1999, that it was the data from 1997 and 1998 that had been collected out at that barracks. It

was forwarded up the chain on a monthly basis, summarized on a six-month basis. It went to Colonel Williams's desk, and it did not go from Colonel Williams's desk over to the Office of the Attorney General.

It was my understanding at the time that there had been a request for that information. And I based that upon information I received from First Assistant David Hespe and also the knowledge that I had that there had been requests that had come in from the press and the discussions I had had with the Black Ministers Council that those documents did not exist.

But in particular, there's a February 8th letter from John Hagerty of the State Police to a couple of newspapers saying we've requested X material. All we have-- We don't have that available to us. And that was not accurate. And so I know that some of the requests were being made -- were in response to the requests that were occurring from the newspapers at the time. And we were under the impression that some of that did not exist, yet it was over at Colonel Williams's desk.

So that was accurate at the time. Perhaps I didn't anticipate that follow-up, which was some notion that Colonel Williams was under some obstruction of justice investigation or criminal investigation. And that impression was, certainly, unfortunate.

SENATOR ROBERTSON: Did you hear Mr. Fahy's testimony when he was here, or did you review his testimony before this Committee prior to your testimony?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I heard some of it. I did not read it.

SENATOR ROBERTSON: Well, I think it's a fair characterization to say that Mr. Fahy testified that he was periodically kept aware of what the numbers looked like by Sergeant Gilbert, and that he didn't see written numbers, but that he had had telephone conversations with regard to the existence of numbers that may have been similar to *Soto* at one juncture. It may have been similar to Maryland at another juncture.

If you were in the position, the lawyer that you are -- and I've been very impressed-- If you were in that position, would you have asked to see whatever material was out there and being compiled?

ASSISTANT ATTORNEY GENERAL ZOUBEK: In fairness to Deputy Attorney Fahy, who has served the Department well over the years and certainly has served me well in the State Grand Jury Unit, I don't know the context of each of those particular requests. And I know that when I did show him the blue binder, he advised me that he had not seen those documents before. Other than that, I really don't want to comment.

SENATOR ROBERTSON: All right. Then let me ask the question a different way.

If you were in a position and you were being advised by law enforcement personnel of the existence of statistics in a case that was very sensitive to statistics and contained, from your own description, at least, some obligation to make discovery, even post-judgement, that pertained to matters that had been requested previously, would you have asked to see the statistics?

ASSISTANT ATTORNEY GENERAL ZOUBEK: If it was relative to a period of time in which I thought that there was a discovery obligation, it

would have an expectation of follow-up, but I don't know whether or not what was identified to Mr. Fahy -- what the exact period of time was.

SENATOR ROBERTSON: I have no further questions, Mr. Chairman.

SENATOR GORMLEY: What we're going to do is, Senator Matheussen -- indication Mr. Chertoff wanted to do some follow-up questions. Mr. Matheussen -- Senator Matheussen, excuse me, has waived his time and said what we can do is we can allot that time to Mr. Chertoff now. I think he indicated 10 minutes, which means 20 minutes, I hope, and then we'll take a break.

MR. CHERTOFF: Thank you, Mr. Chairman.

Thank you to all the Senators.

Just to-- Because we're on this subject, I wanted to make sure the record was complete.

There were some questions concerning the issue of consent to search data. And I, at least, thought you were suggesting, perhaps, that it was in the interim report stage in 1999 that everybody first came to understand that consent to search data was important. Now, that's not correct, right?

ASSISTANT ATTORNEY GENERAL ZOUBEK: No. What I was trying to portray was that the approach taken in the interim report -- and I think some of the troopers have testified to this and said that their understanding was the focus should just -- on training should just be on the stop and -- using race as a sole factor, and that the analysis in the interim -- and the policy that was announced in the interim report was a new policy as it relates to the handling of consents.

MR. CHERTOFF: Let's go back to what the state of knowledge was back in 1997. First of all, you would agree with me that consent to search data is particularly instructive when you're examining possible discriminatory practices, correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I've certainly taken that position.

MR. CHERTOFF: And that doesn't mean that it proves it, but it means that it is a useful indicator that you have to go further and look at the problem, correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Correct.

MR. CHERTOFF: All right. Now, let's go back to what was the case relating to the advice that was furnished to the Attorney General in 1997.

Now, I want to make sure you have before you W-27. I think you were asked about that. This is the memo prepared--

ASSISTANT ATTORNEY GENERAL ZOUBEK: I was asked about it, but I don't think I was provided a copy.

MR. CHERTOFF: Okay. We'll give it to you.

ASSISTANT ATTORNEY GENERAL ZOUBEK: Mr. Chertoff, can indulge the Committee? Can I stand up for one half a minute, please?

MR. CHERTOFF: I beg your pardon?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Can I stand up for one half minute?

MR. CHERTOFF: Oh, sure.

ASSISTANT ATTORNEY GENERAL ZOUBEK: I have a back problem. (witness stands)

That's sufficient for the next 20 minutes.

Thank you. (laughter)

MR. CHERTOFF: You can stand up as you'd like anytime.

I want to-- I'm directing your attention to Mr. Rover's memo to Mr. Waugh that was passed on to the Attorney General. And let's go to Page 7, because I want to make sure I understand your position on this.

First of all, I believe you testified that the Attorney General did tell you in anticipation of the hearings in 1999, that he had gotten advice that consent to search issues were not determinative with respect to profiling, right?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes, in that-- In the discussions he had had, the conclusions of the meeting were, there was not racial profiling occurring.

MR. CHERTOFF: All right. So first, let's establish this. He told you in '99 that he remembered there were discussions about the subject matter, right?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes.

MR. CHERTOFF: He didn't just say, "What the heck are you talking about?"

ASSISTANT ATTORNEY GENERAL ZOUBEK: Well, when we were discussing the differential in approach of the report, yes.

MR. CHERTOFF: All right. And he remembered that there was some discussion at a meeting concerning the significance of consent to search numbers, right?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Again, Mr. Chertoff, there's been a lot of focus, obviously, on May 20th, 1997. I did not

know about a specific one meeting that we've had all this focus on. It was the advice that I received. It wasn't, you know, specific as to a May 20th meeting. It was advice that I had previously received.

MR. CHERTOFF: Now, when we talk about the advice, your attention is not directed to the memo prepared by Mr. Rover that contains advice regarding this issue, right?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Correct.

MR. CHERTOFF: Now, you've read the memo, I take it?

ASSISTANT ATTORNEY GENERAL ZOUBEK: No, my attention now is to them.

MR. CHERTOFF: Yeah. Right. I understand. You didn't have this before you were -- at the time in '99.

ASSISTANT ATTORNEY GENERAL ZOUBEK: Not during my discussions.

MR. CHERTOFF: All right. But you were asked some questions about the advice contained in the memo, and you read a portion of it indicating that the consent to search data, according to this memo, is irrelevant to the pending inquiry, because the pending inquiry is related to stops, correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Correct.

MR. CHERTOFF: But that's not to say that the memo indicates that consent to search data is irrelevant to the issue of profiling, right?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Not necessarily. In the four corners of the document?

MR. CHERTOFF: Yeah. Let's look at the document -- the whole document. Doesn't the document make very clear that consent to search data

is very relevant to the issue of profiling and was found to be so in Maryland, where a court order was imposed on the basis of that data?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Relevant to racial profiling, yes, meaning that racial profiling is occurring. And at that time, the New Jersey State Police was taking a position -- or advisers were taking the position that racial profiling was occurring? No.

MR. CHERTOFF: I want to keep-- I want to draw a distinction between two things we sometimes mix up here, I think. One is whether the numbers are relevant to show something. The other is whether it's conclusive proof. We all agree, statistics are not conclusive proof, right?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Right. And relevance is one of the broadest concepts in the law.

MR. CHERTOFF: But we understand that in this area, statistics are not conclusive proof, right?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Correct.

MR. CHERTOFF: But they do establish what lawyers call a prima facie case, which means, basically, it shows that there's something there, and you have to dig deeper in order to find out the answer, right?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I think we've had this discussion before, Mr. Chertoff, in which it may potentially raise issues. Prima facie case, I don't agree with.

MR. CHERTOFF: And it may even shift the burden to explain, in the individual instance, what the basis was for each interaction once you show a statistical pattern.

ASSISTANT ATTORNEY GENERAL ZOUBEK: In litigation, both at the Federal and State level -- that if there's a sufficient showing of statistics identifying a discriminatory pattern, there have been some decisions to say there's a shift of burden.

MR. CHERTOFF: Now, if someone read this document, which they have before -- which embodies certain advice, the document would make it very clear, would it not, that another court had found that the consent to search numbers were a sufficient basis to, in fact, impose a consent -- to approve a consent decree, correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: That's what happened in the Maryland case.

MR. CHERTOFF: And the memo makes that clear, right? The one right in front of you. Page 7. It makes that clear, right?

ASSISTANT ATTORNEY GENERAL ZOUBEK: It's mentioned in the memo. The Maryland case is mentioned in the memo. Which portion are you referring to?

MR. CHERTOFF: Well, Page 7.

ASSISTANT ATTORNEY GENERAL ZOUBEK: All right. I've reviewed about 90,000 pages of documents.

MR. CHERTOFF: Let's leave the page open.

Page 7 of the memo says specifically that the writer anticipates the U.S. DOJ will attempt to follow the same course of action pursued by the plan you see in the Maryland case. It says that, right?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes.

MR. CHERTOFF: So, if you're reading this memo to get advice, you would read that passage, correct? Correct?

Then it goes on to say, "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." Right? Correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: You're reading it well.

MR. CHERTOFF: Is there any doubt in your mind, therefore, that the discussion here makes it clear that consent to search data is certainly relevant and supportive of a finding of selective prosecution, right?

ASSISTANT ATTORNEY GENERAL ZOUBEK: It's relevant. It's not -- of what selective prosecution is in the context of New Jersey -- it's relevant, it's related. I'm not going to agree that it's determined.

MR. CHERTOFF: Now, would you agree with me that the memo-- There's discussion in the memo later that indicates that the author suggests that one ought to limit the scope of the Department of Justice investigation to keep it focused on stops and not to allow it to broaden into the area of consent to search.

ASSISTANT ATTORNEY GENERAL ZOUBEK: I think the document speaks for itself, and I don't dispute your characterization.

MR. CHERTOFF: All right. So, just in terms of understanding the advice contained in the document, we're clear the document doesn't say consent to search data is irrelevant. What it says is that up to now, the Department of

Justice has been limited to stops. And if we limited the stops, we're not going to get into this other area.

ASSISTANT ATTORNEY GENERAL ZOUBEK: No. I think what I read from this memo, Mr. Chertoff, is there was clearly a focus on stops. And even when I talked to Justice Department, they were very much focused on stops. And the decision -- the initial decision made by a trooper-- They are relevant to the initial decision made by a trooper. Are they relevant to inquiries with respect to disparate treatment? Yes.

MR. CHERTOFF: And are they relevant to the issue of selective prosecution? Right?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Conceptually, yes, not necessarily the way it was framed at that time.

MR. CHERTOFF: But putting aside whether--

ASSISTANT ATTORNEY GENERAL ZOUBEK: That's because selective prosecution is not what the Justice Department was focusing on. They were focusing on pattern and practice litigation and what their authority was on their pattern and practice litigation.

MR. CHERTOFF: But from the standpoint of the people responsible under the law to supervise the State Police, would you agree with me that there's an obligation, ultimately, in that Office of the Attorney General, to see to it that the State Police are complying with the law?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Absolutely.

MR. CHERTOFF: And it's not a question of whether someone comes knocking at the door and says, "Here's a problem." If the problem

comes across your desk, you're supposed to attend to it whether or not your adversaries have cottoned onto it, correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: If you're told that there is a problem, I would agree.

MR. CHERTOFF: Also, just again with respect to W-31, which I still think you have in front of you, which is the October 31 draft on this issue of consent searches.

ASSISTANT ATTORNEY GENERAL ZOUBEK: Actually, Mr. Chertoff, I think that was read to me, and if somebody wants to put it up, that's fine.

MR. CHERTOFF: Okay, it's a different one. We'll get it to you.

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yeah, someone read from this before.

MR. CHERTOFF: All right.

Again, just to focus on this to be clear, the memo doesn't say that consent to search information is irrelevant to selective prosecution or selective enforcement. What it says is, consent to search is irrelevant to stops, right?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes, with the requested boundaries of, "the following documents speak for themselves." I haven't read the whole document, and the record is the record.

MR. CHERTOFF: But again, you'll agree with me that if the issue you're focused on is, how do you -- what do you have to turn over in response to a request, and you're trying to narrow the request, that is a different question from asking whether, as a supervisor, there's an obligation to correct a problem that becomes manifest on its face, right?

ASSISTANT ATTORNEY GENERAL ZOUBEK: They are different analyses.

MR. CHERTOFF: All right.

Now, let me just ask you to turn to other topics very briefly. One, you were asked about, again, the issue of preparation with respect to the hearings at the -- both the racial profiling hearing on the 26th and the subsequent confirmation hearings.

Now, is it fair to say that there was a general understanding in the preparation sessions that there would be some focus on why did it take so long to address the issue of racial profiling when there was litigation going back at least as far back as '96?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes. I think one of the primary focuses of the preparation was what happened in *Soto*, what happened after *Soto*, why wasn't there a response to *Soto*.

MR. CHERTOFF: Now, you indicated that you were of the belief at the time of the hearing that at least there was some portion of information that had not gotten from the State Police to the Attorney General's Office, right?

ASSISTANT ATTORNEY GENERAL ZOUBEK: And I'm still operating under that belief.

MR. CHERTOFF: Now, of course, you've heard Sergeant Gilbert indicate that he had told Mr. Rover about the substance of this statistical stuff, right?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes, but at the time I was operating on the following belief, that there were discussions with not a low-level person to a low-level person, but there was a discussion with

high-level requests over at the State Police for certain information, and that information was not provided, and the record was that it had not been provided.

MR. CHERTOFF: So, in your mind, certainly, you think the '97 and '98 data has not been provided. That's fair to say, right?

ASSISTANT ATTORNEY GENERAL ZOUBEK: And what I mean by '97 and '98 data, which is the compilations that came from Moorestown and Cranbury, is what I'm referring to.

MR. CHERTOFF: However, you clearly knew by April 26th, because you indicated you'd looked at the file, that there was data that had been collected and accumulated in '95 and '96, right?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes.

MR. CHERTOFF: And that's, in fact, what you went to Attorney General Verniero and told him when you said you found these documents in Rover's file?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes, but I-- Yes and no. I did find documents in the file. You just used '95 and '96. I think my deposition-- Now that we're getting-- I'm going to be the record setter on length of time here.

I think my deposition reflected that when I went back and I identified the documents, which were July of '97 documents involving Gilbert, that is what I found in Rover's files, and I think I'm on record to identify those documents.

MR. CHERTOFF: Well, which-- When you went in to have this conversation with the Attorney General, you told him clearly that there were documents predating '98 that had been found in Mr. Rover's files, right?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I believe I told him that there were documents I had found in Rover's files that went to an earlier period of time.

MR. CHERTOFF: Okay.

And Rover, obviously, was the designated person in the Office of the Attorney General to deal with the Department of Justice, correct, as you understood it?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I think that's certainly well established at this point.

MR. CHERTOFF: And you knew that at the time, right?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes.

MR. CHERTOFF: And then you also had focused Mr. Verniero's attention on, again, the fact that there had been, at some point, whether in a meeting or a series of meetings, advice and discussion concerning numbers relating to consent to search, right?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Right. Respectfully, I think I've answered that question 100 times.

MR. CHERTOFF: So, in terms of the point of going into the meeting, is it fair to say that there had been discussion and attention focused on the issue of when the Office of the Attorney General was aware that there were numbers and statistics available with respect to the issue of profiling?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I think the focus of the discussion was the Attorney General's response to the issue of why there wasn't action on the issue of racial profiling earlier.

MR. CHERTOFF: That wasn't exactly my question. So let me see if you can answer my question.

My question is: You'll agree, before the meeting began, before the hearings began, there had been some discussion focused upon the fact that there had been statistics and numbers accumulated by the State Police and in the hands of the Office of the Attorney General prior to 1998?

ASSISTANT ATTORNEY GENERAL ZOUBEK: That I had had some discussions with the Attorney General on that subject matter?

MR. CHERTOFF: Yes.

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes, and just for the record, I will stand by my prior answers to those.

MR. CHERTOFF: Okay, and I think it's consistent with that.

So that it would be-- In your mind, certainly, you would not-- Well, I'll withdraw the question.

Let me come to this one last issue. We've had a lot of questions about this issue of the State Police withholding documents and how Page 23 got watered-down. And I think you testified previously and I'm not going to make you repeat it, correct me if I'm wrong, that after the April 26th profiling hearings, he never did any further investigation with respect to the issue of withholding?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Not in terms of investigative steps.

MR. CHERTOFF: Now, here's my question: Certainly, when this came to you in March of '99 and before you looked at Rover's files, you became aware of the fact that there was a serious issue about whether all the

information being collected by the State Police was getting transmitted to the Office of the Attorney General. Is that fair to say?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Correct.

MR. CHERTOFF: You knew, from Mr. Rover's memo, that there were documents that had been withheld from the Department of Justice, correct? Correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Correct.

MR. CHERTOFF: Mr. Rover told you he'd relied upon his superiors to make that decision, correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I stand by my prior testimony.

MR. CHERTOFF: And your prior testimony was that he'd mentioned Mr. Waugh and said to some degree the Attorney General were involved in that decision, right?

ASSISTANT ATTORNEY GENERAL ZOUBEK: That was his chain.

MR. CHERTOFF: Right

Now, I take it from the Attorney General, your heard is somewhat different or you got a somewhat different impression, which is that he was not involved in this at all. Is that fair to say? Or he didn't remember it, that's maybe better.

ASSISTANT ATTORNEY GENERAL ZOUBEK: I apologize, I missed that first second.

MR. CHERTOFF: All right. Let me step back.

In your conversations with the Attorney General at this same time, which is March and April of '99, is it fair to say he gave you the impression he didn't remember being involved in these issues about whether particular documents ought to be turned over?

ASSISTANT ATTORNEY GENERAL ZOUBEK: All I can say is that I brought the blue binder to his attention. I'm on record in saying what his response was, and that's my recollection of the discussions I had with him on that subject.

MR. CHERTOFF: In the period of time, then, between March 15th and April 26th, did you ever sit down with Mr. Rover, who was, I think at that point in time, an Assistant Attorney General of the State of New Jersey, and ask him, "What gives here? How is it that you can be in possession of critical documents and somehow they don't go anywhere? They don't go to the Department of Justice. They don't go up the chain?"

ASSISTANT ATTORNEY GENERAL ZOUBEK: I think I'm on record as already describing my dissatisfaction with the way in which the document collection and production had occurred with the Justice Department, that I had received some briefings from Mr. Rover. I found them less than adequate. I reassigned the matter, and based upon my impression, was that Mr. Rover was to provide me, in that February 26th memo, with the status of the documents and the issues.

That's what I had considered his providing me that information at the time.

MR. CHERTOFF: But we're wandering away from my question, because I was focused on the period after February 26th until April 20th, and

let me try to frame it -- frame for you what my real question -- what my question is here.

We have heard about trooper falsification and troopers making mistakes with documents, and we're going to hear more about that later, but it's hard to escape the sense that there was an issue right before you in the Office of the Attorney General involving a senior official at the Department of Law and Public Safety -- a lawyer -- who is telling you one thing concerning how documents are being handled that appears to be somewhat inconsistent with other things. He's in a position of enormous responsibility. He's still in a position of enormous responsibility.

My question is: Isn't -- do you feel some impulse to get to the bottom of whether Mr. Rover was derelict or whether someone else was derelict, whether in fact he did everything under orders or whether he did everything as a freelancer? Isn't this something that you needed to get to the bottom of before April 26th when you came here to testify?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I believe I took steps to inquire with respect to what had happened or not happened with respect to that production.

If there was to have been any further discussion that I had with Mr. Rover, again, my evaluation was, there was partly this issue between the AG's Office and the State Police, and I was focused on the reforms and moving forward with respect to that particular report.

But what I had also concluded at that time was, I could not recreate what the Justice Department's requests were, because so many of them were oral. And I viewed that as being tied into the issue of whether there was any

obstruction of justice or knowing withholding, dependent upon what the level of the requests were.

MR. CHERTOFF: But forget the-- Forget the Department of Justice. How about just the way the Office of the Attorney General in the State of New Jersey works. You could recreate whether Mr. Rover was following orders when he didn't -- when he kept certain things buried in the file or whether he was defying orders.

ASSISTANT ATTORNEY GENERAL ZOUBEK: I reached a point in time, and I can't say exactly when I reached that point in time, that I felt that this production problem was a result of the way in which this was -- organized is not the appropriate word -- the way in which the assignments occurred and some of the supervision occurred on this, and I moved forward with trying to deal with that problem.

And I will tell you one of the other factors, Mr. Chertoff, that came involved in-- What happened at that time was, Colonel Williams was not there any longer. I looked in, I saw there was disputes as to who had sent and who hadn't sent issues. I looked at that from a production problem, but I did not get to a point in time where I thought that warranted any, if you will, investigation in terms of a criminal sense.

MR. CHERTOFF: I'm not talking about criminal, just, you know-- You said you came to the conclusion, because of the assignment and supervision problems, and I think I'm quoting you correctly, that you, "really couldn't go any further in terms of Mr. Rover's response."

Well, who was responsible for supervising Mr. Rover? Who gave him the assignment? Where, at some level, was there final responsibility for this?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I don't think I concluded at that point in time-- I don't think there was a level of handling it by Mr. Rover, and to the extent to which supervision is reflective of the conduct of someone underneath them, that it had been handled in the best way that it could have in terms of how it was done. But I didn't reach a conclusion, ultimately, of that it was a nefarious act on Mr. Rover's part.

I did not go back and interview every single person, Mr. Chertoff. That was just a determination I made at that time.

MR. CHERTOFF: Let me ask you one last question: As will presumably come at some point in time, someone sits down with troopers who have been accused, or there are allegations of troopers having mishandled or misreported information, and someone is saying, "We're going to thoroughly investigate you. We've completed an investigation, and we want to take action." What are you going to say to troopers who say, "How come it's the troopers whose mishandling of information gets thoroughly investigated, but the bosses, somehow the investigation never gets completed?" What are you going to say to those troopers?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I'm going to say to the troopers that the investigation that occurred at that point in time was that there was fault on both sides of that, and that if we are going to spend this time having it be whether it's the AG's Office's fault or the troopers' fault, we have

a public to serve here. Let's move forward as a State. Let's solve this problem, and let's protect the public together. That's what I would say.

MR. CHERTOFF: What are you going to do when the troopers ask for the same consideration?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I believe--

MR. CHERTOFF: To have all forgiven and move forward?

ASSISTANT ATTORNEY GENERAL ZOUBEK: What was that?

MR. CHERTOFF: What are you going to do when the troopers say -- they ask for the same consideration, let everything be forgiven in the past, and let's move forward? Are they going to get that attitude as well?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I don't understand. I really don't understand your question.

MR. CHERTOFF: When the troopers look at you-- When some trooper comes in and looks you in the eye, if it ever happens, and says, "Look, I heard you at a hearing saying it was a mess, fault on both sides, let's put it behind us and move forward," and the trooper says, "Well, I've got a case against me now based on my mishandling data, how come -- do I get the same treatment?" What are you going to say to them?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Mr. Chertoff, I think it's a different-- There's a qualitative difference between an issue in terms of confusion as to production of information and a substantial qualitative difference as to issues in terms of lying on a form and your conduct with motorists.

MR. CHERTOFF: I have nothing further.

SENATOR GORMLEY: We will take a half-hour break.

(RECESS)

AFTER RECESS:

SENATOR GORMLEY: Senator Lynch.

SENATOR LYNCH: Mr. Zoubek, you were hired by the New Jersey Attorney General's Office in the summer of 1997?

ASSISTANT ATTORNEY GENERAL ZOUBEK: That's correct.

SENATOR LYNCH: Were you interviewed by Peter Verniero prior to your hiring?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes, sometime in April or May of 1997.

SENATOR LYNCH: And did he tell you what he was looking for particularly in having you come on board?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes.

SENATOR LYNCH: And what was that?

ASSISTANT ATTORNEY GENERAL ZOUBEK: He told me that he was principally interested in having me to come in to work on health-care fraud and insurance issues, but he wanted me to be available on criminal justice issues generally.

SENATOR LYNCH: Criminal justice issues generally?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Correct.

SENATOR LYNCH: What was your previous experience prior to the summer of 1997 with criminal justice issues?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I had spent 10 years in the U.S. Attorney's Office for the District of New Jersey. I served as an Assistant U.S. Attorney from 1987 to 1992, and then I became Deputy Chief of the Criminal Division with responsibilities for South Jersey.

SENATOR LYNCH: What did those responsibilities include when you say South Jersey?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I spent time in both the Trenton and Camden offices of the United States Attorney's Office. I was involved in supervising Assistant U.S. Attorneys, involved in their work intake of criminal cases, and also certain special projects of law enforcement task forces that I might be requested to be involved with.

SENATOR LYNCH: Any of those cases involve drug, contraband, guns, etc.?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Certainly. There was a substantial number of Federal drug cases that we did out of the Camden office in particular.

SENATOR LYNCH: Did you develop a familiarity with New Jersey search and seizure law during that time frame?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Actually, during the time frame that I was in the U.S. Attorney's Office, I was principally familiar with Federal precedent, and then when I came to the Attorney General's Office, became more familiar with State precedent.

SENATOR LYNCH: But did you have any familiarity with New Jersey search and seizure law prior to coming to the Attorney General's Office?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Generally so, but not in depth.

SENATOR LYNCH: When did you first learn, in terms of your professional career, about a consent to search procedure?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I think that would have been in one of the motions to suppress that occurred in a drug case while I was in the U.S. Attorney's Office, which probably would have been early on in my tenure.

SENATOR LYNCH: Would that have been a consent to search involving Federal law enforcement officials?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes.

SENATOR LYNCH: Today, do you know of any New Jersey law enforcement officials, other than the State Police and representatives of the investigative arm of the Attorney General's Office, that use the consent to search procedure?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I believe that some municipalities may have become familiar with that, but those are among the agencies that use that, Senator.

SENATOR LYNCH: Generally speaking, most municipalities and county police operations don't use the consent to search form, do they?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I have been advised that some do, Senator, but in our 573 municipalities we have a wide range of departments. I think some of the larger departments may have, but I'm not entirely certain, Senator.

SENATOR LYNCH: So when did you first become aware that there was a significant number of consent to searches involving State Police in New Jersey, both on the Turnpike or the interstates?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I'm sorry?

SENATOR LYNCH: What point in time -- I assume it was subsequent to your coming to the New Jersey Attorney General's Office -- that you learned that there was a common practice of consent to search by the New Jersey State Police?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I knew it was used. I don't know if it was necessarily a common practice. I knew it was a practice that was available, certainly, when I was in the U.S. Attorney's Office. There were cases that occurred out on the Turnpike that were adopted federally, if you will, in which there were issues raised in those cases as to whether or not the motorist had given effective consent to search.

SENATOR LYNCH: Would they have involved New Jersey law or Federal law?

ASSISTANT ATTORNEY GENERAL ZOUBEK: They would have been decided on Federal law.

SENATOR LYNCH: But they were interdictions by New Jersey police -- New Jersey law enforcement officials?

ASSISTANT ATTORNEY GENERAL ZOUBEK: New Jersey State Troopers.

SENATOR LYNCH: So, because it was in the Federal District Court, you applied the Federal search and seizure law?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Correct.

SENATOR LYNCH: But in that context, you did have some familiarity with the New Jersey search and seizure law?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I had familiarity with New Jersey search and seizures that the operative decisions are being made on Federal precedent, and we wouldn't-- We'd be typically citing U.S. District Court -- U. S. Court of Appeals cases and Supreme Court cases.

SENATOR LYNCH: Were there any differences in New Jersey search and seizure law and the Federal search and seizure law that you became familiar with, starting in 1992, of significance?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Generally, they are similar. There are some additional requirements at the State level.

SENATOR LYNCH: So there was a Supreme Court decision in New Jersey that sort of raised the standard for probable cause here as opposed to the Federal system, correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Generally correct.

SENATOR LYNCH: And do you know when that decision occurred?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Sitting here right now, Senator, I can't cite that for you.

SENATOR LYNCH: But it certainly predated 1992?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I'll take a representation.

SENATOR LYNCH: It certainly predated your coming to the Attorney General's Office in '97, correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Certainly.

SENATOR LYNCH: Okay.

Do you know-- Have you ever, to this day, studied the history of the development of consent to search procedures in New Jersey?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Not specifically, other than some of the work that was done in the State Police Review Team, but I haven't gone out and done a long-term historical analysis of that, Senator.

SENATOR LYNCH: Well, do you know, for instance, that it was an outgrowth of the exclusionary rule of search and seizure?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Certainly, I think that was an outgrowth on the Federal level as well.

SENATOR LYNCH: And do you know if there was an outgrowth of the fact that the law enforcement officials in New Jersey were having difficulty demonstrating probable cause on the motions to suppress?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I'll take your representation on that, Senator.

SENATOR LYNCH: Do you know that?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I don't specifically sit here-- As I said, I didn't do an historical analysis of the development of the doctrine. I dealt with the doctrine as it was when I dealt with the issue.

SENATOR LYNCH: Have you heard that? That that's where it emanates from?

ASSISTANT ATTORNEY GENERAL ZOUBEK: It would be logical.

SENATOR LYNCH: Did you track the history of the evolution of the consent to search forms utilized by the State Police?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I believe that there was some work done in the State Police Review Team that looked at the policies that were put in place in 1990, but I can't say that we went back before that, Senator.

SENATOR LYNCH: Did you ever hear that pre-*Soto* lawsuit, that it was common practice for the State Police to tear up consent to search forms where they had negative findings from that consent to search?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I didn't specifically hear that. I knew that there had been a history of documentation problems.

SENATOR LYNCH: When you say you didn't specifically hear that, did you hear something along those lines?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Not specifically. I knew that there were documentation problems historically.

SENATOR LYNCH: You indicated earlier that the *Soto* case was -- the evidence surrounded stops, correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Generally, I believe.

SENATOR LYNCH: Were you aware that the defense in *Soto* had requested consent to search data in *Soto*, and ultimately, moved in court for that data, and that that was resisted by the prosecutor in the Attorney General's Office?

ASSISTANT ATTORNEY GENERAL ZOUBEK: It's my understanding based upon the testimony I've read in this matter, but I didn't have any contemporaneous knowledge of that.

SENATOR LYNCH: Can I show you SJC-11? Do you have that document?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Thank you.

SENATOR LYNCH: The first page of that document, SJC-11, purports it is a September 30, 1993, letter to Brent Hopkins, Assistant Prosecutor of the Prosecutor's Office in Woodbury, from a Fred Last, who was, I guess, from the Public Defender's operation.

Have you seen this letter before?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Senator, I may have. I've seen a number of the documents that have been identified in this case, and I have reviewed some of the *Soto* documents, but I'm not familiar chapter and verse with all of the requests that occurred in that case.

SENATOR LYNCH: Okay.

SJC-11 is dated September 30, 1993, and it is reference to the Turnpike cases, correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: That's correct.

SENATOR LYNCH: And the second paragraph says that, "New Jersey State Police have, for some time, disseminated and completed a consent to search data form, which includes, among other things, the following information for consent to searches carried out by New Jersey State Police personnel: time, date, and place of the contact; race and state of resident of the

consenter and others physically present; whether consent was ever withdrawn; and the reason for the initial contact; and the seeking of consent.

“These forms were to be completed whether or not any contraband was found and were to be retrieved by troopers other than those conducting the search. The data on these forms would support the defense position that consents to search were disproportionately solicited from members of the African-American race.

“Please forward me copies of all consent to search data forms for the period covered by the Turnpike challenge and completed by Troop D.”

Is that what it says?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I agree that that’s what it says.

SENATOR LYNCH: And on Page 3 of that document is a response letter from Gloucester County Prosecutor Brent Hopkins, who I assume was working in conjunction with Mr. Fahy and others representing the Attorney General’s Office.

Is that correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Ultimately, yes. I don’t know if at this point in time, as I testified to previously, Mr. Fahy got involved just before the hearings began in that case. And so I’m not sure whether or not this was the period of time in which the Prosecutor’s Office was handling it on its own, Senator.

SENATOR LYNCH: You heard testimony from Mr. Buckman, did you not, that they had moved for these documents as well, and it was represented that they weren’t readily available?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I've been made aware of his testimony.

SENATOR LYNCH: And that response from Prosecutor Hopkins to Mr. Last, dated October 22nd, 1993, says, "In response to your letter of September 30, 1993, requesting additional discovery, please be advised at this point in time I must object to your request and will not be providing you with the materials you seek. I fail to see the relevance of the materials that you have requested and also feel that the retrieval and production of such materials would truly be overburdensome to the State, as well as unduly time consuming."

Correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I think you've read it correctly.

