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IN THE MATTER OF INDEPENDENT  
INVESTIGATION UNDER EXECUTIVE  
LAW 63(8)

- x

Virtual Zoom Investigation

April 21, 2021  
3:05 p.m.

TESTIMONY of ALPHONSO DAVID,  
representing the New York Executive  
Chamber in the above-entitled action,  
remotely held at the above time and place,  
taken before SAMUEL HITTIN, a Notary  
Public of the State of New York, pursuant  
to order and stipulations between Counsel.

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APPEARANCES:

CLEARY, GOTTLIEB, STEEN & HAMILTON,  
LLP

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State Attorney General's Office

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Attorneys Representing the Executive  
State of New York and Alphonso David

250 West 55th Street

New York, New York 10019

BY: SI AYDINER, ESQ.

ALSO PRESENT:

VERITEXT SOLUTIONS

Videographer

BY: MARCO SOZIO

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A. DAVID

VIDEOGRAPHER: Good afternoon.  
We are going on the record at  
3:05 p.m. on April 21, 2021. Please  
note that the microphones are  
sensitive and may pick up whispering,  
private conversations and cellular  
interference. Please turn off all  
cell phones or place them away from  
the microphones as they can interfere  
with the audio.

Audio and Video recording will  
continue to take place unless all  
parties agree to go off the record.

This is Media Unit 1 of the  
video recorded interview of Alphonso  
David, taken by Counsel for the New  
York Attorney General's Office in the  
Matter of Independent Investigation  
Under New York State Executive Law  
Section 63(8).

The deposition is being held at  
remote virtual Zoom located at  
Brooklyn, New York 11217. My name is  
Marco Sozio from the firm Veritext New

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A. DAVID

York and I'm the videographer. The court reporter is Samuel Hittin from the firm Veritext New York.

I am not authorized to administer an oath. I am not related to any party in this action.

Counsel and all present in the room and everyone attending remotely will now state their appearances and affiliations for the record. If there are any objections to the proceedings, please state them at the time of your appearance, beginning with the noticing attorney.

MR. KIM: Good afternoon. Joon Kim from the law firm of Cleary, Gottlieb, Steen & Hamilton, but acting as a Special Deputy to the First Deputy Attorney General for the New York State Attorney General's Office.

MS. CLARK: And I am Anne Clark. I'm with the law firm of Vladeck, Raskin & Clark, but like Joon, I am appearing today in my capacity as a

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Special Deputy to the First -- First  
Deputy Attorney General.

MS. KENNEDY PARK: Jennifer  
Kennedy Park, from the law firm  
Cleary, Gottlieb, Steen & Hamilton in  
my capacity today as a Special Deputy  
to the First Deputy Attorney General  
of the Attorney General's Office.

MS. LEE: Good afternoon. Soo  
Jee Lee from the law firm Cleary,  
Gottlieb, Steen & Hamilton, but  
appearing today in my capacity as a  
Special Assistant to the First Deputy  
Attorney General.

MR. AYDINER: And my name is  
Si Aydiner, Aydiner PC for Mr. David.

VIDEOGRAPHER: Thank you.

Will the court reporter please  
swear in the interviewer.

A L P H O N S O D A V I D, the Witness  
herein, having first been duly sworn by  
the Notary Public, was examined and  
testified as follows:

1 A. DAVID

2 VIDEOGRAPHER: Thank you. We  
3 may proceed.

4 EXAMINATION BY

5 MR. KIM:

6 Q. Good afternoon, Mr. David.

7 A. Good afternoon, Mr. Kim.

8 Q. Thank you for joining us today.

9 A. You're welcome.

10 Q. As we stated, we are appearing  
11 in our capacity as Special Deputy to the  
12 First Deputy Attorney General, and as you  
13 may know, we have been appointed -- our  
14 two law firms have been appointed by the  
15 Attorney General's Office to conduct an  
16 independent investigation under New York  
17 Executive Law Section 63(8) into  
18 allegations of sexual harassment against  
19 the Governor and surrounding  
20 circumstances.

21 And you're here today pursuant  
22 to a subpoena that we issued in that  
23 capacity.

24 Do you understand that?

25 A. Yes.

1 A. DAVID

2 Q. And I'd like to note that the  
3 videographer has made clear this interview  
4 is being recorded by video and being  
5 maintained by Veritext.

6 Do you understand that?

7 A. Yes.

8 Q. And we are not separately, the  
9 law firm, not separately recording it  
10 other than through Veritext.

11 We wanted to confirm that  
12 neither you nor your lawyer Mr. Aydiner is  
13 recording this interview.

14 A. I am not recording this  
15 interview.

16 MR. AYDINER: Yes, by Counsel.  
17 No recordation here.

18 Q. Okay. Now I also want to  
19 confirm that there are no other people in  
20 your respective rooms.

21 MR. KIM: Or, actually, Si,  
22 maybe you can have someone there.

23 Q. But, Mr. David, there's no one  
24 else in the room that you're sitting in  
25 right now?

1                   A.     DAVID

2           