SENATOR LYNCH: All right. Now, in retrospect, you have determined, have you not, that based upon Sergeant Gilbert's work, and his testimony, that these documents were readily retrievable, were they not?

ASSISTANT ATTORNEY GENERAL ZOUBEK: There was some information with respect to consents that was retrievable in 1999. I can't sit here and say what the status was on October 22nd, 1993, Senator.

SENATOR LYNCH: Well, when-- You now know that Sergeant Gilbert, when he went back looking for data from 1995, it was readily retrievable, relative to consent to search, correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I'm aware, obviously, that Sergeant Gilbert, at some point in time, collected consent to search data for '95 and '96 and maybe sometime in 1994. But again, Senator -- and I'd be happy to research this further -- I don't know what the context of this

request was. I don't know whether it was litigated before the court and whether there was any ruling with respect to that. If the record's not clear on that, I will be happy to--

SENATOR LYNCH: The record seems to be clear that all of this data on consent to search forms is kept at State Police headquarters during this time period, correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Any consent to search data that would have existed regarding the State Police would have been at State Police. I do not know, sitting here today, what the nature and status and collection was of that data in 1993.

SENATOR LYNCH: Well, as part of your duties and responsibilities, when given them, for the review team and going forward, didn't you go back and determine how one could marshal all the data -- all the consent to search forms from the early '90s right up until the present time?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I think I made a determination to look from the mid-'90s forward, particularly close and proximate to the *Soto* decision. I did not go back to 1993, so I don't have any information to provide you on that. I would if I did.

SENATOR LYNCH: And by the mid-'90s, you mean 1995?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I believe that's correct.

SENATOR LYNCH: And you had no difficulty retrieving those forms, did you?

ASSISTANT ATTORNEY GENERAL ZOUBEK: It took a period of time -- collected in Sergeant Gilbert's, because he had collected some of that data.

SENATOR LYNCH: How much of a period of time--

ASSISTANT ATTORNEY GENERAL ZOUBEK: I mean, Senator--

SENATOR LYNCH: --a month, two months?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I will stipulate to you that there were documents. To the extent to which they existed at the State Police -- they arguably could have been collected. I just was not here in 1993.

SENATOR LYNCH: As part of the review team, did you ever request of the State Police to produce all of the consent to search forms for 1995, '96, '97, '98?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I requested racial profiling data. I don't recall if there was a specific request for all the consents. I was looking for audits and compilations up front so that I could make an assessment as to what further we needed to do.

SENATOR LYNCH: Wasn't it extremely relevant, by the time you took over this process in 1999, to understand what was going on with consent to search forms?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes, but again, Senator, not necessarily back to 1993.

SENATOR LYNCH: No, but I'm talking about from 1995.

ASSISTANT ATTORNEY GENERAL ZOUBEK: I apologize, but I thought I already agreed with you on that.

SENATOR LYNCH: No, no. You're not answering this question. Did you retrieve, as part of this review under your direction-- Did they retrieve all the consent to search forms, starting with 1995 up to 1999, as part of the State Police review and the racial profiling review?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I don't believe, necessarily, that every single consent to search was collected by that point in time. I don't know the full answer to that.

SENATOR LYNCH: Was it ever requested?

ASSISTANT ATTORNEY GENERAL ZOUBEK: The consents and audit compilations were requested. I don't know, Senator, whether or not every single consent form was requested for that period of time.

SENATOR LYNCH: You have no reason to believe that the records kept on consent to search were any different in 1993 than they were 1995, do you?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Senator, I don't have a factual basis for 1993 to make that comparison, in fairness.

SENATOR LYNCH: Okay. Suffice it to say that beginning with 1995, which was the area that you became concerned with forward, there was no difficulty in retrieving these consent to search forms or any audits of those forms, was there?

ASSISTANT ATTORNEY GENERAL ZOUBEK: After I requested them, I received audits and compilations reasonably forthwith from the State Police.

SENATOR LYNCH: Did you ever retrieve anything other than what was in Rover's boxes and the LoGalbo data involving these audits of consent to search?

ASSISTANT ATTORNEY GENERAL ZOUBEK: At what point in time, sir? There's not--

SENATOR LYNCH: For 1999 and-- Before May of 1999.

ASSISTANT ATTORNEY GENERAL ZOUBEK: Did I obtain what, Senator?

SENATOR LYNCH: Did you ever seek anything other than what was in the Rover files and what was in the LoGalbo files prior to May of 1999 involving consent to search?

ASSISTANT ATTORNEY GENERAL ZOUBEK: To the extent to which I may have requested to ensure that whatever the Justice Department had requested was provided, I believe that would have been in the ambit of the assignment that I gave to ensure whatever Justice had required -- had requested that was consent was provided. So, yes, there was some analysis that I had expected to be done to ensure that went to the Justice Department, which would have covered the '95 to '96 period, as it related to consents. So, yes to that.

SENATOR LYNCH: By April of 1999, you knew that consent to search was a significant issue insofar as the racial profiling issue was concerned, did you not?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes.

SENATOR LYNCH: When did you first become aware of that?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I think that during the course of 1998--

Well, let me step back. I knew that one of the areas of discretion involved in drug interdiction was the consent to search. And I had known that for quite some time.

SENATOR LYNCH: And this was--

ASSISTANT ATTORNEY GENERAL ZOUBEK: So I brought that experience with me from the U.S. Attorney's Office to the Attorney General's Office.

SENATOR LYNCH: When did you first become aware of the Department of Justice inquiry?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I believe, Senator, that it was sometime either around the time of the shooting or after the shooting. I think I've testified previously that I may have been aware that there was an inquiry investigation, but I didn't have any -- a familiarity with it other than that.

SENATOR LYNCH: Because you weren't brought in and given any responsibility in that regard, correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Not at that time.

SENATOR LYNCH: Not until February of 1999.

ASSISTANT ATTORNEY GENERAL ZOUBEK: Correct.

SENATOR LYNCH: And how did you become aware of the Department of Justice inquiry sometime after the shooting in 1998?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I don't recall whether I heard that from one of the members of the OAG staff, the Attorney General, or the Colonel, or one of the Lieutenant Colonels. I'm not sure.

SENATOR LYNCH: And what was your title then in the middle of 1998?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I was the Director of the Division of Criminal Justice.

SENATOR LYNCH: In that regard, did it pique your interest that this might be something significant to you in your capacity as Director of the Division of Criminal Justice?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I don't think I was aware enough of what it entailed to be able to make that connection, so--

SENATOR LYNCH: Or did you make an inquiry of the Attorney General or his executive assistant or anyone else when you first learned of this Department of Justice inquiry?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Other than being generally aware of it, I don't recall any substantive discussions as to what that investigation entailed.

SENATOR LYNCH: Didn't it become significant to you, as the Director the Division of Criminal Justice, as to what it was about?

ASSISTANT ATTORNEY GENERAL ZOUBEK: As time progressed it did. But at that point in time, it was a matter as it related to the State Police specifically, and not necessarily in the purview of the Division of Criminal Justice.

SENATOR LYNCH: Did you ask who was handling it?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I did not.

SENATOR LYNCH: You knew that no one in the Division of Criminal Justice was handling it, correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Correct.

SENATOR LYNCH: Didn't that seem odd to you?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Not necessarily, Senator, because I think the record reflects, if you go back and look in mid-1998 to the end of 1998, there was little, if any, activity in the Justice Department investigation.

SENATOR LYNCH: At least that we have in this record.

ASSISTANT ATTORNEY GENERAL ZOUBEK: The record, as I am aware, reflects that there was little, if any, activity from the Justice Department from the spring of 1998 through the end of 1998 that would have caused any additional trigger or focus on that that might have been brought to my attention.

SENATOR LYNCH: You now know, however, from reviewing the Rover file, that he was sending data to the Department of Justice over and over in 1998.

ASSISTANT ATTORNEY GENERAL ZOUBEK: I know that he was sending data for a period of time. I don't know how long that goes into 1998.

SENATOR LYNCH: And that he may have, on maybe 15 or 20 occasions, sent data to the Department of Justice in 1998, correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Again, I don't know exactly the times that he sent the data, but--

SENATOR LYNCH: We have referred to -- or at least I have referred repeatedly to what is our 20 -- November 5, 1997 letter from George Rover to Mark Posner at the Department of Justice relative to--

ASSISTANT ATTORNEY GENERAL ZOUBEK: Which number is that, Senator?

SENATOR LYNCH: --consent to search--

R-20.

ASSISTANT ATTORNEY GENERAL ZOUBEK: I have it now. Yes.

SENATOR LYNCH: You certainly weren't aware of that document when it was sent out, were you?

ASSISTANT ATTORNEY GENERAL ZOUBEK: No.

SENATOR LYNCH: And you heard the testimony that that document was prepared by Rover and Waugh and that Attorney General Verniero was made privy to it, correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I was present while -- for a period of time -- Mr. Waugh's -- Judge Waugh's testimony, so I became familiar with it.

SENATOR LYNCH: You never read this letter before?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I believe I may have seen it at some point regarding the Justice Department review.

SENATOR LYNCH: Had you seen this letter on November 5, 1997, would you have readily appreciated that it was a misdescription of what New Jersey consent to search law is?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I would hope so.

SENATOR LYNCH: It's that evident, isn't it?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Well, I think the portion, with respect to probable cause -- for a consent to search is inaccurate.

It's been established it's inaccurate. And I might not have caught it, but I would have hoped I would have.

SENATOR LYNCH: Well, this letter is attempting, is it not, to demonstrate to the Department of Justice that they have -- there shouldn't be inquiry about New Jersey consent to search data, that it was beyond the scope of what their inquiry should be? Is that not correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: If I can, with the indulgence of the Committee-- The letter is a letter, Senator. If there's any portion of it you want to address or you want me to read, I'll--

SENATOR LYNCH: Well, at the end of the first paragraph, it says, "It has been our understanding that your inquiry was a limited one, which includes other states in addition to New Jersey, concerning the initial stop of motorists by law enforcement officers," correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Correct.

SENATOR LYNCH: Back to where we were at in *Soto*, correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Correct.

SENATOR LYNCH: And then there's a misdescription of New Jersey law and consent to search followed by an olive branch of, "Well, we'll cooperate with you in getting forms," correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Correct.

SENATOR LYNCH: We knew-- You knew in November of 1997, did you not, that consent to search was a significant issue in racial profiling in New Jersey? An issue to be-- Let me strike that.

You knew by -- even though you had not been made privy to the Department of Justice inquiry in November of 1997, had you been asked that

consent to search would be a significant issue to be looked at in terms of determining whether there was selective prosecution, correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Senator, I was not involved in the issue in November of 1997. I have previously testified that, conceptually, one of our approaches was a consent to search -- was something that needed to be focused on.

SENATOR LYNCH: That's not the issue that I asked you. I asked you if you knew in November of '97 yourself whether a consent to search was a significant issue in New Jersey as it relates to a determination on selective enforcement.

ASSISTANT ATTORNEY GENERAL ZOUBEK: I can't say that I knew that specifically. Again, with the caveat that I came to the office with the experience that I did, but I can't say that I was focused on that in November of 1997.

SENATOR LYNCH: But as a professional prosecutor, with the vast experience you had in the U.S. Attorney's Office, if you're looking at selective enforcement, it's much more important to know who's being searched than who's being stopped, isn't it?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Not necessarily, Senator.

SENATOR LYNCH: Well, where are people's rights trampled on, when it comes to searching or when it comes to stopping?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I think if somebody's being stopped inappropriately solely because of their race, I think

their rights are being trampled upon. I also think their rights are being trampled upon if race is used during a search.

SENATOR LYNCH: But which is a more significant invasion of one's rights?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I think we're talking relative terms. I'm not going to qualify whether or not stopping somebody solely for their race -- or versus using their race during the course of a consent to search-- I think they're both inappropriate, and I'm not going to qualify between the two.

SENATOR LYNCH: However, the statistical data that you've seen since February of 1999 demonstrates clearly, does it not, that the percentage of motorists who are the victims of a consent to search practice that are minorities -- or exceeds the percentage of minorities that are stopped relative to nonminorities, correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: That's correct. But that wasn't your question before, Senator. You asked me--

SENATOR LYNCH: Well, that's--

ASSISTANT ATTORNEY GENERAL ZOUBEK: --the relative -- to judge the relative harm. And I don't think you can. I mean, they're both harmful.

SENATOR LYNCH: But it's also clear that the disparity between those who are searched through a consent to search procedure from those who are stopped on a racial basis is significant, is it not?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes. That's what was said in the interim report, and I agree with that today.

SENATOR LYNCH: And as we speak, the data that has come back to you in your capacity as first assistant that you're aware of through these review teams -- the data on the southern end of the Turnpike -- Cranbury and Moorestown -- on consent to search remained pretty much the same as it did before, correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Remained similar.

SENATOR LYNCH: When did you first become aware of the now infamous incident that occurred as part of the Camden Initiative in the spring of 1996 where Governor Whitman illegally searched a 15-year-old Afro-American?

ASSISTANT ATTORNEY GENERAL ZOUBEK: At some point in time in which it was -- as reported, certainly not anywhere near contemporaneous to the event. I was in the-- That's my answer.

SENATOR LYNCH: You never heard about it in 1997?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I'm sorry, I didn't think it occurred in 1997.

SENATOR LYNCH: No, it occurred in the spring of 1996. Did you hear about it in 1997 when you came to the Attorney General's Office?

ASSISTANT ATTORNEY GENERAL ZOUBEK: No.

SENATOR LYNCH: Did you hear about it in 1998?

ASSISTANT ATTORNEY GENERAL ZOUBEK: No.

SENATOR LYNCH: Did you hear about it in 1999?

ASSISTANT ATTORNEY GENERAL ZOUBEK: At some point, yes.

SENATOR LYNCH: In what context?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I think that there was an-- I think there was an allegation -- report -- whether it was in litigation or on the newspaper, that some photo like that existed.

SENATOR LYNCH: My understanding is that occurred in the year 2000 -- that it went into the press. Are you aware of it being out earlier than the year 2000?

ASSISTANT ATTORNEY GENERAL ZOUBEK: No.

SENATOR LYNCH: You never heard anybody discuss it internally as to the existence of a photograph in the State Police files of the Governor frisking a young Afro-American outside of Whitman Park as part of the Camden Initiative in the spring of 1996?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I'm sorry, I got lost in the time frame you're asking me that question.

SENATOR LYNCH: Did you ever hear anybody talk about the fact that they believed that this photograph was still possessed by members of the State Police or in the State Police files in the year 1998 or 1999?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I said, not 1998 or 1999. Sometime around -- shortly before it was reported into the press or around the time it was reported to the press in the year 2000.

SENATOR LYNCH: And you learned about it before it was in the press because there was some action taken by the Attorney General's Office to try to retrieve this photograph, correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I learned about it first from either fact or that the rumor was developing and there was some inquiry with respect to it.

SENATOR LYNCH: And the Office of the Attorney General took some action regarding the State Police to retrieve this documentation?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes. In the context of--

SENATOR LYNCH: What was that action?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I believe that there was a request or a subpoena in litigation for that, and I believe that the Division of Law contacted and obtained a copy.

SENATOR LYNCH: Is it a fact that the Division of Law attempted to subpoena the original of it?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Senator, I'm not sure whether-- I thought it was that there was a subpoena or request by another party in litigation that then resulted in the inquiry to the State Police, "Do you have it, and where is it?"

SENATOR LYNCH: What litigation was that?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I believe it was, and I can-- I believe it was in some of the unemployment litigation that we might have involving a State Trooper.

SENATOR LYNCH: When you first heard about this photograph and the underlying fact that the Governor had illegally searched the 15-year-old Afro-American male in the spring of 1996, did you inquire as to how that could have occurred and who gave her the advice that this would be appropriate?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Well, I think, Senator, I heard about the-- I heard about the photograph. And then during the course of the summer, I had no knowledge, with respect to it, there was some inquiry as to what had taken place.

SENATOR LYNCH: Didn't it trouble you that no one having any familiarity with the law advised the Governor that this would be an invasion of someone's constitutional rights and that she had no color of right as a law enforcement officer to search anyone? Did it occur to you that that was a problem when you learned about this?

ASSISTANT ATTORNEY GENERAL ZOUBEK: During the course of my learning about it-- I certainly don't disagree with the position that it was inappropriate for the Governor to do that.

SENATOR LYNCH: And the date of this was sometime between March and-- I represent to you that the date of this occurrence as part of the Camden Initiative is somewhere between March and May of 1996. And in that context, do you recall what was the date of the *Soto* decision?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I believe it was March 1996.

I do have some contemporaneous information as to what was going on in Camden at the time.

SENATOR LYNCH: I understand that, but I'm talking about-- You understand, of course, do you not, that what the Governor did was unconstitutional?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I said it was inappropriate.

SENATOR LYNCH: Was it unconstitutional invasion of this young man's rights, was it not?

ASSISTANT ATTORNEY GENERAL ZOUBEK: It was inappropriate because they didn't understand that there would be a law enforcement reason for that at the time.

SENATOR LYNCH: And since it was not appropriate, and since the Governor had no credentials as a law enforcement officer to search, whether there was probable cause or not, this really rises to an assault, does it not?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Senator, are these the racial profiling hearings? I'm not going to comment on that.

SENATOR LYNCH: Well, of course it's a racial profiling matter. This is the most heinous act of racial profiling we could see, where the Governor clearly wasn't doing -- utilizing the racial profiling-- And if she's the Governor of this State, and these people are working for her, how do you think their attitude is towards racial profiling in the spring of 1996?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Senator, I'm here to answer questions and try to answer questions. But I think there are some bounds in these questions.

SENATOR LYNCH: You referred earlier to SJC-8 and SJC-7, SJC-7 being a March 8th, 1999 letter from the New Jersey Legislative Black and Latino Caucus.

ASSISTANT ATTORNEY GENERAL ZOUBEK: I have that.

SENATOR LYNCH: And SJC-8 being a March 29, 1999 response to Assemblyman Charles, the Chair of the Caucus, from Peter Verniero, I believe, correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Correct.

SENATOR LYNCH: In SJC-7, Assemblyman Charles -- it's Paragraph 2 -- requests, and I quote, "In preparation for our hearings, we respectfully request your Department provide relevant information and data on the New Jersey State Police for the years 1992 through 1999," correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: 1998.

SENATOR LYNCH: I'm sorry, 1998.

And that's March 8, 1999, correct -- that letter?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Correct.

SENATOR LYNCH: And the response from Peter Verniero is March 29, 1999, is it correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Correct.

SENATOR LYNCH: And in the last paragraph of Peter Verniero's response on Page 9, it says, "In summary, there have been no less than four reviews of State Police initiated under my two and one-half year tenure: the PERF review; the pending State grand jury reviews; the review of the Moorestown and Cranbury Barracks; and the broader February 10th review of State Police practices. All but one were initiated several months ago." That's what the beginning of that paragraph says.

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes.

SENATOR LYNCH: So, by this time, you're already aware, however, of all the information that's in the blue book, are you not?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes.

SENATOR LYNCH: The Gilbert blue book.

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes.

SENATOR LYNCH: But this is the same Gilbert blue book that you showed to the Attorney General, but that he didn't request a copy of, nor did he review, correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: He didn't request a copy. I reviewed portions of it with him.

SENATOR LYNCH: To the best of your knowledge, he never read what was in it, did he?

ASSISTANT ATTORNEY GENERAL ZOUBEK: He reviewed the documents that I reviewed with him. And in the course of that -- I -- he reviewed them.

SENATOR LYNCH: So, when this letter was written and sent out on March the 29th, 1999, as between you and Attorney General Verniero, you already knew of the existence of the reports that flowed from the Littles committee, did you not?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I'm sorry. What do you mean, the reports that flowed from the Littles committee?

SENATOR LYNCH: The audits that flowed from the Littles committee -- they were retrieved.

ASSISTANT ATTORNEY GENERAL ZOUBEK: I knew of the audits. I wouldn't say that I knew of the connection, nor do I necessarily accept the connection to the Littles committee.

SENATOR LYNCH: And you were aware of the earlier Sachetti audits.

ASSISTANT ATTORNEY GENERAL ZOUBEK: I believe those are--

SENATOR LYNCH: The synopsis.

ASSISTANT ATTORNEY GENERAL ZOUBEK: I think those are Hinkle audits -- four or five Hinkle audits that were synopsized by Sachetti in June of 1998, yes.

SENATOR LYNCH: And you had gotten those in the summer of 1998 in some capacity.

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes.

SENATOR LYNCH: And also, the ongoing 1997 and '98 six-month audits. You were aware of those by this time, correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: If you mean the documents that were included in the blue binder, yes.

SENATOR LYNCH: Yes.

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes.

SENATOR LYNCH: Why isn't there any reference in this response to Assemblyman Charles of those audits and those analysis?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I think there was a reference to what was happening currently. And as I said, the knowledge was that at this point in time, March 29th, that within three weeks, the interim report would be released.

SENATOR LYNCH: But the report doesn't attach copies of all these audits from '95, '96, '97, '98, does it?

ASSISTANT ATTORNEY GENERAL ZOUBEK: No, it does not.

SENATOR LYNCH: The same thing with regard to the Department of Justice when you took over the responsibility of February of 1999 for retrieving information for the Department of Justice, finding out what

they had received and who was responsible-- You became aware that you had not sent this same information-- All of sudden you became aware that you had not sent this same information in the blue book to the Department of Justice, correct, you meaning the Office of Attorney General?

ASSISTANT ATTORNEY GENERAL ZOUBEK: What we did was we provided them -- delivered a copy of the interim report to them, in which we admitted the problem, began a discussion, and at that point in time, after they sent the notice of intent to sue, we were in the process of completing discovery. Once we got the notice of intent to sue, we moved toward discussions of the consent decree.

SENATOR LYNCH: Well, you retrieved--

ASSISTANT ATTORNEY GENERAL ZOUBEK: We hadn't completed the process of responding to the discovery and of collecting all that information.

SENATOR LYNCH: You retrieved the Rover file somewhere around the 19th of February, correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: No, I think the record reflects that that was a memo to be dated February 26th, and I would have received it early March.

SENATOR LYNCH: Okay. So by the time this memo to file occurs on March the 16th, you have everything that's in the Gilbert blue book, and you have all of the Rover information from his file, correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes, and I had assigned someone to review those in the Division of Criminal Justice to

determine the level of production, catalogue the documents, and begin sending them down to the Justice Department.

SENATOR LYNCH: Okay. But prior to the issuance of the interim report, none of that information was sent to the Department of Justice by you, correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: No, we sent some additional material to them. We told them we were in the process of collecting additional material. And then after the interim report, at that point in time-- We've got the interim report and they've got a notice of intent to sue, at that point in time. We're not in discovery anymore, we're in -- essentially, moving forward with a potential consent decree.

SENATOR LYNCH: From the time that you had all this information, at least by March 16th, 1999, that was contained in the blue book, as well as what was contained in the Rover file, and up until the time that you had entered into a consent decree with the Department of Justice, did you send any further consent to search data that they had not previously received to the Department of Justice?

ASSISTANT ATTORNEY GENERAL ZOUBEK: What we provided them in the interim report was a listing of all of that data that was in the blue binder with respect to consents, and at that point in time, we moved forward with respect to the consent decree discussions. So they had the compilations of all of that data. There was not any further request for the underlying data, because we had provided them the answers.

SENATOR LYNCH: You couldn't tell from the interim report what that data meant or what it came from -- what audits and analysis it came from, could you?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Not necessarily, but at that point in time, we had provided that to the Justice Department. We admitted that racial profiling--

SENATOR LYNCH: You provided what to the Justice Department and when? The interim report?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes.

SENATOR LYNCH: Okay.

Now, I have a letter in front of me that we retrieved from the Department of Justice, dated March 26th, 2001, and it ends by saying, "You also should note that the Division did not receive any additional documents from the State relating to consensual searches, (other than documents relating to consensual search policies and proposed consent decree language), after March 1999, during the remainder of the pre-suit period. That is, up until December 22, 1999."

Is that a correct statement?

ASSISTANT ATTORNEY GENERAL ZOUBEK: No. I spoke to Mr. Rosenbaum after receiving a copy of that letter and clarified for him that I thought the record appropriately reflects that the data went down in summary format in the interim report.

We moved forward with consent decree discussions, and at that point in time, there was no further need to have additional documents.

SENATOR LYNCH: But the interim report would indicate that you just retrieved this information, when the record shows that these audits and analyses were accomplished years before, correct?

So that you were, in effect, telling -- deceiving the Department into believing that this was newly discovered evidence.

ASSISTANT ATTORNEY GENERAL ZOUBEK: That's not correct, because they had underlying consent data from 1995 and 1996.

SENATOR LYNCH: They were their random selection dates?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Correct. And since--

SENATOR LYNCH: When did you learn that they had those?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I learned that they would have had those as part of the-- If you review the production of documents, the Justice Department record reflects -- got those consent numbers, and the ability to evaluate those consent numbers, and those-- The evaluations of Gilbert data with respect to consents, in large part, was a summary of the 30 days.

SENATOR LYNCH: Right. In those 30 days-- The records of those 30 days were in the Rover file, correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: And in the Justice Department's files.

SENATOR LYNCH: But you saw nothing in the record that tells you that anyone else, other than Rover, in the Office of the Attorney General knew about those random selection date audits being sent to the Department of Justice and what was contained therein, correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I lost you in the last part of that question.

SENATOR LYNCH: Did your review demonstrate that anyone other than George Rover in the Office of the Attorney General knew -- in the Department of Law and Public Safety -- knew that these random date audits as requested by the Department of Justice had been completed and sent along to the Department of Justice?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I don't agree with that. I think that the record reflects that you've established, through this Committee, that Mr. Waugh was involved in part of that, and that there was correspondence--

SENATOR LYNCH: Mr. Waugh was gone now, by the end of November of 1997, correct?

I'm sorry.

ASSISTANT ATTORNEY GENERAL ZOUBEK: The record is the record is the record, but in terms of my knowledge as to what Rover shared or not with others, I apologize, it must be the lateness. I'm confused by the question.

SENATOR LYNCH: Wasn't it important that you find out what Rover did share with others?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Within the Department?

SENATOR LYNCH: What he learned from the State Police, when he learned it, what he sent to the Department of Justice, when he sent it, who

in the Attorney General's Office knew about what he was retrieving, and when they knew about it, was that important to you?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I think I testified early on in the first evening I was here that when Mr. Rover-- I took over the file from Mr. Rover, I asked him what the statistics showed. He told me he didn't know. I then went ahead and gathered that file and reassigned it.

So, in the context of that comment, that affected the way in which I handled that, Senator Lynch.

SENATOR LYNCH: I represent to you, and we'll have it marked, that the date of the data that was sent to us from Department of Justice on March the 26th, 2001, does not contain the sample date data.

ASSISTANT ATTORNEY GENERAL ZOUBEK: What's that?

SENATOR LYNCH: It doesn't contain the analysis of the 30 sample dates. Their file at the Department of Justice does not contain the analysis of the 30 sample dates.

ASSISTANT ATTORNEY GENERAL ZOUBEK: Are you talking about the April 26th letter that they sent?

SENATOR LYNCH: The March 26th, 2001, letter, now, with attachments of everything that they were sent about consent to search, does not contain the State of New Jersey's analysis on the random audit.

ASSISTANT ATTORNEY GENERAL ZOUBEK: Well, Senator, I think the record reflects -- and we were asked to help the Committee to identify whether there was a cover letter that went down with the consent to searches. There was not a cover letter that went down with the consent to searches. The consent to searches were received at the Justice Department.

And what I said was, in the interim report there is a summary of the sample dates. If I had it with me, I could point it out to you. It's on Page 25, and footnotes, too.

SENATOR LYNCH: I understand that, but that was never-- There is no indication that was ever sent to the Department of Justice.

ASSISTANT ATTORNEY GENERAL ZOUBEK: The numbers are right in the interim report, and they're disclosed to the Department of Justice in that report.

SENATOR LYNCH: But I thought you testified a few minutes ago that you knew from the review of the Rover file that that information had been sent to the Department of Justice?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I said that I thought-- I said the consent data. I didn't mean--

SENATOR LYNCH: I was referring specifically to the random audit, and you indicated that the Rover file said, in effect, that those were sent to the Department of Justice.

ASSISTANT ATTORNEY GENERAL ZOUBEK: Senator, with all due respect--

SENATOR LYNCH: You didn't testify to that?

ASSISTANT ATTORNEY GENERAL ZOUBEK: --I think we're talking in circles right now. And if I can for just a second--

SENATOR LYNCH: I think we are, too.

ASSISTANT ATTORNEY GENERAL ZOUBEK: --to try to set the record straight, because I think it's just a matter of confusion in questioner or answerer at this point.

What I thought I had said before was: 30-day sample went down to the Justice Department. I didn't mean to imply that along with that went an analysis of what those numbers showed. But the box of consents that went for those 30 days went down.

When we received the Gilbert summaries-- The Gilbert summaries are included in the interim report and summarize that data, and those were provided and hand delivered to the Justice--

SENATOR LYNCH: Without reference as to when they were done.

ASSISTANT ATTORNEY GENERAL ZOUBEK: Can I finish my answer, Senator?

And they were then sent down to the Justice Department. So the Justice Department, as far as I was concerned, had that compilation as of April 20, 1999.

SENATOR LYNCH: They had the compilation, but they didn't have the individual audits or the individual analyses that had been performed, did they?

ASSISTANT ATTORNEY GENERAL ZOUBEK: No, but they certainly had a conclusion, and the first state in the country to do so--

SENATOR LYNCH: They had your-- They had the conclusion of the Office of the Attorney General--

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes, which they followed up--

SENATOR LYNCH: --without the back-up information that they had previously requested regarding consent to search, correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I guess my question is whether I can finish my answers?

SENATOR LYNCH: Let's move on.

You learned by the end of February of 1999, or at least sometime by the middle of March of 1999, that George Rover was responsible for the accumulation of data from the State Police and for transmitting that to the Department of Justice, correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes.

SENATOR LYNCH: Did you know in February of 1999 who George Rover was and where he worked?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I came to learn where he worked.

SENATOR LYNCH: Did you know of his name prior to your being given this responsibility by Attorney General Verniero?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Only through contact. I had heard of him when I was in the U.S. Attorney's Office.

SENATOR LYNCH: In what vein?

ASSISTANT ATTORNEY GENERAL ZOUBEK: He was in charge of Project Lisa, which was a project to trace guns in New Jersey.

SENATOR LYNCH: That was an accounting type of an issue?

ASSISTANT ATTORNEY GENERAL ZOUBEK: No, it was a law enforcement coordination issue.

SENATOR LYNCH: Coordination of information movement?

ASSISTANT ATTORNEY GENERAL ZOUBEK: It was an attempt-- Project Lisa is an attempt to trace guns in New Jersey to find out

where they originate from, to provide data to county prosecutors on a monthly basis, to collect that with the U.S. Attorney's Office, to make sure in New Jersey we're doing the best we can to follow the traffic of drugs in New Jersey.

SENATOR LYNCH: Okay.

It had nothing to do with--

ASSISTANT ATTORNEY GENERAL ZOUBEK: No.

SENATOR LYNCH: --search and seizure or anything like that?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Only tangentially.

SENATOR LYNCH: Was it surprising to you in February of 1999 when you learned that George Rover, who at that time was in Gaming Enforcement, was in charge of the marshaling of data and interfacing with the Department of Justice?

ASSISTANT ATTORNEY GENERAL ZOUBEK: What I had understood at the time was he was formerly part of what had existed in the Attorney General's Office called Legal Affairs. I thought that was the connection as to why he had that.

SENATOR LYNCH: And when you finally got access to his files and determined that there was a problem, you told Attorney General Verniero that you were putting someone else in that spot, correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Correct.

SENATOR LYNCH: And who was it you put in that spot?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I brought someone in from the Division of Criminal Justice, a Michael LoGalbo, who I

had had contact with before and I respected, just to organize the file and to organize the production.

SENATOR LYNCH: And you brought someone in from the Division of Criminal Justice, because they had familiarity with what you were dealing with, in terms of search and seizure, consent to search, and all of those issues, correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Well, and they were a member of my team.

SENATOR LYNCH: Learning that-- Strike that.

When you told Peter Verniero what was contained in the Rover files, what did he say to you?

ASSISTANT ATTORNEY GENERAL ZOUBEK: No, I think my testimony was that I told him that I was concerned as to the level of organization with respect to the production and that I was going to take that on as part of the responsibilities in the State Police review. And he told me to do whatever I needed to do to make sure that everything that needed to be done was done.

SENATOR LYNCH: At some point in time, you told him that there was information contained in the Rover file on consent to search and other data that there was no indication had been sent along to anyone in the Office of the Attorney General, is that correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: That was the impression when I delivered the blue binder to him, and that was the representation that I gave to him at that time.

SENATOR LYNCH: Prior to the blue binder, after you had reviewed the Rover file, didn't you tell the Attorney General that there was data in there that should have been forwarded to the Department of Justice?

ASSISTANT ATTORNEY GENERAL ZOUBEK: No, I think my testimony was, Senator, that I had reviewed the memo dated February 26th, 1999, which identified certain documents that had not been then produced. There were questions about whether or not they had been specifically requested or not. Then on March 15th I brought the blue binder.

I think I had testified that I had not had an opportunity at that time myself to go back through all of Rover's files myself.

SENATOR LYNCH: Didn't Attorney General Peter Verniero say to you, in the context of information that was being found in the Rover file, whether his name was on any of it as having received copies?

ASSISTANT ATTORNEY GENERAL ZOUBEK: That was much later, Senator.

SENATOR LYNCH: How much later?

ASSISTANT ATTORNEY GENERAL ZOUBEK: That was when I went back before the last draft and double-checked Rover's files, and it was at that time.

ASSISTANT ATTORNEY GENERAL ZOUBEK: And that's when you discovered that the Office of the Attorney General did, in fact, have data so that it didn't have total deniability as not having received same from the State Police, correct?

SENATOR LYNCH: I determined that some of the documents that I had thought had not been produced before were in Mr. Rover's files.

SENATOR LYNCH: And that's when Peter Verniero asked you if his name was on any of those as having received copies, correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Correct.

SENATOR LYNCH: Did you ever conduct an investigation into why George Rover didn't send documentation to the Department of Justice in a promptly and timely manner?

ASSISTANT ATTORNEY GENERAL ZOUBEK: As I've testified before, based upon my discussions with Mr. Rover, based upon my review to attempt to piece back together the Justice Department's requests, I was unable to recreate what those requests exactly were, and I identified that and told the Justice Department that on March 19th, 1999.

So, at that point in time, I was focused on making sure that we were identifying and organizing the production and providing information that we needed to.

SENATOR LYNCH: Did you ever commission anyone in your office, from the investigations side or from other representatives -- lawyer representatives -- of the Division of Criminal Justice, to take a statement from Sergeant Gilbert as to what he retrieved and who he gave it to?

ASSISTANT ATTORNEY GENERAL ZOUBEK: No, I did not.

SENATOR LYNCH: Did you ask them to check with anyone in the State Police as to what information they had to demonstrate that they were sending this information along to the Office of the Attorney General in a timely manner, and if not, why they weren't?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Well, it was my understanding as it relates to the '97 and '98 data, that had not come over -- there was no evidence that it had not come over-- That it had come over--

There was no evidence in the '97 and '98 data that had come over, and that was the data that I was subsequently focused on.

SENATOR LYNCH: Exactly, so weren't you interested in knowing why it didn't come over, and if so, whether there was someone who was culpable here for misfeasance or nonfeasance or malfeasance?

ASSISTANT ATTORNEY GENERAL ZOUBEK: At that point in time, I had been made aware that requests were made. Colonel Williams was no longer with the State Police. That would have been a repository of one of the persons I could have interviewed, and I could have gone to see Colonel Williams and interview Colonel Williams at that time and interview others. I did not choose to do so, because I was moving forward to make sure that there was an appropriate production, and at that point in time, I was moving forward to try to get the interim report completed and to put in reforms.

SENATOR LYNCH: I suggest to you that the appropriate production did not include the specific audits and analyses that could have and should have been sent to the Department of Justice. Is that not correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: And I disagree with you. As I disagreed with you 10 minutes ago, I disagree with you now.

SENATOR LYNCH: Because you say they're contained in the interim report?

ASSISTANT ATTORNEY GENERAL ZOUBEK: That's absolutely correct.

SENATOR LYNCH: Now, you have this memo to file, both you and Peter Verniero, on March 16th, 1999, that's in effect saying, surprise, surprise, we've discovered all this information that hasn't been sent to us, correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I've testified as to that. I'm not going to join your characterization.

SENATOR LYNCH: Isn't it-- Wasn't it then critical for you to determine who blew the responsibility of providing copies of this documentation to the higher echelon of the Attorney General's Office and to the Department of Justice?

ASSISTANT ATTORNEY GENERAL ZOUBEK: And as I said, at that point in time, the logical person for me, perhaps, to have gone to talk to was Colonel Williams. And if Colonel Williams, perhaps, was at the State Police, I might have gotten in my car and gone back up. I did not contact him, and I did not engage in an "investigation" that would relate to some obstruction of justice issue, because there was no basis for an obstruction--

Can I finish, Senator?

SENATOR LYNCH: Sure.

ASSISTANT ATTORNEY GENERAL ZOUBEK: No obstruction of justice investigation. At that point in time, I was moving forward. We were now at a point in time where I had four weeks to complete this report. I was trying to move it forward as expeditiously as possible, and I tried to deal with the problem, which I thought was the result of, ultimately, of disorganization than it was of any nefarious action on anybody's part.

SENATOR LYNCH: How about after the interim report? Didn't you think it was appropriate to find out why there was not this information flow after having been requested from the Attorney General's Office to the State Police? Aren't there others to interview, such as Colonel Dunlop and others who had oversight with regard to the retrieval of information?

ASSISTANT ATTORNEY GENERAL ZOUBEK: My understanding was that the contact that had occurred was up at the upper levels, and the requests were made at the upper levels, not at the lower levels. Again, I didn't see the reason to go and investigate Colonel Williams on that. When I left this hearing on April 26th, I received a notice of intent to sue, and then immediately had to jump into that next assignment, which was dealing more aggressively and more rapidly with the Justice Department.

SENATOR LYNCH: So, at no point in time did it occur to you that you needed a full investigation of George Rover and what he did or didn't do to determine whether or not he should be disciplined, or to review the actions by various representatives of the State Police as to what they did or didn't do in terms of forwarding appropriate documentation? You didn't think that was appropriate to the people of the State of New Jersey?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes, I-- That's correct, I did not, and I will explain why I did not.

As I explained to the Justice Department, if you go back through that request, you cannot recreate what the requests were from the Justice Department. It was not handled in a way in which-- Frankly, as I said at my deposition, I was with the Justice Department for 10 years, I was surprised at the lack of documentation with respect to those requests.

To have an investigation you have to have something to compare it to, and if there is not a record of what the requests were, if they're by phone by two low-level people -- one from the Attorney General's Office and one from the Justice Department -- you can't recreate that to set the basis of an obstruction of justice investigation, so I did not conduct one.

SENATOR LYNCH: I suggest to you as a prosecutor with the U.S. Attorney's Office that the first thing you would have done would have been to statementize George Rover as to what he did, when, and how, and who he communicated with, in terms of what he did.

And the second thing you would do is the same thing with the State Police, including Sergeant Gilbert and Colonel Dunlop, but that hasn't occurred, correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: That's correct, because I made a determination which, sitting here today, I would do the same thing again. There was not a basis for any obstruction of justice investigation.

SENATOR LYNCH: How do you know there's not a basis if you didn't investigate it?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Because I said, Senator, you have to look at what the requests were from the Justice Department, and that would be the fundamental basis. And if you can't recreate what the Justice Department exactly requested when they sent a blank sample form, and then had phone calls after that, it's not the basis for an investigation like I would do as a prosecutor in the U.S. Attorney's Office as a State prosecutor, and I stand by that determination.

SENATOR LYNCH: Right, because you didn't think there was enough here to pursue anything about obstruction of justice. But how about pursuing something with regard to George Rover, who had been promoted in January of 1999 and was now transferred to Gaming Enforcement from the ABC? Didn't you think it appropriate to find out whether he performed in the best interest of the Department, as well as the people of the State of New Jersey?

ASSISTANT ATTORNEY GENERAL ZOUBEK: My answer to that question is the same, Senator. That has to be judged in terms of the record as it relates to what those requests were, and there was not a clear record of those requests based upon my review at that time. And I don't change my position with respect to that sitting here today.

SENATOR LYNCH: There was not enough for you to cause an investigation and a statement taken from George Rover as to who knew what and when and what his instructions were with regard to gathering and forwarding information?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I had a conversation with him, but again, Senator, you--

Here's how this problem has continued to develop, people are ratcheting this up to some concept of a criminal investigation. In my practice as a prosecutor, you make an evaluation of what the particular law is, what the prospect is of an investigation that could be based upon a statute, and I did not see that there was an obstruction of justice issue at that point in time, because there was not a sufficient record with respect to the Department of Justice inquiry that would establish exactly all that they had requested, such that it would warrant me going out at that time and investigating it.

I also testified that I factored into the equation that Colonel Williams was not there, and I did not go and interview Colonel Williams.

SENATOR LYNCH: When you went to the Department of Justice on March the 19th, 1999, three days after the memo to file, did you bring them the blue book and the information contained in the blue book that you had received on the 15th or 16th of March?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I did not. I received that on March 15th. I had assigned it to personnel to evaluate in terms of production, and then we moved into the deliverance of the interim report with the resulting statistics that were provided to the Justice Department at the time.

SENATOR LYNCH: First of all, with regard to the hearings that occurred here for racial profiling on, I think, the 26th of April, 1999, and the confirmation hearings on the 5th and 6th of May of 1999, I think you indicated in the depositions there were some kind of mock proceedings or dry runs previous to those hearings, correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Correct, and I think Senator Robertson asked me some questions about that today.

SENATOR LYNCH: Is it not a fact that somewhere between the 1st and the 10th of March, there was originally scheduled, in anticipation of an early confirmation hearing, a trial run with regard to those confirmation hearings, correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: No. I think Ms. Glading asked me-- I believe that's not correct. I think Ms. Glading asked me

that there was something on my calendar dated March 1, and I think that was to generally prepare information on subject matters that may be relevant.

I don't believe, Senator, that it was scheduled as a mock -- as a mock hearing at that point.

SENATOR LYNCH: I have a copy of the Hesper calendar for-- I'm sorry, for the Zoubek calendar -- I'm sorry -- for Monday, March 1, 1999. It says there was a meeting relative to the confirmation hearings on March 1, 1999. Do you recall that meeting? That's several days after-- That's a week after the nomination.

ASSISTANT ATTORNEY GENERAL ZOUBEK: I think the note says, "confirmation -- regarding confirmation," or it says, "confirmation hearing."

SENATOR LYNCH: Confirmation hearings.

ASSISTANT ATTORNEY GENERAL ZOUBEK: Right. At that point in time, would have been, given the personnel that I think was involved in that, it would have been gathering up information for the Attorney General that may relate to his term as an Attorney General and provision of assignments to individuals to do so.

SENATOR LYNCH: Which occurred first, the dry run hearings relative to the racial profiling hearing or the dry run relative to the confirmation hearings?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Well, if I can-- The March 1st, I don't think was a mock session.

SENATOR LYNCH: Forget March 1st.

ASSISTANT ATTORNEY GENERAL ZOUBEK: There would have been-- As I said, the Friday before the racial profiling hearing, there would have been a mock session at that time.

SENATOR LYNCH: Who organized it?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I think it was-- I don't-- It was requested that I-- I don't know who organized it, but what it was, was a, if you will, a dry--

SENATOR LYNCH: Well, whose idea was it?

ASSISTANT ATTORNEY GENERAL ZOUBEK: It was a dry run with respect to the presentation that I was giving and some of the questions that may be asked.

SENATOR LYNCH: Whose idea was it, do you know?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I don't know if anybody had a particular idea, I think it's a good practice. We have-- Generally, before someone comes over and appears here, we often have premeetings to make sure that someone's prepared.

SENATOR LYNCH: And who was present when you appeared to go through this on the Friday before the profile hearings?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I don't know if my calendar refreshes -- would refresh my recollection on that, but I was there, the Attorney General was there, there may have been--

SENATOR LYNCH: The Attorney General, did you say?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yeah, the Attorney General was there. There may have been some individuals from the Division of Law. Nancy--

SENATOR LYNCH: How many people would you estimate were there?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Probably four or five people.

SENATOR LYNCH: Was there a script?

ASSISTANT ATTORNEY GENERAL ZOUBEK: There was my PowerPoint presentation, which I was going through--

SENATOR LYNCH: Were you only there for your presentation of your testimony?

ASSISTANT ATTORNEY GENERAL ZOUBEK: No, I believe I was there for the whole portion of it.

SENATOR LYNCH: And how long did it last?

ASSISTANT ATTORNEY GENERAL ZOUBEK: If someone tells me what time of the day it was, I might-- I think it was an hour or so, and then I stayed afterwards to continue to hone the PowerPoint presentation.

SENATOR LYNCH: An hour or so on your testimony?

ASSISTANT ATTORNEY GENERAL ZOUBEK: On both.

SENATOR LYNCH: Were you there for the Peter Verniero testimony?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Well, I think his was more-- I made the presentation, and then there were some questions that were asked.

SENATOR LYNCH: Who was asking questions?

ASSISTANT ATTORNEY GENERAL ZOUBEK: There were a number of people in the room. I can't recall whether or not it would have been

somebody there from the Division of Law. There may have been someone there from the Division of Criminal Justice, and there may have been someone there from Legislative Affairs.

SENATOR LYNCH: Anyone you remember specifically?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Brian Litten may have been there. He was Chief of Legislative Affairs. I don't recall--

SENATOR LYNCH: How about Tom O'Reilly, was he there?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Tom may have been there. He was the administrator.

SENATOR LYNCH: Who asked you questions?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I don't recall exactly who asked me questions. I know I would have been asked questions with regard to the presentation.

SENATOR LYNCH: Did you participate in the dry run hearings before the nomination hearings?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes.

SENATOR LYNCH: And when did they occur?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Shortly before the hearings. They're also reflected in my calendar. I don't recall specifically.

SENATOR LYNCH: We don't have your calendar for that.

ASSISTANT ATTORNEY GENERAL ZOUBEK: I'll go back. I could check, but there was one--

SENATOR LYNCH: Do you have any recollection of you participating in those dry run hearings on confirmation?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I think I probably would have.

SENATOR LYNCH: Do you know who organized that meeting and who was asking the questions?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I think, again, there would have been someone from Division of Law, somebody from Legislative Affairs.

SENATOR LYNCH: Was there any videotaping going on?

ASSISTANT ATTORNEY GENERAL ZOUBEK: No.

SENATOR LYNCH: Was there any script to your knowledge?

ASSISTANT ATTORNEY GENERAL ZOUBEK: No. I take that back. I don't know the extent to which the Attorney General had an opening statement that he provided the Committee at the time and whether or not he had a draft of that at the time.

SENATOR LYNCH: Were there written answers to particular questions prepared?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Only to the extent, Senator, that I believe you had forwarded, or other members of the Committee had forwarded, a letter to Attorney General Verniero asking a series of questions of him prior to the hearings, and I believe he provided some written responses. And so, the extent to which there was a record of what those responses were, that may have been available and reviewed at the meeting.

SENATOR LYNCH: All right.

You had received immediate -- subsequent to the profile hearings on the 26th of April, 1999, a fax from the U.S. Department of Justice regarding their results of their investigation, correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Correct.

SENATOR LYNCH: And was that letter of April 26th, 1999, from the Department of Justice, to Peter Verniero from Mr. Lee, was that letter utilized in the trial hearing before the confirmation mock hearing?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I don't believe it was.

SENATOR LYNCH: Was that letter sent to the Judiciary Committee before the May 5th confirmation hearing?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I don't believe the letter itself was, Senator, but again, my recollection was there was some communication with this Committee on or about April 29th from General Verniero to the Committee in reference to the receipt of that notice of intent to sue.

SENATOR LYNCH: Can I refer you to the transcript from the proceedings on May the 5th, 1999, testimony of Peter Verniero, on Page 86, where Senator Zane asks him the question: "So we just established that you were aware of a Federal investigation. How far back were you aware of the Federal investigation, the U.S. Justice Department's investigation of profiling?"

The answer from the Attorney General: "It's been at least two years, maybe longer. I don't know the exact date that they began. I'm not sure that they informed us of the exact date. You know, this -- the unit down in the Justice Department, under the Federal statute, open up a file or begin a review

in many jurisdictions. The review may mature into an actual investigation. I really can't be precise. That's really a question that the Justice Department would be able answer as to when they actually began, and so forth."

Do you remember that testimony?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes, it was read to me before.

SENATOR LYNCH: Do you think that was responsive after reading the first paragraph of the April 26th, 1999 letter from the Department of Justice to Peter Verniero in which they say as follows: "As you are aware, the Civil Rights Division of the United States Department of Justice has been conducting a civil investigation pursuant to Federal civil rights laws of allegations of discriminatory law enforcement by officers of the New Jersey State Police.

"As a result of this investigation, the Department has determined that State Police officers are engaged in a pattern or practice of discriminatory law enforcement, in violation of the 14th Amendment to the Constitution and the nondiscrimination provisions of the Omnibus Crime Control and Safe Streets Act within a citation from the U.S. Code.

"Accordingly, I have authorized the filing of a civil suit in United States District Court, pursuant 42 USC" etc. "to obtain equitable and declaratory relief to eliminate the pattern or practice of misconduct."

Armed with that letter, do you believe that Attorney General Verniero was responsive?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Oh, I think-- If the question that I thought was asked was, "when did it begin," and the General

responded to that-- And again, I'm at a little bit of a loss to be able to provide the context, because I don't recall the exact context of the April 29th letter that was sent to the Committee.

SENATOR LYNCH: All right.

Now, continuing on, on April-- I'm sorry, on May the 6th, confirmation hearing date, on Page 32, continuing question from Senator Zane: "Tell me what the Justice Department's investigation is then?"

This is May 6th, 1999.

Answer from Attorney General Verniero: "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."

And the next question from Senator Zane is: "Do you feel that you know-- Has anyone disclosed to you the full extent of the Federal program?"

And the 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 that question."

Now, do you believe that was a responsive answer, armed with the letter of April 26th, 1999, and the paragraph I just read to you a moment ago?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Senator, again, I would reflect that I don't have the context of the April 29th memo. The April

26th letter is the April 26th letter, and beyond that, I don't think I'm in a position to comment on that.

SENATOR LYNCH: I submit to you, sir, that had this Committee known, and had seen a copy of that letter from the Department of Justice dated April 26th, 1999, the hearings on the confirmation would not have ended on May the 6th. Indeed, they may not have begun on May the 5th.

Do you believe that to be so?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I don't consider that to be a question that I'm able to answer.

SENATOR LYNCH: Don't you think that this Committee--

ASSISTANT ATTORNEY GENERAL ZOUBEK: Senator--

SENATOR LYNCH: --would have found the information contained in the declaration that a suit was being filed and that there already was a pattern determined, which is what the Attorney General said was not yet determined -- don't you believe that this Committee would have found that relevant to making a decision here?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Senator, I don't think it's appropriate for me to speak on behalf of the Committee. I'm here to answer factual questions. I will do the best I can.

SENATOR LYNCH: The confirmation hearings occur. A week later or so, Peter Verniero is confirmed to the Supreme Court. You're now Acting Attorney General.

ASSISTANT ATTORNEY GENERAL ZOUBEK: As of March--

SENATOR LYNCH: What did you do then, relative to the review team, in implementing reforms with regard to the practices that you were

finding, that had been spelled out, and the concerns that flowed from the data that you now had at your disposal?

ASSISTANT ATTORNEY GENERAL ZOUBEK: What we had-- We were on two tracks at that time, Senator. We were completing the work on the final report, which was issued July 2, 1999. We were also in the process of setting up teams at the State Police and the Attorney General's Office to implement the recommendations of the interim report.

We were also, at that point in time, working with the Justice Department to identify the parameters of what potentially might become in a consent decree. And I was also involved, at that point in time heavily, in the search for a Superintendent of the New Jersey State Police.

SENATOR LYNCH: Would it be a fair characterization to say that sometime subsequent to May the 15th, 1999, there was no further -- the Troop D audit, which had been completed -- Phase III, only half of Cranbury, and had completed Phases I and II for Newark, Cranbury, and Moorestown -- that there was no further investigation with regard to the role that George Rover played in the transmission of information to the Department of Justice, and there was no further investigation into whether or not Colonel Williams and people under him had failed to send over information to the Attorney General's Office that they were required to?

Is it fair to say that none of those things were investigated any further after May the 15th, 1999?

ASSISTANT ATTORNEY GENERAL ZOUBEK: No, and my answer to that question is the following: As it relates first to the Troop D audit, there is a misconception that the troop audit was-- As it relates to the

administrative deficiencies, that investigation continued. From June of 1999 through the end of 1999, there was additional Internal Affairs work on the troopers who had been identified. There was a determination as it relates to the administrative violations, that there was a recommendation that I received that those administrative violations investigation was terminated as of June 9th.

So, as it relates to the Troop D audit, that's my best recollection of what the status was, but the investigation did not end, because if you will recall, when Lieutenant Colonel Dunlop and I agreed to begin this, it was designed to focus on race-based deficiencies, and that's what that investigation continued to work on, and there was substantial Internal Affairs individuals that were devoted to that continuing investigation.

SENATOR LYNCH: And it's exactly what I want to ask you now. It's now April of the year 2001, and the Troop D audit was shut down sometime in May of 1999, do you know of any--

ASSISTANT ATTORNEY GENERAL ZOUBEK: I don't-- If I can, I just testified that it was terminated effective June 9th, 1999. That's what the record reflects.

SENATOR LYNCH: Okay.

That's what the record reflects. That's contrary to Lieutenant Sachetti's information as to when he stopped working on the Phase III of the audit.

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yeah, but it's not contrary to his deposition.

SENATOR LYNCH: Well, let's accept June the 9th, for purposes of this discussion.

ASSISTANT ATTORNEY GENERAL ZOUBEK: Thank you.

SENATOR LYNCH: From June 9th, 1999, until today, has there been any presentation to a grand jury against any other trooper found to have falsified documentation since the beginning of the Troop D audit?

ASSISTANT ATTORNEY GENERAL ZOUBEK: What I said before -- so I don't get into grand jury issues -- if they were referred for criminal prosecution, they were declined and returned--

SENATOR LYNCH: Which means they weren't presented, correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Senator, before they get presented, a decision is made to accept the case. They were referred to the Division of Criminal Justice, and they were sent back to the State Police.

SENATOR LYNCH: And to your knowledge, up until today, there hasn't been one Internal Affairs action or court-martial taken against any of the other troopers who may have falsified records to the same level of Hogan-Kenna?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Again, Senator, I'm not going to accept your representation to the same level of Hogan and Kenna.

SENATOR LYNCH: Well, how about any presentation through Internal Affairs for sanctions against troopers who provided false data, to today, any whatsoever, that you know about?

ASSISTANT ATTORNEY GENERAL ZOUBEK: It is my understanding that with respect to a couple of troopers, that charges have been lodged, but the process has not been completed.

SENATOR LYNCH: And when were those charges lodged?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Within the last couple of months. The process would have begun and charges would have been recently brought.

SENATOR LYNCH: If I told you that we know of at least two troopers who were involved in falsification with the original discovery, rising to the level of Hogan and Kenna -- mind you, they're only on a basis of maybe 30 stops out of 300 -- that no action has been taken against them either by Criminal Justice or Internal Affairs, and they're still working and getting paid by the State Police?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Senator, I've said this before--

SENATOR LYNCH: Would that surprise you?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Senator, may I finish my answer?

I said before, that I'm not going to engage in comparisons, and I do not accept the comparisons that have been made in this record with respect to Hogan and Kenna, but I am not going to get into those comparisons.

SENATOR LYNCH: How about if we give you and Attorney General Farmer the information and let you look at the record? And will you report back to this Committee as to whether that's true, and therefore, you may have done selective enforcement when you prosecuted Hogan-Kenna on falsification? Would you be willing to look at that?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Senator, I have said to you more than once, that it is inappropriate for me to make a

comparison with respect to the Hogan and Kenna case and to comment publicly with respect to that.

I believe there have been times in which there were agreements with this Committee, indeed, with respect to the level of questions that would be asked, and frankly, I think we're getting to a point where we're going beyond those that would have an impact, potentially, back on that case.

SENATOR LYNCH: I ask you again: If we gave you this information, would you and the Attorney General look at it to determine whether or not these gentlemen had findings of falsification, at least in the original survey, that rose to the level of the original findings on Hogan-Kenna? And that they have not been prosecuted either on the Criminal Justice side or, through the State Police sanctions, either by court-martial or any other type of punishment?

ASSISTANT ATTORNEY GENERAL ZOUBEK: No, I'm comfortable with the decisions that--

SENATOR LYNCH: Would you--

ASSISTANT ATTORNEY GENERAL ZOUBEK: Senator, may I finish my question -- my answer, please?

SENATOR LYNCH: Are you saying you don't want that information?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Senator, what I'm saying, and if you would listen to my answer, I cannot engage in that kind of comparison. I don't know if this is discovery in a criminal case or this is the racial profiling hearings, but it sounds more like discovery in a criminal case, and I will not engage in that.

SENATOR LYNCH: Sachetti testified there was at least one other.

ASSISTANT ATTORNEY GENERAL ZOUBEK: And I testified before that Lieutenant Sachetti did not participate in the ultimate Internal Affairs investigations, nor did he participate in the evaluation of those.

And I think, frankly, that those questions were beyond the questions that were agreed that the Committee was going to ask -- specifically about the Hogan-Kenna case, without potentially going beyond what the questions were supposed to be.

SENATOR LYNCH: If I told you that one of these troopers was involved in a probable bad shoot in October of the year 2000, would that pique your interest as to whether or not it should be looked at?

ASSISTANT ATTORNEY GENERAL ZOUBEK: With all due respect, Mr. Chairman, I'm doing the best that I can, and I do believe that Senator Lynch is going well beyond the pale here with these questions.

SENATOR LYNCH: There seems to be a pattern of not wanting to know answers to relevant information having to do with the interaction with the State Police and the Attorney General.

ASSISTANT ATTORNEY GENERAL ZOUBEK: Senator, with all due respect, I've given depositions for eight hours. I am now in my seventh or eighth hour of providing information to this Committee. I've tried to be cooperative. I will continue to be cooperative, but I did think there were agreements to the level and the depth of the questions that could be asked on this subject matter.

SENATOR LYNCH: Did you ever have discussion with Mr. Hesse about his role in the retrieval of information for the Department of Justice?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I had discussion with him, with respect to documents, on March 16th. I have not--

SENATOR LYNCH: March 16th, 1999?

ASSISTANT ATTORNEY GENERAL ZOUBEK: 1999. I have not had any subsequent discussions with him with respect to--

SENATOR LYNCH: What did he tell you?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I have not had any subsequent discussions with him. I have not had any subsequent discussions with him with respect to the Justice Department investigation.

SENATOR LYNCH: And so he was not a person who we'd look to get a written statement from as to what his role was in all of this?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Senator, I took no written statements from someone, so I couldn't have taken one from Mr. Hespe.

SENATOR LYNCH: So this investigation into who knew what and when and why things weren't transmitted to the Department of Justice was your investigation, and you based it on what you talked to Rover about, what you talked to Hespe about, and who else?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I believe that, again, with all due respect, Senator, I've answered a number of these questions a number of times. I don't want to be caught up with--

I've answered that question before, but I'll try to answer it again.

SENATOR LYNCH: Well, you said it wasn't -- it wouldn't be appropriate to go any further, and you already talked to Rover and you talked

to Hesper about it, who else did you talk to about it before you drew the conclusion that it didn't make any sense to go any further?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I said that I talked-- I went through the four who I talked to. I talked to Rover. I talked to Fahy. I talked to Dunlop. I provided a copy to Debra Stone of the records that were -- that we had obtained, and I had a discussion, generally, with the Attorney General on that. I did not make a determination to open up an investigation that would require written statements of Colonel Williams and others, and that's the limits of my remarks.

SENATOR LYNCH: When you'd found out what was in the Rover file, you knew that there were certain discovery obligations in the Division of Criminal Justice with cases that they were handling relative to those documents, did you not?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I knew that was one of the issues that we needed to focus on.

SENATOR LYNCH: Immediately you knew that?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes.

SENATOR LYNCH: Did you assume from your discussions that either Peter Verniero nor Mr. Hesper or Mr. Waugh knew that there may be a discovery obligation with that information that they had retrieved?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I did not evaluate that at that point in time in terms of making that assumption.

SENATOR LYNCH: Was it important?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Senator, I identified an issue. I followed up on that particular issue.

SENATOR LYNCH: What did you then do to ensure that discovery requests, in a multitude of cases, would be satisfied by this documentation being sent to the attorneys handling -- the defense attorneys in those cases?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Well, I think I was primarily concerned about the *Soto* case. I was evaluating the *Soto* case, and the question was -- is what was open or closed in that particular record, and then, at that point in time, we withdrew the *Soto* case. That mooted out that question in that particular conduct, and since then, we've been in the process of collecting and putting together and putting up on 27 CDs the State Police archive on all the documents that existed.

SENATOR LYNCH: My understanding is the first thing you did was try to get the Supreme Court to throw out those discovery motions in December of 1999, correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: No. What we attempted to do, Senator, was we attempted to provide some uniformity and consistency in the litigation that was occurring on this, so that we could get it all in one form; so we would know how many cases there were; so that we could make an evaluation of those cases as to whether we were going to go forward with those cases.

So that instead of having five different judges giving five different orders with respect to discovery, we wanted it to be done in one forum. The Supreme Court found that was appropriate. It went before Judge Barisonek, and I think those proceedings have been universally regarded as having been an

appropriate way for everyone to get a handle on the impact on racial profiling cases.

SENATOR LYNCH: With the information that's been retrieved post-May of 1999, relative to consent to search, do you believe that we have an ongoing problem with consent to search and that there needs to be something done about that from a policy perspective either by the executive branch or the legislative branch?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes, and with your indulgence, Senator, I know that General Farmer is prepared to talk very specifically about that.

SENATOR LYNCH: But I believe, Mr. Zoubek, that you have a substantial background in this arena, and that it would be appropriate for us to ask you some questions along those lines.

So, if you don't mind, I'll ask you a couple questions on it?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I don't have a problem with that, I'm just making a suggestion in terms of-- He will have-- I do not have the specific data that he will be discussing tomorrow.

SENATOR LYNCH: Have you seen data or heard about data relating to consent to search that's been accumulated post-May or June of 1999?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I have seen some of that data, and in particular, in preparing the Attorney General Farmer for his remarks tomorrow.

SENATOR LYNCH: Give me the best you can recall what that consent to search data has disclosed since June of '99 coming to today?

ASSISTANT ATTORNEY GENERAL ZOUBEK: It shows that there is a continuing issue and problem as it relates to the consent numbers. And as I said, I think we have a more specific evaluation of what some of that means and what the breakdown of those numbers are. I do not have them with me today, but I know General Farmer is prepared to describe that to the Committee and answer all the questions that he can.

SENATOR LYNCH: Does it support the testimony of Sergeant Gilbert that post-June of '99 up to today, that the audits and analyses have disclosed that anywhere from 60 to 100 percent of the motorists are minority who are utilized in consent to search?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I don't recall what his testimony was. But what I can tell you is that consents are still of a concern, and that one of the things we've been doing is-- We now have an ability to pull the videotapes of those consents, and we've been in the process of doing that -- excuse me -- and to making an evaluation to General Farmer.

Senator, I'm not trying to put you off, he'll be in a position to discuss that more completely.

SENATOR LYNCH: Well, with regard to the critical issue in my mind, is it still true that roughly 75 percent of the minorities who are searched as a result of a consent to search form being executed come up with a negative search?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I don't know the -- I don't know the specifics of that, but I know that General Farmer is going to address that tomorrow.

SENATOR LYNCH: Don't you believe the time has come for us to seriously address this consent to search issue?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I think the time has come for us all to seriously address racial profiling to make sure that all--

SENATOR LYNCH: Just answer the question. With regard to consent to search, don't you believe that the time has come for that practice to be seriously looked at and reformed?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes, and we have been involved in that process, but we need to absolutely do more.

SENATOR LYNCH: Do you have anything to do with the forfeiture funds, in terms of the administration or the reporting?

ASSISTANT ATTORNEY GENERAL ZOUBEK: As Director of the Division of Criminal Justice, I did have oversight of that. As First Assistant, I have oversight in some limited fashion.

SENATOR LYNCH: So are you familiar with the AGLFA Reports, the Attorney General's Law Enforcement Forfeiture Account Reports?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Generally, yes.

SENATOR LYNCH: And who are those reports submitted to?

ASSISTANT ATTORNEY GENERAL ZOUBEK: They're completed out of the Division of Criminal Justice, I believe. I'm not familiar with the question.

SENATOR LYNCH: Was the report--

ASSISTANT ATTORNEY GENERAL ZOUBEK: I have to--

SENATOR LYNCH: Do you have to report to the Legislature, to the Department of Justice, who?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Senator, I'm pretty good at my acronyms, but I don't remember the AGLFA one.

SENATOR LYNCH: Well, it's the Attorney General's Law Enforcement Forfeiture Account.

ASSISTANT ATTORNEY GENERAL ZOUBEK: Okay.

SENATOR LYNCH: Are you familiar with that?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I'm generally familiar with that.

SENATOR LYNCH: And is there a requirement for an audit and a reporting on that account to the Legislature and/or the Department of Justice?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I know that there is reporting that we do on forfeitures, Senator. I'm not 100 percent familiar with all of them.

SENATOR LYNCH: In terms-- Have you ever analyzed the moneys that are -- ultimately wind up in this forfeiture account and their origin, namely from probable cause searches or consent to searches?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Not in the context of forfeiture, but I know that one of the things we're looking at in terms of what to do about consent to search, part of the analysis that's being conducted is not only what the find rate is -- because you could have a find of a joint of marijuana versus a brick of cocaine, that's a find -- and that's part of what we're analyzing right now.

SENATOR LYNCH: Yes, but when they make a find in this 25 percent, as Sergeant Gilbert testified, of consent to searches on minorities, when

they make a find, they confiscate the vehicle and everything in the vehicle, do they not?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Sometimes yes, sometimes no.

SENATOR LYNCH: And they confiscate cash, jewelry, cameras, cell phones--

ASSISTANT ATTORNEY GENERAL ZOUBEK: It depends on the case, Senator.

SENATOR LYNCH: --as well as the car.

ASSISTANT ATTORNEY GENERAL ZOUBEK: It depends on the case.

SENATOR LYNCH: And ultimately, that winds up getting into this AGLEFA account, does it not?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Correct.

SENATOR LYNCH: Do you have any comparison as to what percentage of these funds in the AGLEFA account come from consent to search versus probable cause or other activity?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Not at present.

SENATOR LYNCH: I have some documentation that seems to reflect that there are projections made by the Office of the Attorney General as to what AGLEFA funds will be available for budgetary use in future years. Are you familiar with that?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I believe that there are such documents, yes.

SENATOR LYNCH: So we make projections as to what it is we're going to have in that AGLEFA account for purposes of how we're going to fund certain programs?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Well, I think what it has been, Senator, is that the forfeitures have often been used for some capital expenditures, and in the planning process, they look sometimes at what the average forfeitures have been to see whether or not those accounts, which are used for law enforcement purposes, could be utilized in that regard.

SENATOR LYNCH: I'm looking at a document, just for purposes of refreshing your recollection, that indicates that you use these funds for some hepatitis analysis, confidential funds, drug testing, State match for the burn grant, Megan's Law, CAD -- which is your computerization system. Does that refresh your recollection?

ASSISTANT ATTORNEY GENERAL ZOUBEK: That would be consistent with what my understanding is of the various uses of forfeiture funds.

SENATOR LYNCH: Do you think it's appropriate to project in futuro what kind of funds you can anticipate from this account?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I think it's not inappropriate to evaluate what your budgetary needs would be, but certainly there's never been anything in terms of a goal has been set and you have to beat that goal and conduct yourself accordingly.

SENATOR LYNCH: Doesn't that sound like a bounty system--

ASSISTANT ATTORNEY GENERAL ZOUBEK: No.

SENATOR LYNCH: --when you start projecting what your needs are to fund budgets?

ASSISTANT ATTORNEY GENERAL ZOUBEK: No, I think, Senator, that if you had a period of time in which you had an experience level with respect to forfeiture and you were attempting to utilize those, as long as it's done for appropriate planning purposes, it's not my understanding that that then gets translated into any operational sense or any operational instructions.

SENATOR LYNCH: Do you know who does those analyses for the Attorney General's Office?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I believe that the budget function is out of the Office of the Administrator in the Office of the Attorney General.

SENATOR LYNCH: Do you know that that--

ASSISTANT ATTORNEY GENERAL ZOUBEK: I know that there are some requirements as to planning both capital budgets and other items. Law enforcement is very much an equipment and capital driven enterprise at times, and I know sometimes forfeiture has been used for that.

SENATOR LYNCH: Do you know a Herb Clark there--

ASSISTANT ATTORNEY GENERAL ZOUBEK: I'm sorry?

SENATOR LYNCH: --that works under O'Reilly at the Administration Office?

ASSISTANT ATTORNEY GENERAL ZOUBEK: What's the name?

SENATOR LYNCH: Herb Clark.

ASSISTANT ATTORNEY GENERAL ZOUBEK: I know the weatherman Herb Clarke, but I don't know that one.

SENATOR LYNCH: This document indicates that he prepares these analyses of current balances and projections in futuro. That doesn't refresh your recollection?

ASSISTANT ATTORNEY GENERAL ZOUBEK: No, it does not.

SENATOR LYNCH: And do you know if Mr. Clark performed financial -- was responsible for financial issues when he was over in the State Police?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I don't know Mr. Clark.

SENATOR LYNCH: And are you aware that there are anywhere from eight to ten significant people in the administration of the Attorney General's Office that are retired State Police?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I think you could look at a number of places in the State government and find retired State Police, and yes, we do have retired State Police working hard and doing a good job in the Attorney General's Office.

SENATOR LYNCH: I'm sure they are. We're talking about here, however, the -- as it relates to the oversight practices that the Attorney General has with the State Police, the Division of State Police. Do you believe that creates any kind of a problem when you have eight to ten people higher up in the administration here, as well as another twelve to fifteen in various investigative roles, with the Attorney General's Office?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Not per se, but I would add that what we have added substantially since -- in the last two years,

is the Office of State Police Affairs, which is an office that provides a significant amount of independent oversight.

SENATOR LYNCH: Where's the Inspector General fit into that scheme?

ASSISTANT ATTORNEY GENERAL ZOUBEK: The Inspector General is separate and apart from all of that within the Attorney General's Office and is totally independent.

SENATOR LYNCH: Thank you very much.

SENATOR GORMLEY: We will take a-- First of all, we will take at least a 10-minute standing break, and then we'll have Senator Furnari.

(RECESS)

AFTER RECESS:

SENATOR GORMLEY: We are going to reconvene.

SENATOR MATHEUSSEN: Mr. Chairman?

SENATOR GORMLEY: Yes.

SENATOR MATHEUSSEN: Before we start, I just want -- a question. At around 8:00 or 9:00 tonight, can we convert these TVs into the NCAA final two? Take a break, you know, or just-- No, huh? (laughter) I think Mr. Zoubek might be interested in that.

ASSISTANT ATTORNEY GENERAL ZOUBEK: I'm taking over under on how long this is going to be.

SENATOR GORMLEY: I think he'll have somebody -- last night's finals -- he'll have somebody playing in last night's finals in a few years. How tall?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Six-two.

SENATOR GORMLEY: Six-two.

Okay. Senator Furnari.

SENATOR FURNARI: Good afternoon, Mr. Zoubek.

ASSISTANT ATTORNEY GENERAL ZOUBEK: Good afternoon.

SENATOR FURNARI: I want to start off by thanking you for being here for all these hours and also for reassuring us that attorneys in their forties still have some memory left to answer these questions over such an extended period.

There are certainly-- You know, I've noticed at times today that through these repeated questions you seemed to have gotten a little bit upset, as if we're repeating them over and over. But some of the dilemma that we face here is the timing of things the way they seem to happen, the peculiar or the uniqueness in the way some things have happened out of character, you know, and the apparent or seemingly -- I don't want to use political climate -- or climate around the way things have moved, and I want to ask a few more questions in regard to that. But you know, I think you'll have to agree that something's happened -- that if they happened in just a little bit different order, that we'd be in a whole different set of circumstances. And this seems to occur over and over.

For example, this whole process starts in 1987 -- 1997 -- and the Attorney General's answer is -- and I mean that the Department of Justice

investigation begins, and the Attorney General's response is to go down there and talk to them and make it an inquiry, which is not a public matter. It just so happens that we're dealing with an election year at that time. It seems that in 1999, just after documents become public through *The Star-Ledger*, then suddenly there's a great flurry of activity. There's indictments and things that seem to be happening, and that's what gives rise to, I think, some of the suspicions.

Excuse me, Mr. Chairman, I seem to be hearing something from the other side that's distracting.

SENATOR GORMLEY: Okay. All right.

SENATOR FURNARI: May I proceed?

SENATOR GORMLEY: You may. Go ahead.

SENATOR FURNARI: Thank you.

Now, as of March 15th, and I think I have it -- as of March 15th, 1999, you were aware of the existence of a statistical analysis that showed high stop, arrest, and consent searches for minorities. That was the -- and in the analysis, it was saying was in your possession by that time. You already had the blue book and some additional analysis.

ASSISTANT ATTORNEY GENERAL ZOUBEK: I had analysis by March 15th, yes.

SENATOR FURNARI: And then you went to a meeting with the Department of Justice on March 19th, where the exact issues were framed-- I understand you said it was what the Department of Justice was looking for. And they told you that they were looking for consent search data amongst other things like the high stop and arrest data, right?

ASSISTANT ATTORNEY GENERAL ZOUBEK: No.

SENATOR FURNARI: They didn't tell you that?

ASSISTANT ATTORNEY GENERAL ZOUBEK: No. I said I went down for an additional meeting with the Justice Department. I told them I was in the process of evaluating the production that had occurred at that point in time, I had problems recreating it, and that I had -- we were working on pulling it together. If there was anything else that they thought that they wanted in addition to our pulling together to please advise. But I don't recall and I don't think I've testified to a specific discussion in the Justice Department on March 19th with respect to consent data.

SENATOR FURNARI: But they didn't-- When you went to talk to them and framed the issues, they didn't give you--

ASSISTANT ATTORNEY GENERAL ZOUBEK: I framed a number of issues. I framed issues with them all across-- Part of it was with respect to records. We were dealing much more broadly at that meeting-- As I've testified, I went for three hours to the Police Foundation on putting in an early warning system. We were frankly focused, in part, about production, but there was a whole series of other issues. There was not a specific review of the production of documents at that time.

SENATOR FURNARI: So is it your testimony that when you were there they didn't indicate to you that they were looking for data that was associated with consent searches, arrests, and stops?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I was aware that they had been looking for that. But you had said there was a discussion at that meeting. I was aware that those are among the things that they were looking for

and requests have been made. I made the commitment to work with them to make sure they had what they needed.

SENATOR FURNARI: You see, the problem comes when-- And again, this all could be, to some degree, a coincidence, but it's the difficult -- when you put it in retrospect now. Because not even a month later, we're -- you're releasing the interim report with this same data that you previously had in. And I believe your testimony before was that's how you gave this consent data that they were looking for to them--

ASSISTANT ATTORNEY GENERAL ZOUBEK: No.

SENATOR FURNARI: --through the publication of the interim report.

ASSISTANT ATTORNEY GENERAL ZOUBEK: No. I think what I testified to before was, they had underlying data with respect to the random dates. What-- Where we had an addition or analyses or compilations, the compilations were provided in the interim report that provided that data to the Justice Department, and in that report, had something else that the Justice Department was, I think, essentially looking for -- an admission that there was a problem that then set the foundation to move forward at that point. And indeed, there's a letter that I have in my file-- There's some discussion because of the direction they were going that they were going to suspend requests for witness interviews. And instead, we were going to be focusing on resolving the matter.

SENATOR FURNARI: Okay. But the information that you have down there with you, or at least that you've been exposed to on the 19th, is

much of the information that gives rise to their letter telling us on the 26th that they're going -- about to bring a lawsuit.

ASSISTANT ATTORNEY GENERAL ZOUBEK: I disagree with that. I believe that -- and they would have their own independent obligation. I don't think-- I hope what not happened was that the Justice Department received our interim report on April 20th, and then completed in five days all the work that they've been doing with the documents. That was a result of their review of the documents, and that's their summary of the review and their conclusions based upon the work that they had done.

SENATOR FURNARI: But if they had the information that you had when you went there on the 19th with the analysis -- with that analysis in your hand-- We had it in two places. They were both contained in-- Well, that information eventually became placed in the interim report, but it was in the Gilbert--

ASSISTANT ATTORNEY GENERAL ZOUBEK: But what I'm saying to you, Senator Furnari, is that the information that underlied the interim report -- the information that underlied the Justice Department review was information that, in part, from the 30 days, from 1995 to 1996, the Justice Department had that already. I don't have the interim report in front of me. There's specific reference on the second page of the statistical analysis and a footnote that identifies the period of times that it comes from, and it also identifies that it's, in part, from 30 days. So the Justice Department had those underlying documents. They had the underlying information. And what they received in addition was some additional compilations, but they had the

underlying information. And based upon the information they had, they reached their conclusion that was summarized in their April 26th letter.

SENATOR FURNARI: So then, what you're telling me is, even if when you went on down there-- You know, what I was suggesting is certainly -- is that if that data had been in your hand and given to them at that time, that their letter indicating that they were going to bring a lawsuit would have been forwarded to us at some time at an earlier date, that would not be true.

ASSISTANT ATTORNEY GENERAL ZOUBEK: I absolutely disagree with that. I mean, it's absolutely-- The record is clear. The Justice Department had the documents from the 30 days, and based upon the consent analysis, would have been able to come up with the same numbers that we came up here in New Jersey, and they didn't come up with it until they gave us a notice of intent to sue on April 26th.

SENATOR FURNARI: But they didn't have the '97, '98, and '99 consent search data?

ASSISTANT ATTORNEY GENERAL ZOUBEK: They had the data from '95 and to '96. I don't have the April 26th letter in front of me. If I could have that letter, I would appreciate it.

SENATOR FURNARI: Now, people have said before, as they've come to testify, that there's no law, there's no statutes--

ASSISTANT ATTORNEY GENERAL ZOUBEK: Could I have a copy? Could I see the April 26th letter while you ask your next question, if you don't mind?

SENATOR FURNARI: The April 26th letter.

ASSISTANT ATTORNEY GENERAL ZOUBEK: Okay. And my answer stands that they had made their conclusions based upon some of the data that they already reviewed.

SENATOR FURNARI: Now, I think someone testified before that there's no law in New Jersey prohibiting racial profiling as such. Do you agree with that as a statement?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes. And that's why in the interim report we suggested an official deprivation of civil rights statute that has been forwarded and is here with the Legislature.

SENATOR FURNARI: Now, other than that statute, do we need any additional new laws? Do you have recommendations for others?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Well, I think what we were trying to do there is that there did not exist -- there did not exist on the State level a parallel, if you will, to the Federal civil rights prosecution and the official deprivation of a civil rights bill that we recommended. And I believe it has been forwarded to the Legislature and introduced. I think that, in and of itself-- The problem is, is that you don't want to-- The question is, do you just have it as a racial profiling bill? I think you'd want to have it broadly with respect to civil rights in general and not just to an issue of race. Let's say, if it was an issue of another protected class, you would want to have that included and have those individuals have remedies as well.

SENATOR FURNARI: I'd like you to think back to the meeting of March 10th, where you met with the Attorney General, Deputy Attorney General Stone, and Special Prosecutor Gerrow. You talk about, as I understood

it, the process of the investigation associated with the shooting that took place on April 23rd. Do you recall that?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes.

SENATOR FURNARI: Now, at that time, so that I have the facts down, the grand jury had already been impaneled to hear charges arising out of that investigation associated with the shooting incident that took place near Exit 7A on the Turnpike?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes, it's a matter of public record.

SENATOR FURNARI: And except for the Attorney General in the room, everyone else had an extensive background into criminal law.

ASSISTANT ATTORNEY GENERAL ZOUBEK: Correct.

SENATOR FURNARI: Now, the Attorney General was told at some point during that discussion that the special prosecutor did not feel that he would be able to obtain an indictment of the shooting case for a few months.

ASSISTANT ATTORNEY GENERAL ZOUBEK: I think, if I can-- I don't think that the shooting case would be ready for presentation. I don't think he used the phrase obtain an indictment.

SENATOR FURNARI: All right. That's -- you're probably right. He said he wasn't ready to present the case to the grand jury in that it would take a few months before it was ready--

ASSISTANT ATTORNEY GENERAL ZOUBEK: That's correct.

SENATOR FURNARI: --because of additional expert testimony that he intended to bring. Now, it's at that time that I understand from your

testimony that the Attorney General indicates that he wants to move forward with a falsification indictment against Hogan and Kenna.

ASSISTANT ATTORNEY GENERAL ZOUBEK: I think what he said, and I think I testified to this previously before the Committee, was it essentially is the falsification portion of the case ready to go. Again, you're saying obtain an indictment and--

SENATOR FURNARI: He was ready-- There was a part that he wanted presented to the grand jury.

ASSISTANT ATTORNEY GENERAL ZOUBEK: Well, the first question was, was it ready to go for presentation?

SENATOR FURNARI: And I guess the people in the room said?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes.

SENATOR FURNARI: Now, his reason for wanting to go forward with the indictment is because there was an anniversary of the shooting coming up and there was substantial focus and pressure and criticism on the length of time the shooting investigation had taken. That was the reason he set forth to the rest of the criminal attorneys who were--

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes, I believe that's my prior testimony.

SENATOR FURNARI: And there was absolutely no legal reason for this falsification to be brought at that time in May or April, as opposed to waiting to September when the shooting indictment would be returned.

ASSISTANT ATTORNEY GENERAL ZOUBEK: Not in terms of a statute of limitations running, no legal requirement.

SENATOR FURNARI: In fact, there were lots of reasons why you shouldn't, in the middle, while there's a grand jury impaneled, leave and bring a separate indictment for actions arising out of your investigation of the first grand jury.

ASSISTANT ATTORNEY GENERAL ZOUBEK: I believe I previously testified to the risks that were identified during the course of that meeting.

SENATOR FURNARI: And those risks were what? What were those risks?

ASSISTANT ATTORNEY GENERAL ZOUBEK: The risks were, since there was a pending grand jury, the issue of potential taint of that pending grand jury.

SENATOR FURNARI: And I think we need to understand a little bit more about what that means. What would a taint to the grand jury-- What are we afraid of happening?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Afraid of a required -- obviously, by our system of justice to have an impartial grand jury make a determination, and there's a *Brook-Murphy* process whereby the grand jury, DAG, reviews with the grand jurors, under the supervision of the grand jury judge, to ensure that there is an impartial unbiased grand jury viewing of the matter.

SENATOR FURNARI: Well, there's only-- This *Brook-Murphy* hearing-- This is an unusual and peculiar procedure that's employed whenever there is a suggestion of a taint of a grand jury, is that right?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I wouldn't agree with your characterization that it's unusual. It happens quite frequently that, and indeed at the beginning of an impaneling of a grand jury, where on a particular case you have to identify whether there's anyone there who knows the persons that are involved in that particular case. So it does happen with some frequency.

SENATOR FURNARI: And mostly, those are the cases when someone on the grand jury knows a person that might be the subject of the indictment or someone on the grand jury is familiar with a company that may be involved with the indictment process.

ASSISTANT ATTORNEY GENERAL ZOUBEK: Or that many of the cases that are sometimes in the State grand jury, there may have been parallel reporting in the newspaper that there was an Attorney General's Office investigation or an investigation under the way, and you would have to, at the beginning of that presentation, determine who would grant publicity.

SENATOR FURNARI: Now, in the criminal law, the criminal lawyers, prosecutors have an obligation to try to avoid taints to the grand jury. Is that right?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes.

SENATOR FURNARI: Meaning, in fact, we have rules of ethics, canons of ethics about particular things the prosecutors can say with regard to criminal indictments.

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes, and there's a whole body of law that's developed over the supervision of the grand jury.

SENATOR FURNARI: And our purpose again is to keep this grand jury process free from potential taints?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes.

SENATOR FURNARI: Now, the reason we bring indictments-- Can you tell the panel why do we have a grand jury present at an indictment? What is -- what place does this hold in the judicial process?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Something called the Constitution. It's required in the Constitution before someone is charged criminally that they are charged by a grand jury.

SENATOR FURNARI: So that there is some reason to hold that person over so that they have to face charges someplace else, correct? And the case where we believe justice is done is during the petit jury process, right?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I would hope we believe that justice is done in all phases.

SENATOR FURNARI: I'm sorry?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I would hope we believe that justice is done in all phases.

SENATOR FURNARI: That justice is done-- But the trial of the facts are before this grand jury. This is the very minimal standard, right, for this grand jury?

ASSISTANT ATTORNEY GENERAL ZOUBEK: There's a different standard before a grand jury than there is a petit jury.

SENATOR FURNARI: Now, when there are considerations to bring an indictment, those considerations by the book, by what we teach prosecutors, are the nature of the offense and the facts that relate to them. Is

that right? In other words, the standard is, there's probable cause to believe this person did this particular offense, is that right?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I'm staying with you, Senator Furnari, keep on going. That's correct.

SENATOR FURNARI: Okay. So the criteria and the decisions that we made about how and when we had done something are supposed to be made on the basis of the facts of the offenses that they've committed?

ASSISTANT ATTORNEY GENERAL ZOUBEK: They're supposed to be based upon an evaluation of doing justice, evaluating the public interest. The prosecutor's responsibility is just not one that's on a case-by-case basis. The prosecutor's responsibility to the public -- determinations are made by the prosecutors to which cases to indict and which cases not to indict. Some of those are based upon a request in terms of deterrent, some of those are based upon a request in terms of what the Legislature has enacted and what they perceived the problems may be in the -- what may be perceived to be significant problems in the community at that time.

SENATOR FURNARI: So issues, questions about whether you would indict would be based upon problems that people think we have in society. Is that what you're saying?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Certainly, that's drug cases, by way of example. I've been in plenty of cases in which -- have developed because a community feels ravaged by drug dealing in their particular neighborhood. So they call up the prosecutor, and they ask the prosecutor or the law enforcement to do something in that particular neighborhood. And there's an evaluation that's done. There's a whole panoply of areas in which

prosecutors are responsible for making determinations and ensuring the public safety.

SENATOR FURNARI: Is it your testimony that there's a whole panoply of cases wherein a decision to bring an indictment -- a consideration to bring an indictment is a public relations answer to criticism of the prosecutor's office for failing to move on an underlying indictment? Is that what you're suggesting?

ASSISTANT ATTORNEY GENERAL ZOUBEK: No. What I'm suggesting is--

SENATOR FURNARI: Let me ask you this question.

ASSISTANT ATTORNEY GENERAL ZOUBEK: If I could finish my--

SENATOR FURNARI: Have you ever once before been involved in an indictment or since that time where your consideration as to whether or not you're going to bring this indictment was based on the fact that there were people clamoring over the failure of an office to bring an underlying indictment for the actual facts that would occur? Have you ever been involved in that before?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Senator, in terms of the determination that was made in this particular case, there was an evaluation done. I testified with respect to what the evaluation was, and there are circumstances in which prosecutors' offices, and the Appellate Division outlined this in their opinion, as a wide responsibility to the public -- and the public interest in moving on particular matters can be significant. And indeed, in this area, Senator, there has been much criticism that there was never any

movement in this area for years. And so, it's not necessarily inappropriate that those factors are considered by a prosecutor.

SENATOR FURNARI: Well, let me ask you a question. Did someone tell-- Was the Attorney General under the mistaken belief that if they moved the indictment at some time in April that there would be some kind of resolution -- a plea, a trial, something meaningful -- that would happen with that indictment before the September time when the second indictment came out?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Senator, I disagree with your representation that an indictment is not a meaningful stage in the criminal justice system.

SENATOR FURNARI: Okay. Let's try my question now. Was someone -- did someone there suggest or did the prosecutor suffer under any kind of belief that something would happen other than that indictment being -- or the grand jury coming up with an indictment? In other words, it wasn't going to be disposed of, was it? No one -- not one criminal attorney in that room believed that that indictment would be disposed of before the second indictments of those two guys.

ASSISTANT ATTORNEY GENERAL ZOUBEK: No, but it would have been the sooner you act on it, the sooner it will be disposed of.

SENATOR FURNARI: Okay. But my question was, no one believed it would happen any faster than the other charges. Isn't that right?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I said by a move faster on one it will -- you're expediting its consideration, but not that-- I think

we can stipulate that there was no expectation that it would be done -- that that indictment would be resolved in a couple of months.

SENATOR FURNARI: Right. What really was happening is, we're going to indict now and be able to announce there was an indictment now, but nothing was going to happen with that indictment any faster than if they had sat back and waited and presented those facts in the ordinary course. Is that right?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I don't-- I don't agree necessarily with that characterization. And I--

SENATOR FURNARI: Go ahead. I'm waiting, I'm sorry.

ASSISTANT ATTORNEY GENERAL ZOUBEK: No. Go ahead.

SENATOR FURNARI: And in fact, nothing did happen with that indictment, is that right?

ASSISTANT ATTORNEY GENERAL ZOUBEK: The indictment was released, and that case started to progress. There were court appearances.

SENATOR FURNARI: Until September, when the second indictment came out.

ASSISTANT ATTORNEY GENERAL ZOUBEK: Before the next indictment came out, yes.

SENATOR FURNARI: And did anything meaningful move forward on that case. The answer is nothing was meaningful and moved forward.

ASSISTANT ATTORNEY GENERAL ZOUBEK: I disagree with your characterization of meaningful. I frankly think that the points that you're trying to be making can be made without questioning me.

SENATOR FURNARI: The indictments-- When you were in the room with the Attorney General, you were talking about-- I imagine there must

have come a topic at some point of what would be a good reason to move forward with this and what wouldn't be. I mean, there was a weighing that went on. I think something went on when you decided to indict these two guys. There's some conversation that takes place after the Attorney General says, "Gee, I think I'd like to move the other portion of the case."

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes.

SENATOR FURNARI: Somebody stands up and says I--

ASSISTANT ATTORNEY GENERAL ZOUBEK: And I've testified-- I've testified to that before, and I stand by my testimony in that regard.

SENATOR FURNARI: So the first thing you told them is that what might happen is it might taint the grand jury. And then -- but don't worry about that, because there's a pretty good chance if we taint the grand jury that we can do a *Brook-Murphy* hearing. Now, tell us what happens in the *Brook-Murphy* hearing again. The assignment judge does what?

ASSISTANT ATTORNEY GENERAL ZOUBEK: As I testified to at approximately 9:00 on last Wednesday night-- And I only say that, Senator, because I've answered a number of these questions before, and I was very specific in my answers, and you're characterizing those. I would like to stand by those answers at the same time trying to be cooperative with you. Those risks were, yes, I identified them.

SENATOR FURNARI: But what -- I want to know if you told him and he understood what would have to happen, what was going to happen with this *Brook-Murphy* hearing?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I did-- We did explain that. I explained that in my deposition. I explained that to the Committee the last time of what happens in a *Brook-Murphy* hearing.

SENATOR FURNARI: So I don't remember it as well, and I apologize. Can you please briefly tell me what has to happen?

ASSISTANT ATTORNEY GENERAL ZOUBEK: What happens in a *Brook-Murphy* hearing is that, as I described a couple minutes ago, is there is a questioning of each of the grand jurors by the Deputy Attorney General on the issue of taint, bias, and impartially. And then there can be a review by the supervising grand jury judge of the record and the, perhaps, questioning of the grand jury individually by the supervising grand jury judge for a determination to be made as to whether or not there was taint. The record reflects, and Mr. Chertoff ran me through the record in this particular case, of what happened in this case. It's set forth in our briefs that a *Brook-Murphy* hearing did occur, and it's a matter of record what -- how long that took.

SENATOR FURNARI: And then two of those grand jurors had to get dismissed. Is that right?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I--

SENATOR FURNARI: The judge found that everyone had heard about it, and that two of the grand jurors had to be dismissed, because they were tainted. Is that right?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes, along with the determination that the others were not tainted, and therefore, the case could go forward.

SENATOR FURNARI: Now, did anyone tell the Attorney General at the time that that wasn't his only dilemma. That also there could be and there was likely to be a motion to dismiss the indictments if you were to go through this peculiar process or something. You do agree that it's so much--

ASSISTANT ATTORNEY GENERAL ZOUBEK: Well, I mean, I would agree with you, Senator, that the way in which a criminal case, that of which there's a belief there would be taint, that the way to focus that would be the criminal defense lawyer would file a motion to dismiss, because there'd be no way to bring the issue otherwise.

SENATOR FURNARI: Right. So I would think that you explained that to the Attorney General, or he knew that.

ASSISTANT ATTORNEY GENERAL ZOUBEK: I believe there may have been general discussion about it.

SENATOR FURNARI: And, in fact, that happened in this case, right, somebody brought a motion to dismiss it?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes.

SENATOR FURNARI: And, in fact, it was dismissed.

ASSISTANT ATTORNEY GENERAL ZOUBEK: At trial court, it was dismissed.

SENATOR FURNARI: Now, there's a possibility that if--

ASSISTANT ATTORNEY GENERAL ZOUBEK: The shooting case was dismissed at the trial court.

SENATOR FURNARI: Weren't both cases dismissed at trial court?

ASSISTANT ATTORNEY GENERAL ZOUBEK: No, I saw your question the other night on that. It was not. The underlying falsification case was not dismissed.

SENATOR FURNARI: It wasn't?

ASSISTANT ATTORNEY GENERAL ZOUBEK: No.

SENATOR FURNARI: All right, so the underlying shooting case was dismissed and had to go up to the Appellate Division. Is that right, the next step was the Appellate Division?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes.

SENATOR FURNARI: Now, there is a time when a prosecutor presents a case and taints a grand jury, it can be dismissed, for want of a better word, with prejudice, as well, right? Not only -- it's not only the minimal standard that your case gets dismissed before that grand jury, you can just impanel another grand jury and go forward. There is a possibility that it could be dismissed and you're not able to bring it again.

ASSISTANT ATTORNEY GENERAL ZOUBEK: I don't know if I necessarily agree with that. Perhaps the phrase possibility, I don't see that as a significant issue of risk.

SENATOR FURNARI: Well, in this particular case you -- once the indictment was dismissed, it was appealed to the Appellate Division, right?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes.

SENATOR FURNARI: Why wasn't it simply represented after the trial level judge dismissed it?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Because, like the three-judge panel, we believed that the decision of the trial court was "unfair and

unfounded,” and that it substantially adversely impacted grand jury law in the State of New Jersey. And the Appellate Division agreed with us.

SENATOR FURNARI: Now, did you have -- soon after this indictment, after this indictment was presented, it was announced by the Attorney General. Is that right?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes, on or about April 19th.

SENATOR FURNARI: I don't have this document marked, but what I'm going to present to the witness is a statement of the Attorney General, regarding the *State vs. Hogan and Kenna*, and it's a draft statement.

Did you--

SENATOR GORMLEY: Excuse me, is it marked?

SENATOR FURNARI: I don't see that it's marked, other than the OTG number at the bottom. It was in our file of documents.

MS. GLADING: It's not marked.

ASSISTANT ATTORNEY GENERAL ZOUBEK: All right, I have it, Senator.

SENATOR FURNARI: Now, when it comes to a taint of a grand jury, one of the things that I imagined you talked with the Attorney General about -- I imagined that you talked to the Attorney General about was things that you could do to avoid tainting the grand jury further.

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes. I believe I testified, either at my deposition or last week, that I think there was an expectation that given the focus of this case, which was being reported frequently, and most frequently on the front page, that if there was some action

taken by a grand jury on this, that there would be significant publicity and focus.

SENATOR FURNARI: Now, did you, as a result of that, before he was going to announce, did he allow you or any of the members of that team to participate in the drafting of the statement that he would say to the public?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I think it was -- what has been ultimately -- most likely would have been ultimately reviewed by someone who had more direct contact with the case.

SENATOR FURNARI: This -- I ask you to review through this statement.

ASSISTANT ATTORNEY GENERAL ZOUBEK: I've generally familiarized myself with the document.

SENATOR FURNARI: Does it -- do you recall anything that pertained to this? Did you review this statement before?

ASSISTANT ATTORNEY GENERAL ZOUBEK: It doesn't refresh my recollection as to whether I was-- I would identify that on April 20th, the interim report was issued, so I might have been a little bit busy that day. I don't recall whether or not I reviewed that.

SENATOR FURNARI: Now, in this statement it said that the Attorney General announces, in addition to the other indictment, he announces that he suspects that at least 10 other troopers may have falsified records, and an investigation continues as to the conduct of these other troopers, although they're not at liberty to say.

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes. I don't recall, as a matter of fact -- I recall what happened at the press conference. I

don't believe that portion was included in the final statement. The reason I recall that is because I think that issue was responded to from a question from the floor. I don't think that was in the final statement.

SENATOR FURNARI: Do you think that that statement -- I'm sorry.

ASSISTANT ATTORNEY GENERAL ZOUBEK: The portion with respect to the 10 other troopers, I don't think that that was in the final version of the statement itself. I thought that was a question that came from the press, from the floor, but I don't have any better recollection.

SENATOR FURNARI: And that certainly was -- but that was the truth, so far as you're concerned. There were 10 other--

ASSISTANT ATTORNEY GENERAL ZOUBEK: That was my understanding at the time.

SENATOR FURNARI: Now, I noticed that you still have a difficult time when I -- when I refer to this being a peculiar procedure. Have you ever been involved -- ever been involved where there is a grand jury impaneled, and you decide -- someone decides -- that they're going to move a separate indictment as part of the circumstance arising out of it?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I said that during the time that I was in the State, no. But certainly there have been cases in which there may have been pending, long-term grand jury investigations on more long-term cases, in which other cases were brought during the pendency of that grand jury.

SENATOR FURNARI: Did anyone recommend to the Attorney General that he -- that this was a good idea, and he might want to move forward?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I think what I discussed before was that we had a discussion of the risks, and he would receive advice from us as to what those risks were, and then he made his determination.

SENATOR FURNARI: But no one said, "General, this is not a good idea."

ASSISTANT ATTORNEY GENERAL ZOUBEK: Well, I think in the context of identifying the risks, and the risks in *Brook-Murphy*, we identified those to him, and that was the context.

SENATOR FURNARI: By the way, this indictment didn't go through the ordinary process, like the other ones you described before, where you had to send them over to Criminal Justice and let them make a decision. This was one that the Attorney General himself decided was going to be indicted.

ASSISTANT ATTORNEY GENERAL ZOUBEK: No.

SENATOR FURNARI: No?

ASSISTANT ATTORNEY GENERAL ZOUBEK: No. The individuals working on that case -- it was a case that was superseded -- Burlington County Prosecutor James Gerrow was working on it. It was being supervised by Debra Stone, Deputy Director of Criminal Justice. There was a DAG from Criminal Justice involved in the case. So, as it relates to the work that was done that had already been accomplished by the Division of Criminal

Justice, that's why the answer was, "the case is ready." What happened at that -- at that point was a discussion in terms of timing.

SENATOR FURNARI: All right. I have no further questions.

SENATOR GORMLEY: Senator Girgenti.

SENATOR GIRGENTI: Thank you very much, Mr. Chairman.

The hour is getting late, and most of the questions that I had in mind have been asked already. I just -- just as a clarification, Mr. Zoubek, going back to what Senator Furnari was talking about, that discussion with the assistant AGs and the Attorney General, were you personally concerned about this decision?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I identified the risks to the Attorney General. I did not tell him they could not do it.

SENATOR GIRGENTI: Now, when he discussed -- he was before us the other night, as you know, and he discussed with us a risk that was involved in moving that falsification indictment. How would you characterize the risk that was taken in moving the falsification indictment prior to completion of the shooting investigation?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I think I've used the phrase substantial--

SENATOR GIRGENTI: I know you've probably--

ASSISTANT ATTORNEY GENERAL ZOUBEK: No, substantial in that it entailed substantial risk that warranted examination. And that's when we discussed the *Brook-Murphy* possibility of curing that risk in that fashion. So I think it was clear at that meeting that it was a significant issue that had to be dealt with.

SENATOR GIRGENTI: And just finally, in that area, was there any compelling legal reason to proceed with the falsification indictment at that time, as the State did?

ASSISTANT ATTORNEY GENERAL ZOUBEK: No legal reason, Senator.

SENATOR GIRGENTI: Then, just another area that I had some questions just to clarify. You know, you've been here so long, and you may have said it already, and I just want it for my own clarification. You said in the-

ASSISTANT ATTORNEY GENERAL ZOUBEK: With the introduction that you gave, I'm happy to answer your question, Senator.

SENATOR GIRGENTI: You said in a deposition that the shutting down of the Troop D audit arose from a discussion between Lieutenant Colonel Fedorko and yourself. Is that correct? Is that the way I understood that?

ASSISTANT ATTORNEY GENERAL ZOUBEK: That's my recollection.

SENATOR GIRGENTI: What was the basis of that decision?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I think, as it was described to me by Lieutenant Colonel Fedorko, we had set up this audit in June of 1998. We had already received some results and had referred some 10 additional cases for investigation. And we had just assigned an additional 30 troopers, I believe, in March. And what I heard back from Lieutenant Colonel Fedorko was that they were running into a problem in the audit because they weren't obtaining additional results in Phase III, and that they had a substantial additional amount of interviews that they had to do, and so he informed me

that it was the recommendation of his people involved in the audit that they suspend that portion of it.

I said, that's fine, but please move forward with the Internal Affairs referrals that are necessary in this case. And that's what I saw happen over the next six or seven months, because I was also still the Director of the Division of Criminal Justice, and those referrals passed through my desk and were provided to the team of lawyers in the Division of Criminal Justice analyzing those cases.

SENATOR GIRGENTI: Was it the feeling, and maybe you said that, that the response from the motorists had slowed down to -- I think you said something -- to a near halt.

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yeah, I think -- I think Lieutenant Sachetti provided that, given the process that they had set up, they had 30 troopers, but they're only getting three or four calls a day, and I think, therefore, that it was an appropriate recommendation that came up to me to perhaps move on. And at that point, we had issued the interim report, and we'd asked the State Police to engage in a whole series of reforms, and that's where we focused our attention.

SENATOR GIRGENTI: Okay, just finally, why was the decision to shut the audit down made in favor of increasing the efforts made to get responses from motorists?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Because I had a great deal of respect for the investigators that were involved from the State Police. And if that was their investigative recommendation, that it had, if you will, run its course, I accepted that recommendation at the time.

SENATOR GIRGENTI: Okay, thank you.

SENATOR GORMLEY: Senator Zane.

SENATOR ZANE: Probably about half as long as Senator Girgenti.

Mr. Zoubek, in 1997, the latter part of it, is when you began to work for the Attorney General's Office. Am I correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: July 21st, I worked on the Executive Staff, and then I was sworn in on December 8th as Director of the Division of Criminal Justice.

SENATOR ZANE: Senator Robertson asked you some questions earlier today about -- you were shown two documents, W-27 and W-31.

ASSISTANT ATTORNEY GENERAL ZOUBEK: I have 27, and I'm working on 31. I have both of them, Senator.

SENATOR ZANE: Do you recall the questions about those documents that he asked you?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Generally.

SENATOR ZANE: As I understood the questions, essentially he was asking you if what was expressed there about the level of understanding of racial profiling was reflective of the impression you had as to what the Attorney General or the Attorney General's Office thought at that time about the issue of racial profiling.

Do you agree that that's essentially the questions?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes.

SENATOR ZANE: And I'm confused, and I'll tell you why. Those documents that you have before you are dated 1997, am I correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Correct.

SENATOR ZANE: The first document, W-27, the date on that is April 22nd?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes.

SENATOR ZANE: You were not even with the Attorney General's Office at that time, correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Correct.

SENATOR ZANE: The second document is dated October 31st, at which time you were with the Attorney General's Office.

ASSISTANT ATTORNEY GENERAL ZOUBEK: I was with the office.

SENATOR ZANE: Yes. Just explain to me how you-- Certainly, you were a short timer by October 31st, and you weren't even there the April date. Explain to me how you can convey to this Committee what was the impression you had as to the Attorney General's level of understanding of racial profiling, based upon your very short period of time there, in response to those questions asked to you before from Senator Robertson?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I'll do the best I can, Senator.

SENATOR ZANE: Okay.

ASSISTANT ATTORNEY GENERAL ZOUBEK: Part were the discussions I had directly with Attorney General Verniero that I testified to, and also, was part, as we were doing our work on the State Police Review Team, and I would have discussions with Lieutenant Colonel Dunlop and others from the State Police, and also with individuals from the Attorney General's Office. I was informed as to what, if you will, the approach was with respect to consents

in the past, and that that was consistent with what the Attorney General had told me in terms of the advice that he had gotten, which was that the focus at the time was on stops, not on consents and the impact that consents had on the racial profiling determination.

SENATOR ZANE: Last, on that subject, how would you describe -- or what would you describe as your level of involvement with the issue of racial profiling at that time, in the latter part of 1997? I was under the impression you indicated that your level of involvement really did not come about until sometime in February of 1999. Am I wrong?

ASSISTANT ATTORNEY GENERAL ZOUBEK: That's absolutely correct. And what I meant to convey from the last answer, Senator, was that my information as to about what happened during that period of time was gleaned from discussions with the Attorney General, discussions with some people at the State Police as it related to the approach we were taking, and the State Police review.

And indeed, I heard back from some -- from Lieutenant Colonel Dunlop and others, "Well, that's not the advice that we had been given in the past as to what consents meant."

So I -- you're absolutely right, Senator. I was not involved at the time, as it relates to those documents that you've referred to, because I wasn't directly involved in the issue.

SENATOR ZANE: Would you then suggest at this time, now having reviewed those questions here, now -- would you then suggest that this Committee probably should not rely too heavily on the responses you gave some hours back to Senator Robertson about your level of understanding as to

what the Attorney General thought about these two documents and the status of the issue?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I leave it up to the Committee's determination, but I would put it -- what I was trying to do was put it into context, because I believe that one of the things that the interim report did was, it did change the focus and did change the analysis of consents and their meaning. And so that's the context in which I was putting that, Senator.

SENATOR ZANE: Okay. The Troop D audit didn't really deal with the issue of racial profiling, correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: As originally designed, it was to deal with the issue of racial profiling potentially. The broad category of racial profiling, one of the issues that came out there was, can you learn something if a trooper is "ghosting" their records, writing down -- stopping a black motorist and writing down that it's a white motorist, if you will. And so, when Lieutenant Colonel Dunlop and I sat down in June of 1998, it was very much addressed to race-based discrepancies and the potential impact that had on potential racial profiling practices.

SENATOR ZANE: And the real thrust of that audit was falsification of records. Am I correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: No. As designed, and I think Lieutenant Colonel Dunlop testified that there were a couple of times that we were concerned that it was veering off its original course. Its original course and the investment of personnel was to be on race-based discrepancies. That's why I think there's been some confusion in terms of what

ultimately happened with the Troop D audit, because the rest of the Troop D audit, other than race-based, focuses on administrative discrepancies, and that's not what the priority was during '98 and '99.

SENATOR ZANE: Are there ongoing investigations regarding potential discipline concerning troopers at this time, as a result of that audit and other information that -- other information that the Attorney General's Office now has in their possession?

ASSISTANT ATTORNEY GENERAL ZOUBEK: It's my understanding there's two categories of that, Senator. One would be the follow-up and determinations as to potential discipline -- charges and potential discipline on the 10 troopers that were identified -- 10 to 12 troopers who were identified that have race-based discrepancies.

And then the issue was, what do we do with the rest of the administrative discrepancies, and that, I think, is what was filed sometime in October of 2000, which was, do you do an all or nothing on all of them, or do you set a percentage discrepancy and go after only persons who have X number of discrepancies? That's my understanding of where that is at this time, Senator.

SENATOR ZANE: Correct me if I'm wrong. To suggest that the limit of what is being -- of troopers that are being looked at is around the number of 10 is not accurate.

ASSISTANT ATTORNEY GENERAL ZOUBEK: No, I think it's important, Senator, that there are 10 as to race-based discrepancies. And I think there are 140 or more that Major Brennan testified to, when he was here the first day, and that's the administrative inquiry part that goes to discrepancies. And

I think that's an important point to keep in mind, because if you go back to the original synopsis of the Troop D audit that I received from Sachetti, what he has in his records, he says: "These are the 10 to 12 troopers. After we complete this process, we will refer the administrative inquiry issue."

So that's, I think, where a lot of the confusion has occurred. That's not on race-based discrepancies.

SENATOR ZANE: So the 140, since it was not completed, they will end up being race basis -- race based?

ASSISTANT ATTORNEY GENERAL ZOUBEK: No, I think the referral there, Senator, was with respect to the administrative inquiry at that time. Because they weren't -- one of the problems they ran into was because it was, at that time, in June of '99, they were finding it was very difficult when they tried -- even when they had contact with motorists, for the motorists to specifically remember what happened.

So the determination was to move forward from that, Senator.

SENATOR ZANE: Mr. Zoubek, the State also has a Division of Civil Rights, correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Correct.

SENATOR ZANE: And are they under the Attorney General's Office?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes, they are, primarily with jurisdiction, by statute, under the law against discrimination.

SENATOR ZANE: Understood. Were they, at any time at all, consulted in any of the investigation that took place regarding this issue?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes. Rolando Torres, who was the Director of the Division of Civil Rights at the time, was a member of the State Police Review Team. He was particularly involved in the portion of the report -- I thought it would be appropriate -- he was involved in the portion of the report regarding receipt of complaints from the public and Internal Affairs, which became part of the final report, issued on July 2nd, 1999.

SENATOR ZANE: Last couple of questions: There's been some testimony, both from you and Justice Verniero, about a rehearsal for the hearings of April the 26th, 1999, as well as May 5th and 6th, 1999. How long did those rehearsals last?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I believe, Senator, the one prior to the racial profiling hearing was probably about an hour. The one prior to the confirmation hearing was a couple of hours. And as I said, that related to a range of other issues, intended to focus more on other issues besides racial profiling.

SENATOR ZANE: And that took place at the -- in the Attorney General's Office, or the Justice Complex?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes, it did.

SENATOR ZANE: During regular working hours?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes, it did.

SENATOR ZANE: Was there advice at that time -- I'm not talking attorney-client privilege kind of advice -- was there advice at that time given to Justice Verniero as to how to answer questions in your presence?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I think what we did was, we had a crew of individuals playing senators.

SENATOR ZANE: How many?

ASSISTANT ATTORNEY GENERAL ZOUBEK: And we probably had three or four individuals. And I think what they were keying off of were some of the letters that had been sent asking for the General to respond to certain areas of inquiry, and to identify areas that he might be asked questions about.

SENATOR ZANE: How many people participated in that?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I recall, Senator, that there were probably four or five people.

SENATOR ZANE: Was there a discussion during those rehearsals about when the Attorney General became aware of the issue of racial profiling?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes, I think, Senator, particularly in the first session, which would have been prior to the racial profiling hearing, it was essentially, and the line I talked about before, "The *Soto* decision came out in 1996, why is it that you didn't act earlier?"

SENATOR ZANE: Were there any people there other than employees of the Attorney General's Office?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I don't believe so, Senator.

SENATOR ZANE: But you are saying that there were people there that made suggestions as to how to respond to different questions?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I don't know if it was -- if it was that, or it was more going around and doing a mock, so that you were prepared for questions.

SENATOR ZANE: At either of those hearings, did the word crystallization come up?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I believe it had already come up at that point in time.

SENATOR ZANE: At the hearings?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Well, I--

SENATOR ZANE: Excuse me. I don't mean the hearings, the rehearsals.

ASSISTANT ATTORNEY GENERAL ZOUBEK: I believe that that phrase may have already been memorialized by letter someplace, and that it was -- did come up at the hearing.

SENATOR ZANE: Was there a suggestion to the Attorney General that he use that term to explain when he became aware?

ASSISTANT ATTORNEY GENERAL ZOUBEK: No, that was a term that the Attorney General used to explain when he became aware.

SENATOR ZANE: Mr. Zoubek, when someone is stopped and there is a request made by a State Trooper for a consent search, what happens if the -- in the real world, what happens if the individual who's stopped says, no? What happens?

ASSISTANT ATTORNEY GENERAL ZOUBEK: That should be the end of the matter, unless there is some -- subsequent to that period of time, the officer is able to develop probable cause that would enable him to move forward with a search.

SENATOR ZANE: Now, you said that should be. Did the investigations from the Troop D audit suggest that things other than that happened?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I can't make it specific to the Troop D audit, Senator, but I think one of the concerns has been the documentation as to what happens at a stop, and making sure that any traditions that may have existed in the State Police of not calling stops in was eliminated. And I believe that the system that we now have in place, with the video cameras, the CAD system, now provides, if you will, a multiple cross-check system, not only to catch instances in which a trooper may have acted inappropriately, but also to support troopers, the vast majority of troopers, who have acted appropriately.

SENATOR ZANE: Is there any record or documentation regarding those people who may have refused?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I believe that there are supposed to be, essentially, a negative request that should be filled out, that you requested it, and it was denied. I don't know, Senator, in terms of the timing of that, if whether that is something that is now in our reforms or something that was taking place prior to that.

SENATOR ZANE: Do you happen to know whether it was done or not? Was it negative that someone rejected?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I believe that there were times when it was. I'm not entirely confident on my answer on that subject.

SENATOR ZANE: Have you ever asked for records of people that have refused the consent search?

ASSISTANT ATTORNEY GENERAL ZOUBEK: To the extent to which we ask for consent data, I would presume that would be included in that. It may just be the hour, Senator, I'm drawing a blank as to whether or not there's a form -- a negative consent to search form. I can inquire of that and provide you that answer.

SENATOR ZANE: At the time you were having discussions, did it ever occur to somebody that when data was being requested that we also ought to take a look at the people who refused and see why they refused?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes, and that's certainly part of what we are doing right now, in terms of the negatives and the -- are you talking about when somebody refused?

SENATOR ZANE: Is it fair to say that in 1995, 1996, 1997, and 1998, to the best of your knowledge, you have not seen any documentation that records the refusal by somebody to be searched?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I have not -- I have not seen that myself. I can't sit here and tell you that didn't exist. And I'd be happy to find out further.

SENATOR ZANE: On April the 26th, Senator Robertson asked you some questions regarding the searches. And he had some statistics. And you responded: "We are currently looking at-- Not for the interim report. I don't know the answer to that question. We are currently trying to tabulate probable cause searches, instances in which a request to search was denied, so we can get a better and accurate picture, keeping in mind that we have some

concerns as it relates to the manual tracking of data and our ability to pull that picture together in total.” That’s nearly two years ago. Have you done that?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes, Senator. Yes. And that has been done. And one of the things that the General will be talking about tomorrow is some of the work that has been done in that regard.

SENATOR ZANE: Well, did you do what you were going to say here?

ASSISTANT ATTORNEY GENERAL ZOUBEK: The office did that. As I said, we’ve established the Office of State Police Affairs and brought in the new superintendent in the fall of 1999. I did remove one of the hats that I had at that point in time, Senator, so I haven’t been as directly involved in that.

SENATOR ZANE: Do you happen to know whether or not motorists were ever told that if they did not agree to a consent search, they would be held, and a court order would be obtained to search the vehicle?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I believe I responded to Senator Lynch that generally, I had heard issues with respect to issues, potentially, of a consent to search need for greater documentation. I can’t say that I have specific information about that, Senator.

SENATOR ZANE: In the instructions to the State Police -- and I’m going to get off of that, because you’re suggesting that the questions I have -- I should be able to get the answers from the Attorney General tomorrow.

ASSISTANT ATTORNEY GENERAL ZOUBEK: No, what I’m saying-- I’m trying to answer the best that I can. I do know that the Attorney General will have a more specific analysis of some of the recent consent data,

because I think, clearly, we all recognize, and I know this Committee recognizes, that's an area that requires even additional focus, in terms of the reforms, and he'll be prepared to talk about that.

Senator, if he does not have all those answers, I will be happy to get them for you.

SENATOR ZANE: Okay. The bottom line with your testimony today on that subject is, you have not seen documents or statistics or reports from people that have refused and what transpired after that and the reasons, etc., correct?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I have seen more recent analysis of the data. I don't recall, Senator, as it relates to the refusal issue. I apologize.

SENATOR ZANE: Last question, because really what we're concerned about is civil rights of individuals, when in this entire process, as far as instructions to road troopers-- When does Miranda apply?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Miranda applies once they have a basis to potentially -- probable cause to arrest the individual. And at times, it would be required to be given.

SENATOR ZANE: So probable cause to arrest, which would not be, in most instances, I guess--

ASSISTANT ATTORNEY GENERAL ZOUBEK: Well, let me make sure-- I mean, if there's an indication that they believe they're going to go into a custodial status with someone, they should be giving them Miranda rights.

SENATOR ZANE: And they are not, in essence, in a custodial status when there's a search being conducted, in your opinion?

ASSISTANT ATTORNEY GENERAL ZOUBEK: In the law, it's my understanding -- and frankly, Mr. Susswein or Ms. Stone might be a good person to ask that question to.

SENATOR ZANE: Okay.

ASSISTANT ATTORNEY GENERAL ZOUBEK: There are different standards with respect to a Terry stop and the lengthy duration before it evolves into a right to Miranda.

SENATOR ZANE: I have no further questions.

SENATOR GORMLEY: Senator Matheussen.

SENATOR MATHEUSSEN: I'll try to be quick. Your state of mind, in April of '99, when we delivered the interim report-- Were you convinced then that there was racial profiling being conducted in the State Police?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes.

SENATOR MATHEUSSEN: And to what degree?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I think the answer on the exact degree-- I didn't know the exact degree then. I don't know the exact degree now. But I think we had found that the findings were such that they warranted action. And I don't-- I think in the issue of reform, with respect to racial profiling -- whether the problem is a 1 percent problem, a 5 percent problem, or more of a problem, that we have to do all that we can to protect every single motorist.

SENATOR MATHEUSSEN: Okay. And I know it's a short period of time, but from the time you delivered testimony with the Attorney General in April of '99 until he gave his -- he had confirmations in May of '99, did that opinion grow, as far as you had a stronger opinion about profiling at that time than you did when you gave the testimony on the interim report?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I think I had a strong feeling at the time. And I think the feeling that I have at this point in time, that it is a very difficult challenge -- the reforms are a difficult challenge. But I believe that the new New Jersey State Police, based upon its long-standing traditions, is up to the challenge.

SENATOR MATHEUSSEN: In '99-- In April of '99, how did-- What helped you formulate that opinion with regard to the conclusion that racial profiling was apparent?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Well, I think it was-- And we outlined in the interim report, it was a number of factors. It was complaints coming in from motorists. Reading some of those complaints, they're very compelling. I think complaints from some of the troopers that had come in as to the training, if you will -- the training they had received out on the road once they were past the academy -- what they were being told what to do; experience in the drug interdiction program and the rewards and incentives that may have been giving inappropriate, ultimate incentives to troopers; what we found in the Hogan and Kenna case; what we were finding in the Troop D audit; and yes, some of the historic numbers with respect to consents; and some other factors, as well.

SENATOR MATHEUSSEN: Now, you're also familiar with the letter that you testified earlier to that you had received, or at least was addressed to the Attorney General from the Department of Justice, dated April 26, '99. And I believe before you it said-- You were somewhat disturbed upon the receipt of that letter, because as a normal courtesy, the attorney on the opposite side didn't give you what you would have considered an appropriate heads up. Is that--

ASSISTANT ATTORNEY GENERAL ZOUBEK: Correct.

SENATOR MATHEUSSEN: You read the letter, though. Did you agree with the conclusions of the letter, that, in fact, Justice had given us some reasons, and basically they said, "As a result of this investigation, the Department has determined that State Police Officers are engaged in the pattern of practice of discriminatory law enforcement in violation of the Fourth Amendment to the Constitution and the nondiscrimination provision of the Omnibus Crime Control Safe Streets Act."

ASSISTANT ATTORNEY GENERAL ZOUBEK: I agreed that there was a problem that needed to be remedied. What we did in the consent decree is an attempt to do so. But there was no admission of the broad pattern asserted there that translates specifically into a violation of constitutional rights, because we hadn't made a determination as to the exact degree, but certainly that there was enough of an indication of a problem that we needed to act decisively to try to respond to.

SENATOR MATHEUSSEN: So you recognized the problem. You agreed that it had to be addressed, but you didn't agree necessarily with the violation of constitutional -- or violation of this omnibus act.

ASSISTANT ATTORNEY GENERAL ZOUBEK: Generally, as it relates to the Justice Department -- certainly that it was a concern as to motorists, obviously, but as it relates to the conclusion of their investigation, we did not admit that in the context of that litigation, but certainly stand by the admission that it's a problem.

SENATOR MATHEUSSEN: To a degree, I guess, we could say that although they said that the result of the investigation -- I don't know if they were absolutely convinced of their own, because they were willing to enter into a settlement, so to speak, with you and -- in the form of a consent decree.

ASSISTANT ATTORNEY GENERAL ZOUBEK: Well, I think, actually, the practice throughout the country is, essentially, ultimately they end up in a consent decree. They have litigated in a couple of jurisdictions, but now -- Pittsburgh, Columbus, and Los Angeles. Usually, it has been resolved by way of consent decree.

SENATOR MATHEUSSEN: Now, is that opinion your own, or was it shared by others within the Attorney General's Office, and if so, by whom?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I'm sorry, Senator, which opinion?

SENATOR MATHEUSSEN: Was that opinion -- the opinion that this investigation -- the Department of Justice investigation -- that it was something that needed to be addressed, was that your opinion alone, or was that shared by others in the Attorney General's Office?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Gesundheit, Senator. (acknowledging a sneeze)

SENATOR MATHEUSSEN: Thank you.

ASSISTANT ATTORNEY GENERAL ZOUBEK: At the time that the document came in, Senator?

SENATOR MATHEUSSEN: At the time the document came in, that's correct.

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes.

SENATOR MATHEUSSEN: And who else was it shared by? Was it shared by the Attorney General himself?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes, I shared it with the Attorney General, and there would have been individuals who were assisting me.

SENATOR MATHEUSSEN: No, I didn't say if you shared the document. I said did they share your opinion of the conclusion that you drew as a result of this investigation?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Well, with the authorization that I had at that time -- was to begin to pursue to see if there was a method of resolving it in -- with that -- notice to sue, because it's not the complaint to see if there was a way of resolving it. There would be a way of resolving it if the reforms went in place. And that was accepted another way. To resolve it would be by way of a consent decree. But that ultimately wasn't resolved until Attorney General Farmer's watch.

SENATOR MATHEUSSEN: As a matter of fact, the report outlines the way without going to settlement, doesn't it, I think? Near the end, it mentions your name. It says that you'd be the person to work with from the

Attorney General's Office, as would Rosenbaum from the Department of Justice's-- So it's-- You and he were supposed to get together, I guess.

ASSISTANT ATTORNEY GENERAL ZOUBEK: That's correct. And that also provided the background for why I called him that evening, as well.

SENATOR MATHEUSSEN: Okay. Essentially, the letter lays out three bases, if you would, for concluding that there was profiling going on. And I think you just laid out the same to me -- your conclusion. One was, by the document review that they had completed on reports of statistics that we had provided them. The other was the police training that was ongoing in the State of New Jersey. And the third was the statistics from the *Soto* case. That was what they relied on.

What's remarkable about the letter to me, as is your testimony -- in somewhat in concert with what they were saying -- that they relied on statistics and information that was coming out of New Jersey. Nowhere did it ever say that they relied on the shooting on the Turnpike as drawing a conclusion that profiling was being conducted in New Jersey.

Is that because you left that out on purpose, or is that something--

ASSISTANT ATTORNEY GENERAL ZOUBEK: No, I think, as well -- keeping in mind that the Justice Department has jurisdiction over that incident by way of the potential Federal civil rights case, the Justice Department, during this period of time-- We were in periodic contact of the U.S. Attorney's Office here in New Jersey, updating them as to -- to the extent we could as to that investigation. So I think, actually, it would be entirely appropriate for

them to keep that separate and apart from their civil pattern and practice review, and they did.

SENATOR MATHEUSSEN: I wouldn't necessarily second-guess them on that, and I don't know that your opinion is wrong or my opinion is right, but it seems to me to be an omission on their part, whether it was because they were dealing with it on a separate case basis or not -- that their conclusion was based on everything that New Jersey had given them -- everything that was literally right within our own grasp. And they drew that conclusion from statistics dating as far back as 1995. They did it from conclusions that they drew from the *Soto* case in the decision that Judge Francis rendered in 1996. And they did it looking at our own training manuals. And they could never-- They never once referred to the shooting on the Turnpike to draw the conclusion that profiling was going on in New Jersey and to draw the conclusion that we were engaged in a pattern of practice of discriminatory racial profiling.

ASSISTANT ATTORNEY GENERAL ZOUBEK: No. And I think my point, Senator, was-- I think -- respectfully-- I think it would be inappropriate for them to do so, because it was a pending criminal case. And if they had any reference in here -- the Justice Department had any reference to it, as a matter of public record, they would be commenting on a pending criminal case that they were monitoring at the time.

SENATOR MATHEUSSEN: My question, I guess as a follow-up, is, should New Jersey have waited for the Department of Justice to draw these conclusions, since they seem to have based their conclusions on information that we provided to them in the first place, or could we have very well drawn our own conclusions from the information that we were providing to them?

ASSISTANT ATTORNEY GENERAL ZOUBEK: No, I think I would join in what Attorney General Farmer has said on this issue when he said -- when he made the determination to release the 90,000 pages of documents. Could we have acted earlier? Yes. Should we have acted earlier? Yes. Should all of us have acted on this issue earlier? Absolutely.

SENATOR MATHEUSSEN: Okay. Fair enough.

We talked before about the different types of surveys that are out there: the general population survey, the violators' survey, and the consent to search survey. Of which is the most reliable for us to get to the--

ASSISTANT ATTORNEY GENERAL ZOUBEK: I don't know the answer to that question. And frankly, that's part of the work that we're doing with the Justice Department, because I frankly don't think, respectfully, that they know either. I think each of them will provide some indication. I think we have to be very careful that what we don't set up is law enforcement by numbers. Statistics are of some relevance to this issue, particularly if they get stark in terms of their disproportionate nature.

But I don't think what we want to necessarily have is law enforcement officers who, if you will, are necessarily keeping track of their percentages on a daily basis and law enforcement becomes by the numbers. So that is, frankly, one of the issues that we're working with the Justice Department on right now -- is how you have that appropriate balance between -- use the statistics in an early warning system and not overreliance of statistics, which would potentially cause unintended consequences.

SENATOR MATHEUSSEN: Give me an example, if you could.

ASSISTANT ATTORNEY GENERAL ZOUBEK: Well, I don't think we want to get to a point in time in which people are keeping track of how many people they have stopped on a particular day and trying to balance their numbers.

SENATOR MATHEUSSEN: Balance it with regard to race or gender or anything else.

ASSISTANT ATTORNEY GENERAL ZOUBEK: Correct.

SENATOR MATHEUSSEN: You testified before that we have not yet completed any survey, but that there's an RFP out for one.

ASSISTANT ATTORNEY GENERAL ZOUBEK: I believe, and I will talk to the General when I go back, as to whether we're able to provide further information at this time, but it's substantially under way at this point in time.

SENATOR MATHEUSSEN: So the specificity-- If we are, in fact, out with an RFP, there would have to be some specificity, would there not, with regard to whether it's going to be a general population or violation.

ASSISTANT ATTORNEY GENERAL ZOUBEK: This would be a survey that would look more at-- And I think the distinction that we maybe use is it may be called a speed survey.

SENATOR MATHEUSSEN: Speed survey.

ASSISTANT ATTORNEY GENERAL ZOUBEK: And the reason that is, is because--

SENATOR MATHEUSSEN: That's a fourth one. I haven't heard that one.

ASSISTANT ATTORNEY GENERAL ZOUBEK: The reason is, because I think it's more accurate. I think, actually, what was-- There are 150 or more violations that occur out on the highway. By collecting up each car that's got a problem with it -- its exhaust or windshield-- It's difficult to do that. This, and what Senator Robertson, I think, was talking about before is by speed, and the differentials of speed. It would legally be a speed violations survey. And I think that would be the focus.

SENATOR MATHEUSSEN: Being one of the more prominent violations.

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes.

SENATOR MATHEUSSEN: Are you personally satisfied, at this point in time, that we've taken as long as we have? We are almost approaching the--

God bless you. (acknowledging a sneeze)

We are almost approaching the two-year anniversary since you last testified before this Committee with the interim report. Are you satisfied that we are moving quick enough? And I don't mean to have to necessarily have to weigh expediency for detail.

ASSISTANT ATTORNEY GENERAL ZOUBEK: I think--

SENATOR MATHEUSSEN: But I'm asking--

ASSISTANT ATTORNEY GENERAL ZOUBEK: I think one of the points that has to be kept in mind, that is certainly something that could frame your discussions tomorrow, is that what is occurring in terms of reforms of the State Police is just not just as to a racial profiling issue. That's part of it, but across the board, in terms of the academy and a whole number of things that are

occurring -- and a \$30 million investment in new computer systems, and a record management system so we don't have to engage in these discussions on document problems.

SENATOR MATHEUSSEN: It's just--

ASSISTANT ATTORNEY GENERAL ZOUBEK: I think we're at a point where we're putting it in place, as it has occurred as quickly as we would have liked. But I think the monitors' recent reports have identified that it's occurring more quickly in New Jersey because of the commitment that would be expected to happen otherwise.

SENATOR MATHEUSSEN: Is Justice still involved?

ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes. As a matter of fact, pursuant to the consent decree, the monitors come into New Jersey, their reports are given to both Justice and the Attorney General's Office prior to their being issued, and we get contact with Justice Department representatives who were up here on this past Monday. We're discussing some of the continuing issues with us on the consent decree. So we do have contact.

SENATOR MATHEUSSEN: How are we measuring up to their standards?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I think the standards are the standards of the monitors' report. And if I may, in the midst of all this, I think one of the things that's gotten lost is that we have had two outstanding monitors' reports that have identified the strength of our training, our reform, the strength of our motor vehicle video reforms. And we can't-- We're not, certainly, going to rest on those. But I think it's really the first, outside of New Jersey Voice -- to come in and make an independent evaluation

of what we are doing-- And those -- very strong, positive reports. And I think we all should be encouraged by that. But it doesn't mean that we should, in any way, shape, or form, take the pressure off of cooperative reform in the State Police.

SENATOR MATHEUSSEN: It seemed to me that in 1996, '97, '98, we had a policy where it was almost don't ask, and we won't tell, or if you ask, then we'll finally tell you what's going on. Has that relationship changed with the Department of Justice now?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I think it's-- I wouldn't necessarily characterize it as you did, but I think we have a strong--

SENATOR MATHEUSSEN: I'm not asking you do--

ASSISTANT ATTORNEY GENERAL ZOUBEK: We have a strong working--

SENATOR MATHEUSSEN: It's my characterization.

ASSISTANT ATTORNEY GENERAL ZOUBEK: All right. We have a strong working relationship with the Justice Department. And I do think it's important to also emphasize we have a much stronger, much more cooperative, much more productive working relationship with the New Jersey State Police because of the creation of the Office of Police Affairs, which, in part, was suggested in the final report to remedy some of these communication problems and other things that we've discussed on Page 23.

SENATOR MATHEUSSEN: Whose final report?

ASSISTANT ATTORNEY GENERAL ZOUBEK: The final report of the State Police Review Team that was issued on July 2nd, 1999, called for the creation of an Office of State Police Affairs so that we were maximizing not

only the oversight of the State Police in a cooperative fashion as part of the -- what ultimately became the consent decree, but also increasing some of the level and depth of the legal expertise that they were receiving.

SENATOR MATHEUSSEN: Aside from waiting for the RFP and getting statisticians in to do the proper surveys, are we doing everything we possibly can do now to address the issue of profiling and trying to correct it?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I think there's more that we can do.

SENATOR MATHEUSSEN: Can you tell us what those things are?

ASSISTANT ATTORNEY GENERAL ZOUBEK: I think the General's going to speak to some of that tomorrow. And I think one of the issues that we recognized and we have to be careful of, is just ensuring that troopers who are out there trying to do their job are not taking shortcuts in terms of the decisions they're making about certain ethnic groups. And that's an issue for troopers, as well as it is for the society at large.

SENATOR MATHEUSSEN: What do you mean by shortcuts?

ASSISTANT ATTORNEY GENERAL ZOUBEK: To make sure that what is happening is we don't have -- when a trooper is stopping someone of a particular race or ethnic background, that they're not making -- still not making inappropriate conclusions based upon the fact that somebody happens to be a person of color.

SENATOR MATHEUSSEN: Thank you.

No further questions.

SENATOR GORMLEY: I want to thank you for your testimony, and thank goodness you were assigned the file.

Thank you.

The next witness will be David Hesse.

I'd just like to announce that our two dates for next week to hear testimony from interested parties and members of the public will be April 9th and 10th.

Appearances of the witnesses will be announced by Wednesday of this week.

Mr. Hesse, would you please--

SENATOR ROBERTSON: Mr. Chairman, as we are transitioning here, let me just make note of the fact that the staff has advised us that the Yankees won the opening game today. And if you could keep us posted in the developments in the NCAA, we'd appreciate it.

SENATOR GORMLEY: Well, I certainly appreciate that.

All right, what was the score?

SENATOR MARTIN: Just keep us posted on the World Series, given the way we're going here. (laughter)

SENATOR GORMLEY: Would you please raise your right hand?

(Oath administered)

Be seated.

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

DAVID HESPE, ESQ.: It is.

SENATOR GORMLEY: Okay.

Mr. Chertoff.

Just for the record, we've had certain inquiries. We had extended an opportunity to appear tomorrow to a prior witness from last Wednesday, and we haven't had notification back, so we'll assume that Justice Verniero will let his testimony stand as is.

Thank you.

Mr. Chertoff.

MR. CHERTOFF: Thank you, Mr. Chairman.

Good evening Mr. Hesse.

Mr. Hesse, when did you join the Department of Law and Public Safety?

MR. HESPE: March 23rd, 1998.

MR. CHERTOFF: And what was your position?

MR. HESPE: First Assistant Attorney General.

MR. CHERTOFF: Who was the Attorney General at that time?

MR. HESPE: Peter Verniero.

MR. CHERTOFF: And generally speaking, what was your scope of responsibility?

MR. HESPE: My responsibilities as First Assistant Attorney General were to work with a number of the divisions on issues that were coming to those divisions, to work on special projects given to me by the Attorney General, to work on some special counsel issues, as well, and to be the representative of the Attorney General on the Sports Authority.

MR. CHERTOFF: Did you have responsibility for the Division of Criminal Justice?

MR. HESPE: No, I did not.

MR. CHERTOFF: Did you have responsibility for the Division of Law?

MR. HESPE: No, I did not.

MR. CHERTOFF: Did you have responsibility for the Division of State Police?

MR. HESPE: No, I did not, although I would add, Mr. Chertoff, that special projects given to me by the Attorney General could touch on either one -- on any of those divisions.

MR. CHERTOFF: Now, you left your position when?

MR. HESPE: My First Assistant Attorney General position, Mr. Chertoff?

MR. CHERTOFF: Yeah.

MR. HESPE: I resigned effective March 19th, 1999, although my last full week in the office was probably in early February, because I had a very rapid transition out.

MR. CHERTOFF: So essentially, you were in the position for approximately a year, from March '98 to March '99, correct?

MR. HESPE: Correct.

MR. CHERTOFF: Now, in that year, did you have responsibility for supervising the handling of an appeal in a case called *State versus Soto*?

MR. HESPE: No, I did not.

MR. CHERTOFF: Did you have responsibility for handling something called the Troop D audit?

MR. HESPE: No, I did not.

MR. CHERTOFF: In that year, were you familiar with the fact that there was a Department of Justice, Civil Rights Division, investigation or review of racial profiling?

MR. HESPE: No, but let me caveat that by-- There was one meeting in December of '98 at which I attended where I was aware of a Justice Department request for information, but I was not aware that it was anything more than that.

MR. CHERTOFF: All right. We're going to come to that December meeting in a moment. But just to be clear--

As First Assistant, you would be the number two person in the Department of Law and Public Safety.

MR. HESPE: That's correct.

MR. CHERTOFF: Did you have any role in coordinating the activities of those people working on the *Soto* case, those people working on the Troop D audit, and those people working on the Department of Justice, Civil Rights investigation?

MR. HESPE: No.

MR. CHERTOFF: So you were not in the loop of control on those things?

MR. HESPE: No, I was not.

MR. CHERTOFF: By the way, was there an individual by the name of George Rover with whom you were familiar in 1998?

MR. HESPE: In 1998, I worked with Mr. Rover on a couple of ABC issues.

MR. CHERTOFF: ABC being Alcohol--

MR. HESPE: Alcohol Beverage Control issues, most notably working on a -- I think Rutgers-- I think a student had died of an alcohol-related situation, and we wanted to do something to promote responsible drinking. So that was, I think, my major contact with Mr. Rover -- was on that. And I think that was in the fall of '98.

MR. CHERTOFF: All right. Now, let me direct your attention to this meeting you referred to in December of 1998.

Do you remember where the meeting was?

MR. HESPE: The meeting was in my office on the eighth floor of the Justice Complex.

MR. CHERTOFF: And who was there besides yourself?

MR. HESPE: George Rover, Jack Fahy, and Al Ramey.

MR. CHERTOFF: And how did the meeting come to be called?

MR. HESPE: On my schedule, it appears the day before, so it must have been placed on my schedule the day before the meeting. I believe George Rover requested it. It appears on my schedule as profiling/Justice Department. And what I can gather is that my secretary asked Rover who should be at the meeting. He responded Fahy. And I think I probably invited Al Ramey, since Al was working with me on a number of profiling issues at the time.

MR. CHERTOFF: All right. Now, did you know before the meeting what the purpose of the meeting was?

MR. HESPE: No, I did not.

MR. CHERTOFF: Who requested the meeting?

MR. HESPE: I believe George Rover requested the meeting.

MR. CHERTOFF: And at the meeting, you said you were there, Mr. Fahy, Mr. Rover, and Mr. Ramey?

MR. HESPE: Yes, that's correct.

MR. CHERTOFF: All right. What was the discussion at the meeting?

MR. HESPE: It was a short meeting. It was generally an informational meeting. What I can recollect about the meeting was that George had received a phone call from a contact he had had off and on at the Justice Department. He wasn't sure -- we had to return the phone call at that point. He hadn't touched base with anyone in OAG since he indicated that Alex Waugh left. Alex was previously someone he would touch base with if a request came in. And he indicated that he wanted to touch base with me before he moved any further with it.

It was a very informational meeting for me. I wanted to get at least some basic background information on what was happening in terms of the profiling issue. And the conversation, I think, was very basic. I got some basic information on *Soto*. And that was about the extent of the meeting.

MR. CHERTOFF: Well, was there a question he came in to get answered?

MR. HESPE: I think he just wanted to touch base with someone at OAG to reestablish, I gather, you know, to just reestablish contact and let me know for future reference that he was going to be doing this and at least get me up to speed on part of this.

MR. CHERTOFF: Well, let me unpack this a little bit.

MR. HESPE: Sure.

MR. CHERTOFF: You said, a moment ago, that this was in connection with a request that the Department of Justice had made for some specific items, right?

MR. HESPE: No, I never said that.

MR. CHERTOFF: Well, you said it was in connection with a request from the Department of Justice.

MR. HESPE: A request for information, that's right.

MR. CHERTOFF: All right. So there was a request for information from the Department of Justice, right?

MR. HESPE: At that point, there had been no specific requests, but George's contact was -- normally, he would request information of George at the time. I think what I said prior was that I had never -- that I would not put it in the context of a Justice Department investigation or inquiry, but I was involved with an information request.

MR. CHERTOFF: All right. So there was an information request that Mr. Rover had told you had come from Justice?

MR. HESPE: He had said that he had a phone call from Justice. He had not yet returned it, but normally when they call him, it means they are going to be looking for information.

MR. CHERTOFF: And did he tell you what information they were looking for?

MR. HESPE: He did not say, but he thought they might be looking for particular information, and there's a short discussion about what that information was, but I don't recall exactly what the substance of the information was.

MR. CHERTOFF: Was the information statistical or an audit analysis of things on the southern part of the Turnpike?

MR. HESPE: It might have been, but I just-- The conversation on the information was very brief, because of the context of the meeting was just to try to bring to me up to speed on what George was doing, what the issue of racial profiling in that context was, and that really wasn't focused on responding to a particular request for information, not at that point.

MR. CHERTOFF: Well, was there some later point that he came back to you to ask you how he should respond to this informational request?

MR. HESPE: There's never any subsequent meeting to the December meeting. The meeting ended with my direction that George was to call them back, find out in specific detail what they wanted, perhaps why they wanted it, a time frame for responding, and then they'd get back to me when that was all done. He never did until the point -- this file got transferred over to CJ.

MR. CHERTOFF: Well, let me ask you this question: In the meeting you had in December, were you shown some statistics?

MR. HESPE: He came with some information. He did not go through them with me. I think Jack Fahy might have asked a couple questions about them. But at that point, since we didn't really have what I thought was a specific request for information, we didn't spend a lot of time going through what he thought he might have.

MR. CHERTOFF: Didn't you see some data that you thought were troubling?

MR. HESPE: Not at that meeting.

MR. CHERTOFF: At what meeting did you see that?

MR. HESPE: Well, I think when we were discussing *The Star-Ledger* request for information the next month on arrest data. I think that was some of the data that I saw that was troubling to me.

MR. CHERTOFF: Didn't you see data in the fall of 1998 that you regarded as troubling?

MR. HESPE: I indicated that in the deposition, but I think I was probably not recalling correctly when I actually saw that data.

MR. CHERTOFF: Well, let's break it down.

MR. HESPE: Go ahead.

MR. CHERTOFF: First, I'm going to read to you from a passage from Mr. Rover's testimony, before this Committee, a couple of weeks ago. It's at Page 142. And the question is: "How did this come up in December 1998?"

Answer: "I received a phone call from Justice, I believe, in the early or middle part of the month asking if they could speak to some active State Troopers. And I told Justice that I would get back to them. And I believe a day or two later I received another call from Justice, and they asked me if we had any audits or statistical analysis of anything on the southern part of the Turnpike and could I check to see if any of those documents existed. And I said I would get back to them."

And then he continues on at Page 143. Question: "Who did you go to, to find out what you should do?"

Answer: "Dave Hespe, the First Assistant Attorney General."

"Did you call him up first?"

“Oh, yes, I called him first.”

“What did you tell him?”

“I believe I told him I had two issues I needed to be resolved. And I can’t remember if I said I just have two issues or if I said one involves this and one involves that.”

“And did you set up an appointment to go over and see him?”

“Yes, I did.”

“And who did you meet with when you saw him?”

“I went to a meeting in Dave Hesper’s office with Al Ramey and Jack Fahy.”

“And what was discussed?”

“The first issue was whether or not the Department of Justice could speak to these active State Troopers.”

“And with respect to this request for an audit what was discussed?”

Answer: “I believe I went into the meeting and said, you know, here it is, Justice has asked for this, made a request for a document that this falls clearly within, and what do you want me to do.”

Question: “Did you bring the memo?”

Answer: “Did I bring the document?”

Question: “Yeah, the document.”

“Oh, yes. Okay.”

Question: “Okay. What was the response to the people in the room?”

Answer: “I know First Assistant Attorney General Hesper told me that they were working on something right now that they might be able to

release at some time in the future and that -- don't turn it over, get back to Justice, and say we're looking and let me know if they ask again."

Now, did that happen?

MR. HESPE: I don't recall it happening in that way. I recall very specifically, actually, asking a lot of questions -- my first exposure to this entire issue. I wanted to know exactly what was happening and why. I wanted to know the background on some of the racial profiling issues. For example, the *Soto* case, we spent some time on, background on that. And what I recall, the meeting ending was for George to find out from the Justice Department exactly what they wanted, why did they want it, and a time frame for responding to that request.

MR. CHERTOFF: Do you remember seeing a document or being shown a document?

MR. HESPE: I know he had some information with him. I don't know if it was a document or what it, in fact, it was, and we didn't spend a lot of time on it, because I didn't think we had a specific request from Justice Department at that point.

MR. CHERTOFF: Well, let's go to Page 30 in your deposition.

MR. HESPE: Whose deposition, Mr. Chertoff?

MR. CHERTOFF: Your deposition.

MR. HESPE: Okay, my deposition.

MR. CHERTOFF: The one you testified at.

MR. HESPE: Okay. Very good.

MR. CHERTOFF: And here's your answer in the middle of the page. Unfortunately, the lines aren't numbered. The question actually begins,

“Do you recall when you first started dealing with statistical data as to traffic stops and violations?”

Answer: “It must have been in the fall of '98 -- was the first time I can recollect the issue of data actually being raised, and I'm not even sure what the context was. There was a meeting of which I was probably -- and it was an ancillary meeting on the topic.”

“Do you recall if the data was troubling?”

“Was the data troubling? Yes. Did I understand the data? No. All I knew was I thought someone should explain this data, and that's when I saw the data. That's all, from what I can recollect, my thought was, yes, the data was troubling, but I didn't understand the data. I really didn't have much exposure to law enforcement data at that point to know whether this was normal or not normal, but it certainly was a concern. But I think my immediate reaction was, we need to have someone explain why we're seeing this information.”

Does it help you remember you actually saw data?

MR. HESPE: The only data that I know that we discussed at that meeting was the underlying reason for the *Soto* decision. That there might have been some data discussed at that point as they briefed me on the underlying *Soto* decision. But I don't recall anyone ever walking me through any data that George might have had at that meeting.

MR. CHERTOFF: Well, did you see data that you regarded as troubling?

MR. HESPE: I did in January at that meeting. The only thing I can recall is the discussion on the *Soto* case and perhaps the data underlying that.

MR. CHERTOFF: Well, let's go further. Again, back to this and the questions. Ms. Glading asks you: "Who told you about the--" I'm sorry. The question is "The fall of '98?"

Answer: "I'm sorry. Not the fall of '99, the fall of '98."

Question: "Who told you about the *Soto* data at that point?"

"It was raised at a meeting."

"With who?"

"I don't recall."

"Was it State Police, OAG?"

"It was definitely-- Well, I don't know definitely if the State Police were there. OAG individuals were there, and I don't know who else was there beyond that, because it was over at OAG, so I know OAG individuals were there. I just don't know what the context was other than that."

"How about Fahy?"

"Fahy might have been there. Yeah, Fahy might have been there. Some of the DAGs from Law might have been there."

Does that help us remember that this meeting where this comes up is a meeting where Fahy is there, right?

MR. HESPE: Yeah. And I think given the fact that I indicated that there was a general discussion of the *Soto* case and the data underlying that, I think that would be consistent with that.

MR. CHERTOFF: And that would be the fall meeting, right?

MR. HESPE: Excuse me?

MR. CHERTOFF: That would be the fall of 1998 meeting, right?

MR. HESPE: Yeah. That's right. It could have been fall '98, could have been early '99.

MR. CHERTOFF: Well, you said fall of '98. Is your testimony different now from what it was a couple of weeks ago under oath?

MR. HESPE: Yeah. Having found my schedule and looking for other meetings in the fall of '98, I found no meetings in the fall of '98 where this might have come up. The only meetings that I looked at that I could recall would be the December meeting with Fahy where the *Soto* case might have been discussed, or could have been in January with *The Star-Ledger*.

MR. CHERTOFF: Well, was Mr. Rover at *The Star-Ledger* meeting?

MR. HESPE: No, he was not.

MR. CHERTOFF: Was Mr. Fahy at *The Star-Ledger* meeting?

MR. HESPE: I don't believe so.

MR. CHERTOFF: All right. So I guess that helps us decide it's the December meeting, right?

MR. HESPE: It could very well be that it was the discussion of the *Soto* case at the December meeting.

MR. CHERTOFF: The 9th?

MR. HESPE: December 9th meeting.

MR. CHERTOFF: December 9th, 1998?

MR. HESPE: That's correct.

MR. CHERTOFF: All right. So this is not about *The Star-Ledger*, right? This is about when Rover comes in, right?

MR. HESPE: Well, in terms of the particular reference to the *Soto* case in my deposition, that's right.

MR. CHERTOFF: All right. Just so we're located on this, there's a-- And it's quite clear, by the way, that when the meeting appears on your agenda, it says U.S. Justice Department, profiling, right?

MR. HESPE: That's correct.

MR. CHERTOFF: All right. Nothing to do with *The Star-Ledger*, right? That's--

MR. HESPE: No, it does not.

MR. CHERTOFF: All right. So we've established now you had a meeting on December 9th, 1998, correct?

MR. HESPE: Correct.

MR. CHERTOFF: Fahy is there, correct?

MR. HESPE: Fahy is there.

MR. CHERTOFF: Rover is there?

MR. HESPE: Rover is there.

MR. CHERTOFF: The subject is the Department of Justice investigation, right?

MR. HESPE: Correct.

MR. CHERTOFF: You become familiar with the *Soto* figures, right?

MR. HESPE: That's correct.

MR. CHERTOFF: You are shown figures, and your reaction is that the data on its face indicates there's an issue, right?

MR. HESPE: I don't believe I was shown any of the *Soto* data. I think there was a discussion of the *Soto* data.

MR. CHERTOFF: All right. Let's go back to the sworn testimony of a couple of weeks ago, Page 52. Question: "So your criticism was of the quality of the analysis of the data, rather than the existence of data in the fall of '98?"

Answer: "No. Actually, I think my-- I didn't have a criticism. My concern was that the data on its face indicated that there was an issue, why was these percentages where they were, and a need for an explanation, and that was what other entities in the Department were working on, at least to my recollection, at those meetings."

All right, does that help you understand that you did have some -- whether you saw it, whether you were told it -- you were familiar with data on its face, correct?

MR. HESPE: And I think that's consistent with what I'm saying, that there is a discussion of the *Soto* case and the underlying rationale for that Judge's decision probably was discussed.

MR. CHERTOFF: And you know that what instigated this was some kind of call that Mr. Rover got from the Department of Justice, right?

MR. HESPE: That's correct. This is my first exposure to this issue, and my introduction to it was a phone call that I believe Rover received from his contact from the Justice Department after apparently a very long time of no contact.

MR. CHERTOFF: So were you surprised when there was a Department of Justice investigation in profiling?

MR. HESPE: When I learned about it over the last couple of weeks, or--

MR. CHERTOFF: No, on December 9th, 1998?

MR. HESPE: At that point, all I knew was that they were requesting certain information. It did not strike me as -- at least I did not learn at the time that it was part of a much more serious engagement at the time.

MR. CHERTOFF: Here's my first question, which I'd like you to answer.

MR. HESPE: Sure.

MR. CHERTOFF: Did it surprise you to learn that there was a Department of Justice investigation relating to profiling?

MR. HESPE: When?

MR. CHERTOFF: In December of 1998, when Mr. Rover put it on your calendar?

MR. HESPE: There's-- At that point, I did not know that there was a particular investigation. And what I learned during the meeting was that there was a request for information.

MR. CHERTOFF: Well, did Mr. Rover say to you at the meeting, "Geez, I got a call. There's a request for information," or did he say, "That for years now I've been turning over information?"

MR. HESPE: What he indicated was that he was a contact person for the U.S. Justice Department. That he had been providing information to them over time. That Alexander Waugh was his prior contact at OAG. And that now that Alex had left, he needed to just make someone at OAG aware of the fact that he had another contact in the Justice Department. That's what precipitated the meeting.

MR. CHERTOFF: So, did you take on responsibility for supervising now in this endeavor?

MR. HESPE: At that point, I became involved with George, and I would say, yes, at that point, I became involved with George. I didn't think he needed intensive supervision here. It was basically just getting enough information to me that we could take this up the chain of command, but, yes, Mr. Chertoff, I think the answer to that is yes at that point.

MR. CHERTOFF: Well, did you, after this meeting, did you see the Attorney General on a regular basis?

MR. HESPE: On this issue or any issue?

MR. CHERTOFF: In general?

MR. HESPE: Yes.

MR. CHERTOFF: Did you, at some point after this meeting, roll in and say to the Attorney General, hey, did you know, by the way, there's a Department of Justice request for information with respect to racial profiling?

MR. HESPE: At that point, since there was really nothing to take to them -- take to him at that point, George was going to get the information and get back to me. There was really no need to take it to the General. I would take it up the chain of command, certainly, when that information came in.

MR. CHERTOFF: Well, did you ask to see the file, to see what had been turned over?

MR. HESPE: What file was that?

MR. CHERTOFF: Well, did you ask Rover, is there a file regarding what's going on in this matter?

MR. HESPE: No, I did not.

MR. CHERTOFF: Well, let me ask you this. I mean, could it have possibly have escaped your attention in December 1998 that a Justice Department investigation in profiling was a big deal?

MR. HESPE: If I had known it was a Justice Department investigation, would it have appeared to me that it was a big deal? Absolutely.

MR. CHERTOFF: Well, did you-- You understood the Department of Justice was asking for information?

MR. HESPE: Yes. Yes, I did.

MR. CHERTOFF: You didn't think they were just kind of casually satisfying their curiosity, right?

MR. HESPE: Well, this was a contact with a deputy from ABC. It wasn't a high-level contact. It was an ongoing request for information. I did not -- at that point, did not strike me that this was unusual.

MR. CHERTOFF: I want to step back.

MR. HESPE: Go ahead, Mr. Chertoff.

MR. CHERTOFF: I want to establish what was in your mind -- the context of this in 1998 -- was you knew about the trooper shooting, right?

MR. HESPE: The Turnpike shooting, correct.

MR. CHERTOFF: Okay. You knew about the fact that there was a lot of public discussion about profiling, right?

MR. HESPE: Correct.

MR. CHERTOFF: Were you at least generally aware that there was a case called *Soto* that involved litigation of profiling, right?

MR. HESPE: In December, absolutely, yes.

MR. CHERTOFF: And you knew, in general, the issue of race and race relations was a significant issue for the administration, right?

MR. HESPE: Yes.

MR. CHERTOFF: It was a priority for the Governor, right?

MR. HESPE: It was a priority.

MR. CHERTOFF: So Mr. Rover comes in and he says, guess what, the U.S. Department of Justice in Washington is asking for information. Did that strike you as a matter of great significance?

MR. HESPE: I thought it was significant, but I thought the correct way to deal with that is to try to find out what exactly the Justice Department wanted, why in the time frame for responding that we get it up the chain of command at that point.

MR. CHERTOFF: But did you ask Rover whether this was the first request or have they requested things previously?

MR. HESPE: He had indicated to me that they would make requests to him, he would provide them with the information.

MR. CHERTOFF: Did you ask him to see what he had previously provided?

MR. HESPE: At that point, I -- there was going to be a multiple-step process in my mind. This is just the initial step. And at the time we got the -- you know, the actual specific information, we would then, at that point, take it up the chain of command.

MR. CHERTOFF: So are telling us you made no effort to familiarize yourself in the file to find out what was going on?

MR. HESPE: At that point, I did not ask or review the file.

MR. CHERTOFF: Did you make a determination you were going to take over supervision of the matter?

MR. HESPE: At that point, since what he had done is indicate to me that he was -- there was requests for information that he had done prior to that, my thoughts in my mind were when he had made the contact and had gotten the information, at that point, we would take it up the chain of command.

MR. CHERTOFF: Did you tell the Attorney General you were taking over responsibility for this?

MR. HESPE: At the point I became involved, it did not look like a serious engagement with the Justice Department. I now know that is not true.

MR. CHERTOFF: Well, how did you know-- How did you know-- Why did you come to the determination it wasn't a serious engagement if Mr. Rover told you you'd been turning over documents produced.

MR. HESPE: Well, just because of -- it seemed like a very low-level exchange of information at that point in time and--

MR. CHERTOFF: How did you know it was low-level if you didn't look for the information?

MR. HESPE: Well, I mean in terms of the people involved and that--

MR. CHERTOFF: Well, didn't Mr. Rover tell you he had reported to Mr. Waugh?

MR. HESPE: At some point-- Well, yeah, that he had touched base normally with Alex Waugh, but he didn't get into it in any great detail.

MR. CHERTOFF: Was Mr. Waugh low-level?

MR. HESPE: As I said, he didn't get into any great details to what Alexander Waugh's role was in this whole--

MR. CHERTOFF: Did you ask him?

MR. HESPE: What Alexander Waugh's role was?

MR. CHERTOFF: Yeah.

MR. HESPE: At that point, I -- what I wanted George to do was find out what the Justice Department wanted, what was the context for the request, and to get back to me with that information and time frame for us to provide. And then I thought that we could get it entirely up the chain of command and get an answer to the Justice Department.

MR. CHERTOFF: Now, let's be clear about this. Would you agree with me that given your state of awareness in December of 1998, there's no way you would have taken it upon yourself to make a final decision about whether something should be turned over to the Department of Justice?

MR. HESPE: Absolutely not.

MR. CHERTOFF: You would have gone up the chain of command?

MR. HESPE: Absolutely.

MR. CHERTOFF: Who was up the chain of command from you in December of 1998?

MR. HESPE: Attorney General Verniero.

MR. CHERTOFF: All right. Now, I want to come back, just again, to Mr. Rover's testimony. Are you telling us you don't remember or are you actually disputing his testimony that he told you there was a request for information, he showed you statistical information, and you said to him, don't

turn it over, get back to Justice and say, well, look, you let me know if they ask again. You're actually disputing that testimony?

MR. HESPE: All I can say is what I recollect. And what I recollect is that the meeting was informational, and that it ended with me indicating to Mr. Rover that he should find out more from the Justice Department as to what they specifically wanted, a why and a time frame, and then bring it back to me, and we'll take it up the chain of command.

MR. CHERTOFF: How long did this meeting take?

MR. HESPE: Probably a half hour or so.

MR. CHERTOFF: Well, it was scheduled for a hour. So what did you spend the other 30 minutes talking about?

MR. HESPE: We didn't. It just ended. It was a short meeting, and it ended with, I think, that ended it.

MR. CHERTOFF: And did it seem odd to you that Mr. Fahy and Mr. Ramey would be attending a meeting where all that happens is Mr. Rover says, hey, I got an inquiry from the Justice Department, you should go find out what it's about?

MR. HESPE: Well, to the extent that it was an informational meeting for me to be brought up to date on some of these issues, no. I think, and certainly to the extent that I was working on some of these issues with Al that actually makes -- be perfect sense, and I've had a lot shorter meetings than that.

MR. CHERTOFF: You had other meetings on profiling before this meeting in December, right?

MR. HESPE: I was involved in a number of aspects of racial profiling before this meeting.

MR. CHERTOFF: What aspects were you involved in?

MR. HESPE: The law enforcement summit was something that I spent a tremendous amount of time on--

MR. CHERTOFF: Yes.

MR. HESPE: --perhaps 30 meetings or so.

MR. CHERTOFF: And how does that relate to racial profiling?

MR. HESPE: It was a conversation that we had begun in the summer with Tom O'Reilly, Paul Zoubek, and myself about wanting to do something proactive on the subject.

MR. CHERTOFF: On what subject?

MR. HESPE: The subject of racial profiling and race in law enforcement generally. And the law enforcement summit was an outflow of those initial conversations of the summer. We had consulted with a person by the name of George Kelling, who had a community justice approach to racial profiling, race, and law enforcement issues. And then we decided that was a very beneficial way that the State could pursue a proactive approach to try to address some of the race and law enforcement issues.

MR. CHERTOFF: But as it relates to profiling, proactive with respect to what? Were you aware that there was an issue out there relating to profiling?

MR. HESPE: Racial profiling in general, yes.

MR. CHERTOFF: What was the issue that you were aware of, based on your work on this summit and your other meetings before December 9th?

MR. HESPE: Well, particularly, we were looking at the issue of the minority community's lack of confidence in law enforcement and proactive approaches we could take to try to address that. And certainly racial profiling--

MR. CHERTOFF: Well, you're wandering off the question. The question is specifically profiling.

MR. HESPE: I--

MR. CHERTOFF: Did you understand what profiling was?

MR. HESPE: Absolutely. I had many--

MR. CHERTOFF: What was it that you understood profiling was before December 9th, 1998?

MR. HESPE: What racial profiling was?

MR. CHERTOFF: Yeah.

MR. HESPE: It was quite simply -- it was law enforcement conflicting with the constitutional rights of the citizens it serves.

MR. CHERTOFF: In what way? You told us you had 30 meetings about a law enforcement summit?

MR. HESPE: Which deal with, very generally, the issue of race and law enforcement, and racial profiling is a piece of that.

MR. CHERTOFF: Okay. So just getting very focused on racial profiling, can you tell us what was your understanding as of December 9th, 1998, about what racial profiling is?

MR. HESPE: It was a law enforcement tactic that conflicted with the constitutional rights--

MR. CHERTOFF: And what was the tactic?

MR. HESPE: The tactic was targeting minorities for, first, auto stops, motor vehicle stops.

MR. CHERTOFF: So you did understand going into this thing in December 1998 that there was a big controversy about targeting minorities with auto stops, correct?

MR. HESPE: Sure. Absolutely.

MR. CHERTOFF: And you had meetings about it with the Attorney General, right?

MR. HESPE: I had a couple of meetings on organized law enforcement summit -- were with the Attorney General, that's right.

MR. CHERTOFF: And in all these meetings, did anybody ever tell you, hey, by the way, you know, there's a Civil Rights Division inquiry into this matter?

MR. HESPE: No. It did not come up during the course of the law enforcement summit planning.

MR. CHERTOFF: But at least you were-- When was the law enforcement summit, by the way?

MR. HESPE: December 11th.

MR. CHERTOFF: So, in other words, this meeting on December 9th is a mere two days before this summit meeting, right?

MR. HESPE: That's correct.

MR. CHERTOFF: So you must have been particularly sensitive to the issue at that point.

MR. HESPE: I was particularly sensitive to the issue throughout my term. I was involved in a number of different areas with racial profiling, but the issue of the actual Justice Department request for information and investigation/inquiry law enforcement strategies, or any of those issues, really, I wasn't focused on. I was focused on the summit, some Internal Affairs investigatory procedures--

MR. CHERTOFF: What Internal Affairs investigatory procedures?

MR. HESPE: Okay, we're switching gears. Back in May of '98, I received a Governor's referral letter from an individual who had been stopped on the Turnpike indicating that he had been the victim of racial profiling, and that began an engagement with the State Police on how they were going to look into that, a complaint, how it was going to flow through their Internal Affairs processes. And in fact, that came to a head probably in January of '99 as they resolved some of the issues -- at least their investigation of that complainant. We were able to engage the State Police on exactly how they handled it.

MR. CHERTOFF: So then is it fair to say that as of December of 1998, in addition to the law enforcement summit, you would have been sensitive to the issue of profiling because of the fact that you were working tracking this one allegation of profiling for the assistant?

MR. HESPE: That's right.

MR. CHERTOFF: So, in light of the fact that you're involved in both of these activities, on December 9th, you're told for the first time, guess

what, this is the subject of requests for information by the Department of Justice, right?

MR. HESPE: That's correct.

MR. CHERTOFF: And you've been told that there had been prior requests, right?

MR. HESPE: Correct.

MR. CHERTOFF: And you had been told that Mr. Waugh was personally involved in this, correct?

MR. HESPE: Correct.

MR. CHERTOFF: And then you're told that Mr. Rover is coming to you because he wants your supervision with respect to this matter, right?

MR. HESPE: He said he just wanted to touch base with someone. But certainly, if you're asking me would I assume responsibility for giving directions to Rover, the answer to that is yes.

MR. CHERTOFF: All right. So now, having come in and said he wants to touch base, your testimony is he has nothing specific except that he got a general call, but he doesn't tell you what it is, right?

MR. HESPE: He got a general call. He thought they were going to be seeking additional information from him.

MR. CHERTOFF: Like what? What did he say they were going to be seeking?

MR. HESPE: That, Mr. Chertoff, I do not remember, and specifically what he said they might be seeking.

MR. CHERTOFF: Well, could it have been that he said what they would be seeking would be specific audits or statistical analyses of profiling?

MR. HESPE: I couldn't answer that without conjecture.

MR. CHERTOFF: So, in other words, you're not in a position to dispute testimony that says that he said that the communication that he was expecting from Justice would have to do with statistical analysis or numbers, right? You can't dispute that.

MR. HESPE: Oh, absolutely not.

MR. CHERTOFF: All right. So your dispute is whether he actually told you the request had been made in the meeting or that he simply said the request was going to be made?

MR. HESPE: I think that's correct, yes.

MR. CHERTOFF: Now, your testimony is, though, that he didn't actually say the request was made, that he was going to get back to you, right?

MR. HESPE: I gave him that instruction, that's correct.

MR. CHERTOFF: And did you follow up?

MR. HESPE: It was a period of time where I was involved with a tremendous amount of duties. I was delegating heavily. I thought this was something I could delegate to George and that he would fulfill it. So the answer is no.

MR. CHERTOFF: But when you said you thought you could delegate it to him, hadn't he come in specifically to ask you for guidance about this?

MR. HESPE: He wanted to touch base and bring me up to speed on it.

MR. CHERTOFF: But what did you understand is touch base to mean?

MR. HESPE: He hadn't had any contact with anyone at OAG for quite some period of time. Now that the team had left, he wanted to reestablish some contact with someone at the OAG.

MR. CHERTOFF: Was it your understanding he was looking for guidance?

MR. HESPE: I'm not sure what you want to say.

MR. CHERTOFF: Did he want contact because he was lonely or because he wanted to get some guidance from somebody?

MR. HESPE: I think he wanted to make sure that someone was aware that this was happening in OAG, and that when it came up, you know, when they came for approval to release these documents, he had at least someone coming up to speed on them, is what I recall.

MR. CHERTOFF: So now, for the first time, you're aware that the issue of profiling is a hot-button issue, right? Correct?

MR. HESPE: Correct.

MR. CHERTOFF: The AG's going to provide -- preside over a summit in two days, which involves, among other things, that subject, right?

MR. HESPE: Correct.

MR. CHERTOFF: You're aware of the fact, for the first time, there's a Civil Rights inquiry or request for information from Washington, right?

MR. HESPE: Request for information, correct.

MR. CHERTOFF: Yet, you-- Do you ever mention this to Attorney General Verniero?

MR. HESPE: No, I was waiting for it to come back up with specific information that I could bring to his attention and get a decision.

MR. CHERTOFF: There was never a point in time when you're maybe waiting for something to happen at the summit two days later that you turn to the Attorney General and say, "By the way, did you know that the Justice Department in Washington has been nosing around in the issue of profiling?"

MR. HESPE: No, I never indicated that to him. I was going to wait for me to be able to say this is what they're looking for and then to try to get embedded in them a decision made up the chain of command.

MR. CHERTOFF: And then when weeks go by and you don't hear anything, you just think it went away?

MR. HESPE: It was-- The file was transferred to CJ in February, so my involvement didn't span that great length of time.

MR. CHERTOFF: Well, it spanned eight weeks, right?

MR. HESPE: It spanned eight weeks, correct.

MR. CHERTOFF: And at eight weeks, you had no follow-up on this issue, right?

MR. HESPE: With George Rover, that's -- well, with anyone, that's correct. It was delegated to George, and it did not appear to me that this interaction between Rover and the Justice Department was a very quick one. It appeared that it took great periods of time, at least that's to my impression at the time at the December meeting -- that this was something that was an ongoing relationship, and that wasn't necessarily going to be a call and get an immediate answer--

MR. CHERTOFF: Well, I want to make sure I understand the position and that it's very clear.

MR. HESPE: Sure.

MR. CHERTOFF: You agree there was a meeting with Mr. Rover.

MR. HESPE: I've already testified, yes.

MR. CHERTOFF: You agree he showed you data.

MR. HESPE: I don't-- I agree that he brought data with him -- or information with him. I do not agree that he showed the data to me or walked me through the data. I believe that some of the conversation might have been on that, but certainly--

MR. CHERTOFF: He made you aware of the data.

MR. HESPE: Made-- Exactly, made me aware that he had some information. That's correct.

MR. CHERTOFF: He made you sufficiently aware for you to draw the conclusion it was troubling, correct?

MR. HESPE: No, no. See, we're-- You're diverging down the line, Mr. Chertoff. What also happened at the meeting was a briefing for me on the *Soto* case, which, apparently, these information requests began after. And that's where a discussion of the data that was troubling to me, I believe, ensued at that point. That's the conversation I--

MR. CHERTOFF: To you, the troubling data was the *Soto* data.

MR. HESPE: Exactly. That's what I said in my deposition, as well.

MR. CHERTOFF: And the other data he discussed, you didn't form an opinion whether it was troubling or not.

MR. HESPE: No, I thought that would -- that could wait until the point where the Justice Department got back to him, and he got back to me.

MR. CHERTOFF: And then your position is, you never followed up.

MR. HESPE: That's correct.

MR. CHERTOFF: And then you say the file is transferred to CJ in February, right?

MR. HESPE: Correct.

MR. CHERTOFF: And this subject rears its head again in March, correct?

MR. HESPE: Not this subject.

MR. CHERTOFF: Well, the subject of profiling and the Department of Justice rears its head in March, correct?

MR. HESPE: No, it does not.

MR. CHERTOFF: Well, did you have a meeting on March 15th or 16th with Mr. Verniero where the subject came up about certain State Police documents that had not been turned over, supposedly?

MR. HESPE: I had a meeting with Attorney General Verniero and Paul Zoubek about information from the State Police that had not been turned over to us. The issue of the Justice Department did not come up.

MR. CHERTOFF: Well, how did that come up?

MR. HESPE: The March 15th?

MR. CHERTOFF: Yeah.

MR. HESPE: I had been out of the office for a few days with my transition -- Department of Education. I came back into the office -- I think it was the afternoon of that day. Justice Verniero-- Excuse me, Attorney General Verniero, at that point, asked me to speak with Paul. Paul just received some

information from the State Police. It was troubling them. I went and I spoke with Paul. Paul was very concerned about this information he just got in from the State Police. And Paul and the Attorney General indicated that they wanted to memo this to the file, that they just received this information on that date.

They asked me if I had received any information from the State Police regarding racial profiling. I indicated that except for information I received through my Internal Affairs work with them, I had not received any information from the State Police. I also indicated that we had been receiving a number of information requests from newspapers for this type of information. And we had been telling them, based upon representations of the State Police, that it did not exist. And I think the Attorney General was very concerned about his credibility on that issue, and the memo was written to the file.

MR. CHERTOFF: Now, let me ask you this: How did you get pulled into this? I thought you told us you weren't really involved in the racial profiling stuff.

MR. HESPE: Oh, I was involved in a number of different areas, as I said -- the summit, the Internal Affairs investigation, and also, over those -- at least February, in terms of the newspaper requests for State Police information. So I was involved in a number of different respects.

MR. CHERTOFF: When the newspapers asked for information, you said to them nothing forthcoming. Who did you check with at the State Police?

MR. HESPE: John Hagerty, I believe.

MR. CHERTOFF: Who's John Hagerty?

MR. HESPE: He's the information officer over there. This is all interplays between our public information office and their public information office that I was heavily involved in.

MR. CHERTOFF: So, did you actually talk to Mr. Hagerty?

MR. HESPE: No, but he sent-- You know, I-- He sent a letter out, which indicated that he did not have this information. It was a February letter. I cannot remember the date. You might have it.

MR. CHERTOFF: And of course, in February, you didn't raise the issue with anybody about the meeting you had had with Rover in December, right?

MR. HESPE: I knew the file -- Rover's file was going to CJ, but I did not speak with anyone about it.

MR. CHERTOFF: But when you're there in March with the Attorney General and Mr. Zoubek, do you say, "By the way, how does this all interrelate to the fact that there's a Department of Justice request for information?"

MR. HESPE: I did not. That conversation didn't come up. I assumed that since Paul had the Rover file at that point, that if it was information that was overlapping that file, that he would have certainly flagged that.

MR. CHERTOFF: Did you look at the information that came over from the State Police on March 15th?

MR. HESPE: No, I asked-- Paul gave me-- It was late in the day. It was late in the afternoon. And I asked Paul to give a brief description of it

just to make sure that it didn't overlap with anything that I had gotten from the State Police in terms of the Internal Affairs. I did not. And I told him that.

MR. CHERTOFF: You didn't look for it? You didn't look at it? You didn't look at the information?

MR. HESPE: There was no reason to because of the fact that the information I got was in no-- The information I got in turn involved Internal Affairs complaints from the State Police. It wasn't even the same subject matter in terms of what they -- of what Paul described to me he was getting -- some data regarding motor vehicle stops, so it wasn't even something that crossed my mind that it could be that category. But I did ask Paul for a description of it, and he gave me a description of it.

MR. CHERTOFF: And Mr. Verniero's concern was-- And the reason this memo was written was because Mr. Verniero was concerned about his credibility?

MR. HESPE: I think so, because they had been making representations that this information did not exist.

MR. CHERTOFF: What was the information that Mr. Verniero told you he had been making representations -- did not exist?

MR. HESPE: I think it was the information being requested by newspapers on this type of statistical data.

MR. CHERTOFF: Which were statistics on stops and consents to search?

MR. HESPE: I believe that's correct, yes.

MR. CHERTOFF: So, in other words, Mr. Verniero told you, in the course of these discussions, that he believed that there was no data available regarding stops and consents to search?

MR. HESPE: Well, that was what was represented, I believe, by the State Police.

Mr. Chertoff, I'm sorry, there's a lot of background noise.

MR. CHERTOFF: My question was this: In the conversation with Mr. Verniero, did he tell you that he had made representations that there was no data available regarding stops and consents to search based on his honest belief that there was no such data?

MR. HESPE: That's correct, yes.

MR. CHERTOFF: Did he tell you he had asked questions, or he asked about that data?

MR. HESPE: I believe he and Paul had an extensive conversation before I arrived in the building that day and discussed the data. That conversation didn't occur when I was there.

MR. CHERTOFF: Did Mr. Verniero tell you how it is he found out whether data existed -- whether this data existed or didn't exist?

MR. HESPE: I did not have that conversation with the General as to his assessment of the data.

MR. CHERTOFF: Did you see the memo to file?

MR. HESPE: Yes, I did.

MR. CHERTOFF: Did you approve it, as far as it made a statement concerning the fact that, "First Assistant Attorney General David Hesse 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.”

MR. HESPE: Correct.

MR. CHERTOFF: And you knew this had to do with data information relating to stops and searches of minority motorists, right?

MR. HESPE: Correct.

MR. CHERTOFF: And you were under the impression, from the people that you -- from Mr. Verniero and Mr. Zoubek, that they were not aware that this information existed.

MR. HESPE: Correct.

MR. CHERTOFF: That's what they told you.

MR. HESPE: That's what the memo says. That's right.

MR. CHERTOFF: But you actually never looked at the documents in question, right?

MR. HESPE: That was not necessary for me to be able to indicate that I did not receive that information from the State Police. I got a description of the documents from Paul.

MR. CHERTOFF: And did Mr. Verniero tell you why he wanted you to go to Mr. Zoubek and talk about this?

MR. HESPE: Other than that Paul had just received some documents, which he was upset about, no, he didn't give me a description of that. It was right as I entered the building that afternoon.

MR. CHERTOFF: Did you have conversations after this memo was prepared about the issue of what documents were available and when?

MR. HESPE: No, I was-- Just a day or two later I was gone.

MR. CHERTOFF: Now, I take it you were not involved in the actual preparation for the racial profiling hearings or the confirmation hearings. Is that correct?

MR. HESPE: Correct. There was a meeting on my schedule at some point, but I was over at the Department of Education and never was able to get to it. I was aware it was happening, but I didn't participate.

MR. CHERTOFF: You were aware, however, that Mr. Verniero was concerned about whether the issue of racial profiling was going to become an issue in his confirmation hearings, correct?

MR. HESPE: Did he tell me he was concerned about--

MR. CHERTOFF: Did Mr. Verniero ever tell you that he was concerned that racial profiling would come up in his confirmation hearings?

MR. HESPE: We spoke about the two issues occurring about the same time, and I think he was concerned. So I think the answer is yes.

MR. CHERTOFF: Okay. So what did he tell you were his concerns about the fact that racial profiling was arising as an issue at the same time as his confirmation hearings?

MR. HESPE: Just that it's a very controversial issue, and it's a very heated issue and that the fact that the two might overlap at his hearing was a concern to him.

MR. CHERTOFF: He told you it was going to be a big issue, correct?

MR. HESPE: Yes. I think that's right.

MR. CHERTOFF: And he told you that even though he thought the two issues should be separate and independent, they were going to blend together, because it was a matter of poor timing, right?

MR. HESPE: I think that's the-- Yes.

MR. CHERTOFF: So he conveyed to you, in essence, the notion that he felt unlucky, because the issue of racial profiling happened to break at the point in time that he was facing confirmation. Is that fair to say?

MR. HESPE: I don't know if luck had anything to do with it, but certainly the timing was of concern to him.

MR. CHERTOFF: The timing being that he thought it would have been better for him if racial profiling was not going to be an issue at his confirmation hearings, right?

MR. HESPE: I'm sure you'd be happy to have no controversial issues popping up at about the time of your confirmation hearing. Yeah, I think that's right.

MR. CHERTOFF: And what he told you was that he viewed this as an issue that would be controversial at his confirmation hearings, correct?

MR. HESPE: That's correct.

MR. CHERTOFF: Now, I want to just come back to this question to make sure we're clear on this. To the extent that Mr. Rover or anybody else ever asked you for guidance with respect to the Department of Justice requests, if any, for information, is it fair to say that you would not have been in a position to make the decision yourself?

MR. HESPE: No. Clearly, I was not in that position. In my mind, during the meeting, I was focused on making sure that I had the information

necessary to bring to the General. And he was the only one in my mind who would be able to authorize that type of information request.

MR. CHERTOFF: I think, actually, if we could get the Chairman out--

I think I have no further questions.

SENATOR GORMLEY: A couple of questions before. Just a couple of questions.

MS. GLADING: In the memo to file that you approved and the reference to you being unaware of these documents and noting that you had, on several occasions, requested State Police for this kind of information to no avail, who had you asked that information of?

MR. HESPE: Those were-- I'm sorry, are you finished?
(affirmative response)

Yeah, those were information requests, I think, on two levels. First, they were information requests of the State Police as a result of newspaper requests to our office for stop data.

MS. GLADING: Who had you made the request to?

MR. HESPE: That went over to John Hagerty through our public information office.

MS. GLADING: Okay. And--

MR. HESPE: I'm sorry, I didn't-- Could I finish? I said there were two. And the second would be my involvement with them -- with my Internal Affairs issue that I was pursuing with them. We had a number of meetings, and certainly, I asked them for all facets of how they were reviewing the complaints, any investigations they had under way with the complaints, and certainly, if

they were collecting data on this issue, I would have thought they would have told me about it at that time, as well.

MS. GLADING: Okay. But in your sworn interview, you testified that you had not made requests for statistical data as part of those Internal Affairs investigations.

MR. HESPE: That's right.

MS. GLADING: Okay.

MR. HESPE: But I would have thought that if they were doing investigations, they would have disclosed that to me.

MS. GLADING: In your calendar, there's a reference to a meeting on October -- I guess it's November 2nd -- State Police vehicles at Treasurer's office with Dave Mortimer, Tom O'Reilly. Was this about the time -- and this is 1998 -- the fall of 1998. Was this about the time that the State Police had abandoned the use of contraband vehicles and was now leasing them?

MR. HESPE: No, this was, I think, whether or not we would move from Crown Vics to Luminas.

MS. GLADING: I beg your pardon?

MR. HESPE: Moving from Crown Vics to Luminas, I think, was -- what-- How many-- What was it -- the type of patrol vehicle to be used on the highways. And I think that was what the issue was -- would it be a Crown Vic, would it be a Lumina, what would the car be.

MS. GLADING: You met with Mr. Rover again on January 4th, which was a Monday--

MR. HESPE: Yes.

MS. GLADING: --according to your calendar.

MR. HESPE: Uh-huh.

MS. GLADING: What was the substance of that meeting?

MR. HESPE: To begin a transition to Division of Gaming Enforcement.

MS. GLADING: Did you sign off on his promotion?

MR. HESPE: It was-- His promotion was -- came out of conversations that I had with Tom O'Reilly and others. Frank Catania was resigning, and we knew that George was interested in leaving ABC. And we, at some point, probably -- perhaps December, early January, had asked him whether or not he'd be interested in composing a team to go in to replace with J.P. Suarez. And I think that January 4th meeting was a meeting to introduce J.P. Suarez to the Attorney General, and George Rover to J.P. Suarez. So it was an introductory meeting at that point.

I did recommend George for that position at DGE. My involvement with him and the recommendations I had received from others indicated that he would be suitable for that job. And certainly, he had a very good chemistry with the Director Suarez at that point. And I think that's really what dictated him getting the position.

MS. GLADING: Did you-- Was Attorney General Verniero aware of that promotion?

MR. HESPE: Yes.

MS. GLADING: You spoke with him about it?

MR. HESPE: Yes.

MS. GLADING: And he approved of it also?

MR. HESPE: Yes.

MS. GLADING: When Mr. Rover came to you in December of 1998 and told you whatever you testified to that he told you, did Mr. Rover also tell you that he had had seven or eight contacts with the Department of Justice since June of 1998, in which he was forwarding information to them -- voluntarily, information that they had not requested, but things like highway interdiction training course information about in-car cameras, information -- more information about video cameras, more information about trooper training, information about the new standard operating procedure that required listing of race and sex on patrol charts? Did he tell you that he had been aggressively sending them information over the prior six months?

MR. HESPE: Not that I remember at that meeting. It didn't concern any of those issues.

MS. GLADING: Were you concerned that he had been basically left without any kind of management over his activities in response to the Department of Justice investigation for the better part -- for over a year since Mr. Waugh had effectively left?

MR. HESPE: At that point, I didn't realize that that history had attached to this. So at that point, no. And now that I know a lot more information about it, it might be different. But at that point, I didn't realize that there was this history to this and that--

MS. GLADING: I just want you to take a look at the statistical information that Sergeant Gilbert said Department of Justice was specifically asking for when Mr. Rover came to you in December. And I want to ask you if you've seen anything like that prior to today, the charts in particular.

For the record, these are the six-month analyses that are contained within the Gilbert notebook covering various time periods.

Does that look familiar to you?

MR. HESPE: No.

MS. GLADING: I'm sorry.

MR. HESPE: No. Actually, I'd have to get someone to explain what exactly this is to me.

MS. GLADING: It's not familiar to you?

MR. HESPE: No. I said, no. And I said, I think in order for me to even understand what this is, someone would have to take some time and explain to me exactly what is appearing here.

MS. GLADING: You said Mr. Rover came with some materials that day.

MR. HESPE: Yeah, but definitely did not show this to me.

MS. GLADING: Okay. Did you ask them why they were briefing you on *Soto* in December of 1998, when the case had been decided almost three years earlier?

MR. HESPE: Yeah, this was an introduction meeting for me on this issue. And certainly, the *Soto* case had a role to play. And I think that's the context for me at this meeting -- was trying to be introduced to the subject area. And certainly, *Soto* had a big role to play in that. It's my first exposure to this area.

MS. GLADING: Thank you.

When was the decision made that you were going to the Department of Education?

MR. HESPE: The Governor asked me in early to mid-January of 1999--

MS. GLADING: Thank you.

MR. HESPE: --and I started assuming some Education roles immediately.

SENATOR O'CONNOR: Mr. Hespe, I just have a couple of questions for you.

MR. HESPE: Sure, Senator.

SENATOR O'CONNOR: I'm looking at the transcript of your deposition, which was taken on February 5th, 2001. And right near the end of the deposition, a question was asked on Page 86 by Ms. Glading.

"Just one last question. At any time before you left the Department, did you learn about the Department of Justice investigation?" And your response is: "Into what? That's the only--" Ms. Glading: "Into racial profiling."

And then, skipping down a little bit further on Page 87, you're asked again the same question. And your answer is: "No. No. No. No three times."

And in light of what you've testified to today about this meeting in December, am I correct that you did know about the Department of Justice investigation, or is there some confusion there?

MR. HESPE: Yeah, I think the confusion is what was my mind-set in December. My mind-set was not that this was part of some greater investigation by the Justice Department. I thought of this as an information request. I didn't recall this meeting during the deposition. It was one meeting

on the issue of racial profiling where I probably had several dozen, and it did not appear to me, at the time, that this was part of something greater. I just thought it was an information request that I was involved in. I did not see it as part of a greater investigation or inquiry by the Justice Department and that this one meeting did not stick out in my mind for that reason, at any point, including during the deposition.

SENATOR O'CONNOR: Well, as the second in command behind the Attorney General himself, wouldn't you expect that the Attorney General would have briefed you on a Department of Justice investigation or inquiry?

MR. HESPE: Not if he wasn't going to be having me do anything on it, no. There's a lot of things happening in the Department which the Attorney General dealt one-on-one with either the Division directors, one of the OAG staff. And going into the job, I knew that I was not going to be part of everything going on in the Department. I was not going to be part of-- I wasn't even going to be aware of everything going on in the Department. There's a lot of things the General was going to be working on directly. So, no, it didn't strike me as odd at all.

SENATOR O'CONNOR: When you had this meeting with Mr. Ramey and Mr. Fahy and Rover, and you were briefed on the Department of Justice investigation or inquiry and then the *Soto* case, did you not make any tie between the two?

MR. HESPE: Definitely, there was a tie between the two. I think these information requests began about the time *Soto*, I believe, ended. So there was a tie there. And I think that's why I spent a considerable amount of time there being briefed on *Soto*, what *Soto* was all about, what it meant.

SENATOR O'CONNOR: Was there any discussion at that meeting in terms of the reports that had been made by Detective Gilbert, and in particular, in relation to the Maryland case and how the numbers in New Jersey related to the Maryland numbers?

MR. HESPE: There was no discussion of that.

SENATOR O'CONNOR: You were asked the question before, but I just want to make sure, because there was very, very clear testimony from Mr. Rover, when he was here, that he, in fact, took the information request from DOJ to you, and you specifically gave him the instruction that he should let the DOJ know that you were working on this and that he would get back to them at a future time -- to let you know, in fact, if they requested the information again. You read that or you heard that, I'm sure.

MR. HESPE: Yes.

SENATOR O'CONNOR: And that's directly contradictory to what you testified to today.

MR. HESPE: That's-- Well, all I can say is what I recall. I do not recall saying to George, "Do not give this information. And call me if they call back." Clearly, it was a different type of conversation in my mind as to what the purpose of that meeting was.

And equally clearly in my mind, this is not something I was going to be able to make a decision on without a briefing -- or the decision from the Attorney General.

SENATOR O'CONNOR: Did the Attorney General ever tell you, as he testified here, that his direction, at all times, was to be one of complete

cooperation with the DOJ, whatever they requested was to be handed over to them?

MR. HESPE: I never had a discussion with the Attorney General on the Justice Department requests.

SENATOR O'CONNOR: And in the entire eight-week period that you had some responsibility for this investigation or inquiry, did you ever approve the release of any records to the DOJ through Mr. Rover?

MR. HESPE: I neither approved the release or not approved release. All I approved was to find out enough information for me to take this up the chain of command.

SENATOR O'CONNOR: And after your meeting with Mr. Rover in December, did you, in fact, talk to the Attorney General about the meeting and what was to be your responsibility in this racial profiling matter?

MR. HESPE: Not on the Justice Department, no.

SENATOR O'CONNOR: Thank you.

MR. HESPE: Sure.

SENATOR GORMLEY: Senator Girgenti.

SENATOR GIRGENTI: Thank you, Mr. Chairman.

Just a few questions, Mr. Hespe.

I'm curious about-- You spoke about this law enforcement summit, which you say you spent a considerable amount of time on. I think you said 30 meetings -- you said.

On what date was the summit held?

MR. HESPE: December 11th.

SENATOR GIRGENTI: And what was the purpose of the summit?

MR. HESPE: The purpose of the summit was to raise, in a greater context, the issue of race in law enforcement, including, certainly, racial profiling; are there a large number of polls that were out there saying that the minority community did not believe it was being well served by law enforcement; that its constitutional rights were not being -- were being violated; that law enforcement wasn't doing enough to interdict drugs, to protect their children. And I think this was an opportunity for us to have an honest dialogue on these issues. And we tried to bring the minority community together with law enforcement from around the state to begin that dialogue and to try to come up with some strategies to address that lack of confidence issue. And one of the ones that we came up with was community justice approach -- that community has the -- needs to come together with law enforcement and come up with these strategies and to work together on addressing them.

SENATOR GIRGENTI: The AG was there?

MR. HESPE: The AG was at the law enforcement summit, correct.

SENATOR GIRGENTI: All right. And who was invited, and who attended this?

MR. HESPE: A few hundred people, members of the minority community and members of law enforcement.

SENATOR GIRGENTI: And what was the format of the summit?

MR. HESPE: The format was, there were informational sessions. There were working group sessions. There were various modes of delivering information and exchanging information and trying to come up with some strategies for addressing the issue. It was that type of dialogue that ensued during the summit.

SENATOR GIRGENTI: And what were the main points of interest you discussed at this? Was it racial profiling -- the major topic, or-- Was racial profiling a major topic?

MR. HESPE: Yes, definitely, in the context of race and law enforcement, racial profiling was a topic. A number of the members of the minority community indicated that they had been subject to that practice, but it was in the context of trying to do something positive, trying to do something proactive.

SENATOR GIRGENTI: Did State Police participate?

MR. HESPE: Yes, they did.

SENATOR GIRGENTI: And you were in charge of the preparation of this summit?

MR. HESPE: I was certainly one of the leads, along with Tom O'Reilly, in who put the summit together. We focused on, to a large extent, on administrative issues, trying to bring in experts, and relied on those experts for a lot of the substance of the summit. But in terms of administratively putting it together, that's right.

SENATOR GIRGENTI: All right.

And then you said racial profiling was a major topic of this summit, and in what context was it discussed? Who discussed the issue? What was the-

MR. HESPE: Well, it was discussed within the issue of race and law enforcement, the lack of confidence for these various issues, and then during the working groups--

SENATOR GIRGENTI: Was Jack Fahy there?

MR. HESPE: Of the few hundred people attending, I'm pretty certain Jack was probably invited.

SENATOR GIRGENTI: All right.

Did any recommendations for combating the problem arise as a result of the summit?

MR. HESPE: Yes. I think there was agreement to try to pursue a community justice approach, and in fact, putting -- actually putting out community justice grants to law enforcement to try to pursue that.

SENATOR GIRGENTI: All right.

Now, I believe in your deposition, you had, I believe you said -- and related to the State Police -- had responsibility for dealing with recruitment, hiring, and promotions?

MR. HESPE: Correct.

SENATOR GIRGENTI: And what was your role in that?

MR. HESPE: Yes, that was efforts to try to diversify the Division through changing recruitment practices, promotion practices, selection practices, and that assignment carried forward for around six months. And I think the recruitment and selection changes were actually announced at the law enforcement summit to show that there was a focusing on diversity issues at the State Police.

SENATOR GIRGENTI: And this was your direct responsibility in this area?

MR. HESPE: Along with Tom O'Reilly, that's correct.

SENATOR GIRGENTI: All right.

And then, were -- it was in the deposition -- were you aware that the NAACP had filed a lawsuit against the -- for alleged minority discrimination within the State Police? Were you aware of that at the time?

MR. HESPE: Not specifically, no, but I could have been. I'm reaching back for--

SENATOR GIRGENTI: Well, the lawsuit was filed in '95, and it wasn't settled until March of 2000. So certainly it was in your tenure there.

MR. HESPE: Perhaps, but I had no activity on it, and it probably only would have come up as, perhaps, some of the deputies might have been working through some of the recruitment and selection issues. But it wouldn't have been something--

SENATOR GIRGENTI: Wasn't it directly related to recruitment, hiring, and promotion?

MR. HESPE: Well, I think that that's right, but I wasn't involved with every aspect of developing that. I was very much trying to put together a team effort in that regard, and wouldn't know every piece of what was happening. I don't necessarily even know where the NAACP came into what we were doing. I don't know if it was, whether it's the degree issue or an activity type issue in terms of recruitment.

I'm not sure where it comes in there to tell you the truth, Senator.

SENATOR GIRGENTI: All right.

Well, you know that, because it's your area of jurisdiction, that you were working on it, I thought you would be more informed on that.

The only other question I have, and it's just a clarification, I guess, when Waugh left -- I believe it was '98 -- and when you came in, is there a

transition period? Does he bring you up to speed in terms of what exactly is expected or what dealings he was having at that point?

MR. HESPE: Waugh had left a number of months before I arrived. He was the Executive Assistant Attorney General. I was the First Assistant Attorney General. So, in terms of who I went to, to ensure a transition, Janice Mintz was my successor, and I indeed met with her and asked her what she was doing to make sure that there was a smooth transition.

I didn't-- Alex was not my successor, and I did not ever meet with him.

SENATOR GIRGENTI: Okay.

So you never-- But you did assume some of his responsibilities?

MR. HESPE: No.

SENATOR GIRGENTI: All right.

Well, in this particular case, the Rover situation, were you not--

MR. HESPE: Not at the time of my transition in, but by December, George had walked into my office, and at that point, I think I did assume part of that one piece, but not until December, and not until George walked in and indicated to me that he needed to touch base with someone. And the First Assistant normally is, if you're looking for a--

SENATOR GIRGENTI: But is that the way that things would operate? In other words, somebody would walk in and say, "Now I'm under your jurisdiction," or you as the supervisor-- You had no idea this guy was working for you or working under you?

MR. HESPE: Well, it was something that I wasn't even aware of what he was doing until he walked in my office in December. I didn't know this was going on at that point in time.

And I guess your question was, is this something that you'd expect to happen that way? No, I don't think so. I think you would have expected some transition to occur.

SENATOR GIRGENTI: And you said that the Department of Justice, you had no idea about it at this time?

MR. HESPE: Not until December. I had no idea that there was any involvement with the Justice Department in the Department.

SENATOR GIRGENTI: And then did Rover bring you up-to-date on it?

MR. HESPE: He gave me some basic information as to his requests for information coming in from the Justice Department, that he normally touched base with Alex Waugh. And now that Alex was gone, after a while of getting no contact, he was getting a contact, and he wanted to touch base with someone in OAG, and he figured the First Assistant was probably the best place to go.

SENATOR GIRGENTI: And you felt no need, again repeating it, to talk to the Attorney General at that point in time, when this individual walks in and says, "We have an inquiry. We've got a problem." This guy's under my jurisdiction, because he's placed himself under my jurisdiction, basically.

MR. HESPE: Well, he came to me to bring someone up to speed at OAG on the latest contact, and there's no reason for me to bring it to the

Attorney General at that point, because there's no decision for the Attorney General to make at that point.

SENATOR GIRGENTI: Well, wouldn't someone want to make him aware of the problem, that this was going on, that this guy was out there?

MR. HESPE: It seemed like a routine information request to me, and it would not be something I'd bring to the Attorney General until I had something to bring to him.

SENATOR GIRGENTI: So you never discussed it with the Attorney General?

MR. HESPE: No.

SENATOR GIRGENTI: Thank you.

SENATOR GORMLEY: Mr. Chertoff has two questions.

MR. CHERTOFF: I just want to give you an opportunity to respond to some testimony that we had last week from Justice Verniero as it relates to you and your role in this. I take it--

You've testified now, repeatedly, that you didn't know anything about this Department of Justice inquiry until December of '98, correct?

MR. HESPE: Correct.

MR. CHERTOFF: I'm going to read you a portion of testimony, and then I want to ask you a question about it.

MR. HESPE: Sure. Sure, Mr. Chertoff.

MR. CHERTOFF: The pages are not numbered, but at a point in time, the question is this, here is my question to Justice Verniero: "What steps did you take in 1998 to assure that potentially relevant information gathered by Mr. Zoubek and in the Troop D audit was communicated to Mr. Rover who

was dealing with the Department of Justice and satisfying the requests for information?”

Answer: “I would have assumed Alex Waugh, who is the point person, would have assured that we were complying with the Justice Department requests.”

Question: “Alex Waugh wasn’t there in 1998.”

Answer: “Oh, 1998, then it would have been whoever the First Assistant was. I think Dave Hespe took over or Janice Mintz, I’m not sure.”

So my question to you is: Did you do anything to assure-- Did you know what the Troop D audit was, by the way?

MR. HESPE: No, I did not.

MR. CHERTOFF: So I guess it would follow from that, that you did nothing to assure that information from the Troop D audit got over to the Department of Justice in terms of requests, right?

MR. HESPE: I had not been informed that it was my responsibility, that’s correct.

MR. CHERTOFF: Because you didn’t know about Troop D or about the Justice Department?

MR. HESPE: Correct.

MR. CHERTOFF: And so the next question is: “Did you direct them to be involved in any way to make sure that the information being gathered by the Troop D audit was getting over to Mr. Rover so it complied with what the Department of Justice wanted?”

Answer: "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."

Am I correct that Mr. Verniero never suggested to you that you consult with CJ about anything to do with the Troop D audit or the Department of Justice?

MR. HESPE: Correct.

MR. CHERTOFF: All right. Let me go to one last passage.

The testimony is as follows -- again, it's an unnumbered page -- the answer is -- again on the same issue about whether the Troop D audit was turned over: "We were looking at a Troop D audit situation, which may or may not have materialized our worst fears -- our worst fears that there were widespread falsification. I have no specific recollection in deciding yes or no to send information, but I would not have sent information to 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.

"Now, when Alex Waugh left the Department, as I recall, the Department -- that function -- that supervisory function over George Rover was discharged by Dave Hesper."

Was the supervisory function over George Rover in his capacity as someone who was dealing with the Department of Justice discharged by you before December 9th, 1998?

MR. HESPE: December 9th was the first time I became aware of any involvement with the Department of Justice. The answer to that is, no.

MR. CHERTOFF: And did anybody ever tell you, before Mr. Rover showed up on your doorstep, as it were, to discharge that supervisory function over George Rover?

MR. HESPE: No.

MR. CHERTOFF: Nothing further.

SENATOR GORMLEY: Thank you for your testimony.

MR. HESPE: Thank you, Senator.

SENATOR GORMLEY: What we're going to do now is, the next two witnesses will be Ron Susswein and Debra Stone. We are going to question the witnesses until quarter to 8:00, and then we're going to break.

(Oath administered)

Mr. Weber.

MR. WEBER (Assistant Special Counsel to the Committee): Ms. Stone, could you please let the Committee know where you're currently employed?

ASST. ATTY. GEN. DEBRA L. STONE: Division of Criminal Justice.

SENATOR GORMLEY: Are the red lights on? (referring to PA microphone)

ASSISTANT ATTORNEY GENERAL STONE: No. There it is, it's on now.

MR. WEBER: In what position?

ASSISTANT ATTORNEY GENERAL STONE: I'm the Deputy Director of Operations and Chief of Staff.

MR. WEBER: Mr. Susswein, where are you currently employed?

ASST. ATTY. GEN. RONALD SUSSWEIN: I'm currently employed with the Office of the Attorney General as an Assistant Attorney General.

MR. WEBER: What position? Are you in charge of any Divisions or Sections?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: No, sir. My title right now is Special Assistant to the Attorney General for Policy.

MR. WEBER: Ms. Stone, generally, what are your responsibilities?

ASSISTANT ATTORNEY GENERAL STONE: Generally, I oversee the Appellate Bureau, the Prosecutors and Police Bureau, Bias Crime, and Community Relations, the Office of Victim-Witness Advocacy, and a number of other smaller areas within the Division of Criminal Justice.

MR. WEBER: How long have you overseen the Appellate Bureau?

ASSISTANT ATTORNEY GENERAL STONE: Well, I started out in the Appellate Bureau in 1978. I became Deputy Director in 1993, and I've always overseen.

MR. WEBER: Mr. Susswein, generally, what are your responsibilities?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Right now, I'm doing policy projects for the Attorney General.

MR. WEBER: And how long have you been doing policy projects for the Attorney General?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: This current position is since, I believe, October of last year.

MR. WEBER: You had been involved, though, in policy strategies and decisions going back to the 1980s at the Attorney General's Office, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes, sir, in various -- various roles.

MR. WEBER: I want to bring you both to March of 1996, at which point in time, Judge Francis issued his decision in the *Soto* case.

Ms. Stone, you were involved in the decision to appeal that decision by Judge Francis, correct?

ASSISTANT ATTORNEY GENERAL STONE: I was called up to Attorney General Poritz's office -- I apologize for my voice -- and was asked to give input as to whether or not there should be an appeal of the *Soto* decision.

MR. WEBER: What was your input?

ASSISTANT ATTORNEY GENERAL STONE: My input was that we should not appeal it.

MR. WEBER: Why was that?

ASSISTANT ATTORNEY GENERAL STONE: I felt it was a very poor record. I had read the opinion. I was concerned about some of the statistics, even though I was assured that the statistics were not valid, and indeed, it did not seem to be a terribly valid survey just to drive up and down the Turnpike.

I felt the factual information in there was very bad, and it would have a bad effect on selective enforcement law generally.

MR. WEBER: Ultimately, though, a decision was made to appeal the case, correct?

ASSISTANT ATTORNEY GENERAL STONE: That is correct.

MR. WEBER: And it was based, primarily, on the thought that the defense study was based on junk science, and that the judge had made bad law in his decision, correct?

ASSISTANT ATTORNEY GENERAL STONE: It was based on, at least from our perspective, there was a narrow legal issue as to whether he had shifted the burden of proof improperly and whether he had made a leap from determining that racial profiling existed and that these particular defendants were affected by it.

MR. WEBER: And this was an interlocutory appeal, correct?

ASSISTANT ATTORNEY GENERAL STONE: From my perspective, I thought it was, yes. That was the advice I gave.

MR. WEBER: Mr. Susswein, you became involved in the issue of racial profiling shortly after Judge Francis issued his decision in March of 1996, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes, I actually had been a witness in the *Soto* case, so to that extent--

MR. WEBER: But after the decision was rendered in March of 1996, there was a committee of individuals put together that consisted of individuals from the New Jersey State Police, yourself, and Mr. Fahy, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes, I attended at least two meetings.

MR. WEBER: There was a meeting on April 12, 1996, which was the first meeting -- and for just ease of reference I'll refer to the committee as the Littles committee, okay? You attended that meeting, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes, I did.

MR. WEBER: Let me show you -- we'll put up on the screen -- a document we've marked as G-4, which is an interoffice communication from then Detective Gilbert to Colonel Williams, and I'll direct your attention to the second page of that memo, which recounts the April 12, 1996 meeting.

At that meeting, there was a discussion, and a decision was made that there would be a review of the 19 Moorestown State Police cases to ascertain which troops were involved, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: That's what this says here, and I really wasn't-- I was focusing on the training, so I wasn't focusing on that particular issue.

MR. WEBER: Well, you don't dispute what's in the memo, do you?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: No, no, I don't.

MR. WEBER: Okay.

There was further discussion that once those 19 cases were identified and the analysis was conducted, there would be an attempt to identify any potential negative issues should any of those troopers be called upon to testify, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I don't have a specific recollection of that discussion, but I don't deny that that was one of the things that was talked about that day.

MR. WEBER: And ultimately, it was discussed that if the review uncovered substantial problems, there would be a recommendation given to the

Attorney General's Office that additional thought be given to proceeding with the appeal of the *Soto* decision, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Again, the same answer. I don't dispute--

MR. WEBER: You don't dispute that that was discussed?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I don't dispute Sergeant Gilbert's recollection.

MR. WEBER: If we go on a little further, the next page of the memo recounts a decision, or actually, a discussion that you and DAG Fahy participated in.

You see that at the top of the memo?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Which page is this, sir?

MR. WEBER: This is Page 3 of the memo -- OAG-4199.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes, sir.

MR. WEBER: And the memo accurately recounts that you and Mr. Fahy noted that it was unlikely that other judges would summarily be dismissing defense claims of profiling as a result of Judge Francis now issuing his decision, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes. I was involved in that discussion.

MR. WEBER: And that, as a result, you had suggested to the group of the Littles committee that there would probably be a number of attempts going forward on other cases that dealt with racial profiling by defense lawyers

to obtain records and statistics to support further claims of racial profiling, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes, this was an issue that was clearly not going away.

MR. WEBER: And there was discussion of other racial profiling allegations in cases in Hunterdon County, in Mercer County, and in Bergen County, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I believe that Jack was briefing the members of the committee on some other litigation that was pending.

MR. WEBER: But you and Mr. Fahy made it clear to the members of the Littles committee that, basically, the tide had changed on this particular issue, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: That's the phrase that I used for this and for Fourth Amendment issues, as well. That there was a great need now for enhanced training and documenting the reasons for the exercise of police discretion.

MR. WEBER: And as a result of the *Soto* decision in March of 1999, you believe that there is now a chink in the law enforcement armor, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I did use that phraseology. I do believe that.

MR. WEBER: And in your deposition, you told us that one of your purposes on this committee was to -- and I'll use a quote -- "turn lemons into lemonade," correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: That's what I was there for, which was, obviously, *Soto* we had lost to this point-- The trial court had issued a ruling adverse to the State. Now, the question was, moving forward, what good can come of this? And I think the answer was enhanced training for the State Police.

MR. WEBER: In fact, this memo -- G-4 -- the last page recounts a proposal to do a half-day training session as a starting point, but that training would be, in no way, an adequate solution, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: That's correct, it was a starting point.

MR. WEBER: And you had suggested that you start with a half-day training session, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I don't know that I was specific as to saying a half-day, although the lectures that I give tend to be three or four hours, so that would be considered a half-day session.

MR. WEBER: Okay, but you had made the suggestion that some training was needed, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Absolutely.

MR. WEBER: Ultimately though, this half-day training session, or any training session for that matter, is never instituted, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: That's correct.

MR. WEBER: Why is that?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I do not know.

MR. WEBER: Did you do anything to follow up with any of the members of the Littles committee to ascertain what they were doing with your suggestion that enhanced training was necessary to address racial profiling?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Well, my role transformed from this attending two committee meetings to becoming a member of what was called the State Police Search and Seizure Review Board. So that's how I was following up on these suggestions, which was I became the legal advisor to the State Police Search and Seizure Review Board shortly afterwards.

MR. WEBER: Well, as a member of the Search and Seizure Review Board, did you do anything to institute any training for the State Police?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Not in terms of training sessions, like seminars, but the key of the Search and Seizure Review Board was to develop newsletters and publications to get the word out to all State Police membership, and I was very actively involved in the development of those publications.

MR. WEBER: All right.

So you developed a newsletter, but no training session, half-day, full-day, or otherwise, was ever instituted as a result of the discussions that took place with the Littles committee, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: That's correct. To my knowledge, there was no such training.

MR. WEBER: The next meeting that occurred -- and we'll put in front of you CW-6 -- was a meeting on May 16th, 1996, and that actually was the third meeting of the Littles committee. And you attended that meeting, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes, I did.

MR. WEBER: At that meeting it was discussed, and in fact, you had noted that, going forward, a much better strategy would be for the State Police to produce statistics, to gather statistics, to have more complete records as opposed to defending what they had done in the past, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: That was one of the major themes of the meeting. I wasn't the only one to suggest that, but that was a major point of discussion.

MR. WEBER: And who raised that issue with the Littles committee?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I don't recall who. I think everyone sort of agreed with that. I don't know whose agenda item or who was the first to broach that subject--

MR. WEBER: Okay, but based on Judge Francis's decision, it was clear to everyone at the Littles committee that the State Police had to implement tighter controls that would enable the production of more complete data at a much better rate than they had done in the *Soto* case, which was approximately one-third of all of the incidents, there is documentation to support those incidents, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Exactly. One of the problems in the *Soto* litigation was the so-called missing data, and the problems that that created not only for the experts, but the appearance that it would allow inferences that the data, if known, would have been adverse to the State.

MR. WEBER: Let's fast-forward a little bit now to the summer of 1998, and Ms. Stone, you had testified before the Committee previously that in approximately June of 1998, you saw audits that were either prepared or put together by members of the State Police, Mr. Sachetti and Mr. Touw, correct?

ASSISTANT ATTORNEY GENERAL STONE: Yes, it was a document. I had requested background information on Trooper Hogan.

MR. WEBER: Why did you request that information?

ASSISTANT ATTORNEY GENERAL STONE: There was an investigation going on at the time.

MR. WEBER: And what did you hope this information would help you with?

ASSISTANT ATTORNEY GENERAL STONE: Early on in the shooting investigation, it became apparent that there had been discrepancies with respect to race. It's very difficult for me to talk too much about this, because it's a pending criminal case. As a result of that, I asked Major Crimes to go to Internal Affairs and ask them for any background information.

As a result of what we found, Director Zoubek -- then Director Zoubek -- and I met with Bob Dunlop and some members of Internal Affairs and split off a separate investigation.

MR. WEBER: All right. Let me just step back for a second.

You asked someone at Major Crimes, which is at the Attorney General's Office?

ASSISTANT ATTORNEY GENERAL STONE: No, Major Crimes is-- I'm sorry, it's a part of State Police. Major Crimes investigates shootings

where their members are involved -- sworn members are involved. They've been working with us on the Turnpike case.

MR. WEBER: Who did you ask at Major Crimes to get you background information?

ASSISTANT ATTORNEY GENERAL STONE: It was probably Jack Repsha, but I don't recall.

MR. WEBER: Was there any resistance by the State Police to give you this information?

ASSISTANT ATTORNEY GENERAL STONE: No.

MR. WEBER: How quickly did you get the information after you made the request?

ASSISTANT ATTORNEY GENERAL STONE: The request was probably-- A few weeks, a couple of weeks maybe.

MR. WEBER: But again, no one resisted your request for the information?

ASSISTANT ATTORNEY GENERAL STONE: No.

MR. WEBER: Did they limit the type of information-- Let me strike that.

Did they respond by saying, "We can give you X, but we can't give you Y and Z," or was the response just a production of documents?

ASSISTANT ATTORNEY GENERAL STONE: The response was just the production of the document.

MR. WEBER: Why don't we put in front of you Z-3, and I'll ask if you could please identify whether that is one of the documents you received in June of 1998 in response to your request to background information?

ASSISTANT ATTORNEY GENERAL STONE: This was the document I received.

MR. WEBER: And again, you received that, approximately, in June of 1998?

ASSISTANT ATTORNEY GENERAL STONE: That would be my best guess, yes.

MR. WEBER: Why don't you to take a quick flip through this document? I will represent to you that within the document there is a lot of statistical information, both on stop data as well as consent to search data, for various stations, including Perryville and Washington, Moorestown, Cranbury, and actually, information on each of the five troops.

Is that correct?

ASSISTANT ATTORNEY GENERAL STONE: Yes, it appears to be.

MR. WEBER: You get this data in June of 1998. What did you do after you reviewed the data?

ASSISTANT ATTORNEY GENERAL STONE: I brought it to the attention of Director Zoubek.

MR. WEBER: Why is that?

ASSISTANT ATTORNEY GENERAL STONE: I thought it impacted on the continuing viability of the *Soto* appeal.

MR. WEBER: Why did you think it impacted on the viability of the *Soto* appeal?

ASSISTANT ATTORNEY GENERAL STONE: Because the numbers I was seeing in here were as bad or worse, in some instances, than some of the information that the defense counsel had brought forward in the *Soto* case.

MR. WEBER: Now, when you say the numbers, do you mean the stop data numbers?

ASSISTANT ATTORNEY GENERAL STONE: Yes.

MR. WEBER: Okay.

Not consent to search numbers, because consent to search was not an issue in the *Soto* case, correct?

ASSISTANT ATTORNEY GENERAL STONE: Correct.

MR. WEBER: Let me specifically ask you to turn to OAG-2074 and 2075, and this is a report by Lieutenant Hinkle, dated September 24, 1996, to Captain Touw, correct?

ASSISTANT ATTORNEY GENERAL STONE: Yes.

MR. WEBER: 2074 to 2075.

ASSISTANT ATTORNEY GENERAL STONE: Yes, I've got it, thanks.

MR. WEBER: This report is entitled, "Patrol Issues/Concerns at Moorestown Station," correct?

ASSISTANT ATTORNEY GENERAL STONE: Yes.

MR. WEBER: And it sets forth information for a three-month period from May 1st, '96 through July 31st, '96, correct?

ASSISTANT ATTORNEY GENERAL STONE: Yes.

MR. WEBER: Down at the bottom of the first page -- 2074 -- it indicates that vehicle stops during this time period for Moorestown were, for nonminority troopers, 34.3 percent, correct?

ASSISTANT ATTORNEY GENERAL STONE: Yes.

MR. WEBER: And for minority troopers, 33.3 percent, correct?

ASSISTANT ATTORNEY GENERAL STONE: Correct.

MR. WEBER: Why don't you flip to the next page, please -- 2075 -- which is the second page of this report? It's a two-page report.

ASSISTANT ATTORNEY GENERAL STONE: Right.

MR. WEBER: And it indicates additional figures for motor vehicle stops for Moorestown Station, but this is during the midnight shifts for the same period of time, correct?

ASSISTANT ATTORNEY GENERAL STONE: Yes, that's correct.

MR. WEBER: And it sets forth that for nonminority dual patrols the minority stops were 36.9 percent, correct?

ASSISTANT ATTORNEY GENERAL STONE: Yes.

MR. WEBER: Minority dual patrols were 52.1 percent, correct?

ASSISTANT ATTORNEY GENERAL STONE: Yes.

MR. WEBER: And minority nonminority dual patrols were 41.3 percent, correct?

ASSISTANT ATTORNEY GENERAL STONE: Correct.

MR. WEBER: And that reflects the stop percentages of minority drivers during those time periods, correct?

ASSISTANT ATTORNEY GENERAL STONE: That's correct.

MR. WEBER: Okay.

These were -- these numbers were in the same range, and indeed, at times, a little higher than the numbers that the court relied on in the decision in *Soto*, correct?

ASSISTANT ATTORNEY GENERAL STONE: Yes, I believe that's correct.

MR. WEBER: I believe that in the court's decision in March of 1996, the court found that 35.6 percent of the motorists that were stopped were minority motorists, correct?

ASSISTANT ATTORNEY GENERAL STONE: I think that's about right.

MR. WEBER: And we now have here numbers that range from 33.3 percent up to 41.3 percent, correct?

ASSISTANT ATTORNEY GENERAL STONE: Yes.

MR. WEBER: So, when you saw these numbers, at that point in time, you thought to yourself, "Maybe we didn't have a reasonable basis to continue with the *Soto* appeal," correct?

ASSISTANT ATTORNEY GENERAL STONE: At least on the factual underpinnings of it, yes.

MR. WEBER: Let's put in front of you, please, a document we've marked as W-30.

While we put that document in front of you, Ms. Stone, did you-- You got this document -- Z-3 -- in June of 1998, correct?

ASSISTANT ATTORNEY GENERAL STONE: The first document, yes.

MR. WEBER: Z-3, and you took a look at it and you went to Director Zoubek, and you expressed your concern about maintaining the *Soto* appeal in light of the numbers that were set forth in Z-3, correct?

ASSISTANT ATTORNEY GENERAL STONE: Right.

MR. WEBER: How quickly after you received the document and you took a look at it, did you then go to Mr. Zoubek and express your concern?

ASSISTANT ATTORNEY GENERAL STONE: Probably almost immediately.

MR. WEBER: So this was also in June of 1998, correct?

ASSISTANT ATTORNEY GENERAL STONE: Yes.

MR. WEBER: All right.

Now, let's take a look at W-30. This is a July 29, 1997, memo from Alexander Waugh to Peter Verniero.

Have you seen this document before?

ASSISTANT ATTORNEY GENERAL STONE: No, I haven't.

MR. WEBER: Okay.

I'm going to ask you to please turn to the second page of this document, and again, it's marked W-30. The second page is the same as -- is the same Hinkle audit that's contained in Z-3, correct?

ASSISTANT ATTORNEY GENERAL STONE: It appears to be, yes.

MR. WEBER: The September 24, 1996, audit, correct?

ASSISTANT ATTORNEY GENERAL STONE: Yes.

MR. WEBER: And the copy of the Hinkle audit that is contained in the July 29, 1997 memo from Alexander Waugh to Peter Verniero contains both pages of the audit, correct?

ASSISTANT ATTORNEY GENERAL STONE: Yes, it does.

MR. WEBER: It contains the same percentages, correct?

ASSISTANT ATTORNEY GENERAL STONE: Yes.

MR. WEBER: It shows that minority stops for May 1st, 1996 to July 31st, 1996, at the Moorestown Station ranged anywhere from 33.3 percent to 41.3 percent, correct?

ASSISTANT ATTORNEY GENERAL STONE: The numbers are the same.

MR. WEBER: And again, those numbers are higher than the 35.6 percent number that Judge Francis relied upon in his decision in *Soto* in March of '96?

ASSISTANT ATTORNEY GENERAL STONE: They're around the same area or higher.

MR. WEBER: Or higher, correct.

And there's nothing different about either two versions of these reports that you can see from your review today, is there?

ASSISTANT ATTORNEY GENERAL STONE: No, I don't see any difference.

MR. WEBER: Now, Z-3 also contains information about consent to search data, correct?

ASSISTANT ATTORNEY GENERAL STONE: I don't recall that from reading it the first time, but -- where would that be?

MR. WEBER: Did you come to realize at a subsequent review of the document that there was information about consent to search data?

ASSISTANT ATTORNEY GENERAL STONE: Yes, I did, but I think I originally was focused on the stop data, because that was the issue in *Soto*.

MR. WEBER: If you take a look at OAG-2072.

ASSISTANT ATTORNEY GENERAL STONE: The Cranbury arrest statistics? Is that what you're referring to?

MR. WEBER: Yes.

ASSISTANT ATTORNEY GENERAL STONE: Okay.

MR. WEBER: There is data in here that concerns consent to searches, correct?

ASSISTANT ATTORNEY GENERAL STONE: Yes.

MR. WEBER: At least it gives you -- it doesn't give you percentages, but it gives you a numbers breakdown, correct?

ASSISTANT ATTORNEY GENERAL STONE: Yes, it's in the body of it, I think, here. Yes.

MR. WEBER: All right. And let me just, by way of example, direct your attention to the paragraph that says: "Cranbury Station personnel completed 232 consent to search forms which did not result in criminal arrests. Six hundred thirty-one individuals were the subjects of these negative searches. The following is the racial composition of the operators of the searched vehicles."

And it breaks it down to show that 52 of the consent searches were white Hispanics, 8 were black Hispanics, 45 were white non-Hispanics, and 127

were black non-Hispanics. I will represent to you, roughly, it reflects that about 80 percent of the 232 consent to search forms reflected consent searches of minorities.

ASSISTANT ATTORNEY GENERAL STONE: Um-hm.

MR. WEBER: Did the fact that there were these -- approximately 80 percent of the consent searches were for minority motorists make any impression upon you in June of 1998, or during a subsequent review of this document?

ASSISTANT ATTORNEY GENERAL STONE: It did during the subsequent reviews of the document, as I got more information in regards to the other investigation that was conducted.

MR. WEBER: When did you conduct the subsequent review of this document?

ASSISTANT ATTORNEY GENERAL STONE: I reviewed it again, probably, in the fall of '98.

MR. WEBER: Why did you review it in fall '98?

ASSISTANT ATTORNEY GENERAL STONE: Information that I was getting as the result of the Hunterdon County investigation.

MR. WEBER: So was your review -- or were you looking at the consent to search numbers separate and apart from your determination that it may not be reasonable to maintain the *Soto* appeal, but was rather in connection with the investigation you were conducting on Hogan and Kenna, either in the falsification context or the shooting context?

ASSISTANT ATTORNEY GENERAL STONE: At that particular time, it was the Hogan and Kenna, if you'll notice the troopers involved.

MR. WEBER: Actually, before we go off this document, let me ask that we put F-26 in front of the witness, and we'll put it up on the Elmo. While we're getting it out, I'll identify it for you, Ms. Stone. It is a draft letter, dated January 3, and it's crossed out and redated as January 17, although I think there is some testimony that that was a mistake. It's really supposed to be January 7th. So now, if you're clear on the date, you're a much better person than I am.

ASSISTANT ATTORNEY GENERAL STONE: Okay.

MR. WEBER: Let me refer your attention to Page 632, when we get the document in front of you. And actually, we'll put it up on the screen while we're waiting for it.

ASSISTANT ATTORNEY GENERAL STONE: Okay.

MR. WEBER: This is a draft letter from Peter Verniero, then Attorney General, to Loretta King, the Deputy Assistant Attorney General of the Civil Rights Division. And there's a paragraph that is stricken out. The paragraph states: "I believe the time has come to spend sufficient resources to develop and conduct a trustworthy violator 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 levels reported in the *Soto* case."

That information, if you had it in January of 1997, the information being that the State Police report that the number of stops involving black motorists in January of 1997 on the southern portion of the Turnpike remained near the levels reported in the *Soto* case -- if you knew that in January of 1997,

would you have then recommended that the *Soto* appeal was no longer maintainable?

ASSISTANT ATTORNEY GENERAL STONE: Yes.

MR. WEBER: There also came a point in time when you -- when you realized that the statistics contained in Z-3 reflected numbers that were at the level of the Maryland State Police, which forced Maryland State Police to enter into a consent order, correct?

ASSISTANT ATTORNEY GENERAL STONE: That was much later on.

MR. WEBER: Okay, when did you come to that realization?

ASSISTANT ATTORNEY GENERAL STONE: When I received a copy of, I think, the Maryland consent decree, which was probably February of '99, I think.

MR. WEBER: February 1999?

ASSISTANT ATTORNEY GENERAL STONE: I think so.

MR. WEBER: Was that in connection with your work on the interim report?

ASSISTANT ATTORNEY GENERAL STONE: Yeah, I believe Paul had obtained a copy for us.

MR. WEBER: There also came a point in time when you found out that George Rover had been sending documents to the Department of Justice. Actually, let me step back. I want to ask both of you the following question.

When did each of you learn that the Department of Justice was conducting an investigation into the New Jersey State Police?

And I'll ask Ms. Stone to answer the question first.

ASSISTANT ATTORNEY GENERAL STONE: When George Rover brought over a hand truck full of documents to Paul Zoubek's office, I was called in by Paul, and that's when I learned there was an ongoing Justice Department -- I think he termed it an inquiry.

MR. WEBER: Okay, and that was what, sometime in 1999?

ASSISTANT ATTORNEY GENERAL STONE: Probably late February of '99.

MR. WEBER: All right. So, let me understand something. You were involved in the decision to appeal the *Soto* case, or at least a part of a group of people that made that decision, correct?

ASSISTANT ATTORNEY GENERAL STONE: I was consulted on it. I did not--

MR. WEBER: You were consulted.

ASSISTANT ATTORNEY GENERAL STONE: Yes.

MR. WEBER: Were you consulted during the drafting of the papers that were filed in the *Soto* appeal?

ASSISTANT ATTORNEY GENERAL STONE: Yes, I would have overseen them as part of the Appellate record.

MR. WEBER: And that was '96 and into 1997?

ASSISTANT ATTORNEY GENERAL STONE: In '97 was when most of this stuff was brought, yes.

MR. WEBER: And you were then part of the team of individuals at the Attorney General's Office that were investigating Troopers Hogan and Kenna in 1998, correct?

ASSISTANT ATTORNEY GENERAL STONE: Correct.

MR. WEBER: And then you became a member of the State Police Review Team in February 1999, correct?

ASSISTANT ATTORNEY GENERAL STONE: That's correct.

MR. WEBER: Is it your testimony that at no time prior to becoming a member of the State Police Review Team in February of 1999, were you informed that the Department of Justice was conducting an investigation into the New Jersey State Police?

ASSISTANT ATTORNEY GENERAL STONE: That is correct.

MR. WEBER: And at no time were you informed that documentation and information was being collected by the State Police and the Attorney General's Office had sent down to the Department of Justice at periods of time in 1997 and 1998, correct?

ASSISTANT ATTORNEY GENERAL STONE: That is correct.

MR. WEBER: Mr. Susswein, let me pose the question to you. When did you first become aware of the Department of Justice investigation into the New Jersey State Police?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: It was at exactly the same moment--

MR. WEBER: Exactly the same moment in time.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: --exactly the same meeting that Deb just described.

MR. WEBER: No one informed you, as a result of you being a member of this Littles committee, that in late 1996 the Department of Justice

had reached out to the Attorney General's Office and informed them that they were going to conduct an investigation into the issue of racial profiling?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: No. But just to clarify though, the last meeting I attended on the Littles committee I think was the May--

MR. WEBER: The May of 1996.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: The May 16th, 1996 meeting.

MR. WEBER: Okay. But at no point in time prior to you becoming a member of the State Police Review Team in February of 1999, did anyone inform you that the Department of Justice was conducting an investigation into the New Jersey State Police on racial profiling?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: That's correct.

MR. WEBER: Ms. Stone, let's go back to your testimony about Mr. Rover bringing -- I think you said a hand truck of documents.

ASSISTANT ATTORNEY GENERAL STONE: Yes, a hand truck with a bunch of boxes on it, as I recall.

MR. WEBER: How many boxes?

ASSISTANT ATTORNEY GENERAL STONE: Oh, God, I didn't count them. A number of them.

MR. WEBER: Did you take a look at the documents that were in the boxes that were on the hand truck?

ASSISTANT ATTORNEY GENERAL STONE: Eventually, not that day, but eventually I did look through some of the boxes at Paul Zoubek's request.

MR. WEBER: When did Mr. Rover bring this hand truck full of documents to you and Mr. Susswein and whoever else was present?

ASSISTANT ATTORNEY GENERAL STONE: I think it was -- it was either late February or early March -- March, I think.

MR. WEBER: Do you know why Mr. Rover brought this hand truck full of documents?

ASSISTANT ATTORNEY GENERAL STONE: I think he was requested to bring it over.

MR. WEBER: By who?

ASSISTANT ATTORNEY GENERAL STONE: I don't know. It wasn't by me.

MR. WEBER: Were the documents to be used in connection with the State Police review?

ASSISTANT ATTORNEY GENERAL STONE: That was my understanding, yes.

MR. WEBER: Did you -- at some point in time, did you take a look at the boxes that Mr. Rover brought up in the hand truck, to determine what sort of information was in there?

ASSISTANT ATTORNEY GENERAL STONE: Yeah, I was looking primarily to see if there was additional information with respect to Hunterdon County that we were unaware of.

MR. WEBER: Putting the Hogan and Kenna information aside, did you determine whether there was any information in those boxes from Mr. Rover that had consent to search data?

ASSISTANT ATTORNEY GENERAL STONE: I believe there was some raw consent to search data in there, without an analysis. I do recall seeing something like that.

MR. WEBER: How about stop data?

ASSISTANT ATTORNEY GENERAL STONE: I believe there was stop data in there, as well.

MR. WEBER: Was there any information that was contained in those boxes, without getting into the specifics of the information, that would have been useful to you, or that was useful to you in your investigation into Hogan and Kenna?

ASSISTANT ATTORNEY GENERAL STONE: No, it was primarily useful to me in *Soto*.

MR. WEBER: How was it useful to you in *Soto*?

ASSISTANT ATTORNEY GENERAL STONE: It reinforced my position that we should be dropping the appeal.

MR. WEBER: And this was information, again, about stop data that either coincided with the data presented in *Soto*, or had percentages that were somewhat higher?

ASSISTANT ATTORNEY GENERAL STONE: Right, and coupled with the consent data, I felt it totally undermined our position.

MR. WEBER: And was that information -- information in addition to the information contained in Z-3?

ASSISTANT ATTORNEY GENERAL STONE: I believe it was additional information.

MR. WEBER: So there was more information than just the information you had seen in December of 1998, correct?

ASSISTANT ATTORNEY GENERAL STONE: Yes.

MR. WEBER: Do you remember specifically when that information -- was there any indication as to when that information was collected? It wasn't collected in 1999, was it?

ASSISTANT ATTORNEY GENERAL STONE: I don't know when it was collected. I know some of the things dated back -- it looked like to 1995, but I couldn't tell you when it was collected.

MR. WEBER: Just so we're clear, there was information in the boxes that were in Mr. Rover's possession, dating back to 1995, that provided information to you that reaffirmed your belief that the *Soto* appeal had to be withdrawn, correct?

ASSISTANT ATTORNEY GENERAL STONE: To the best of my recollection, yes.

MR. WEBER: And if you had that information in 1996 or in 1997 or in 1998, I take it at any point in time during those years, you would have recommended that the *Soto* appeal be withdrawn?

ASSISTANT ATTORNEY GENERAL STONE: I never changed my position on that.

MR. WEBER: And indeed, if you had that information in 1996, you may have even suggested that the State not appeal at all, correct?

ASSISTANT ATTORNEY GENERAL STONE: Well, I did suggest the State not appeal at all.

MR. WEBER: But you would have had, instead--

ASSISTANT ATTORNEY GENERAL STONE: I would have had a better basis for saying it, yes.

MR. WEBER: Right. Instead of what was perceived to be the junk science that defense presented during the *Soto* litigation, you would have had data that was collected by the State Police or by the Attorney General's Office that you would have been able to say is more reliable, and therefore, we should not pursue the appeal, correct?

ASSISTANT ATTORNEY GENERAL STONE: Correct.

MR. WEBER: And, in fact, that information would have been discoverable information, too, correct?

ASSISTANT ATTORNEY GENERAL STONE: It was my position that it would have been discoverable, although not directly relevant to the time period in question in *Soto*, therefore, not *Brady* material. I believed it was relevant and should be turned over.

MR. WEBER: All right. Let's go to the time period on the interim report.

I don't know, Mr. Chairman, if you wanted to take a break at quarter to eight, this may be a logical point in time to stop.

SENATOR GORMLEY: Okay. We will -- we'll -- excuse me.

We will meet with members of the Committee. We will be back with you in terms of the conclusion of your testimony. It's very professional. It's very enjoyable to listen to the testimony.

ASSISTANT ATTORNEY GENERAL STONE: Thank you, Senator.

(HEARING CONCLUDED)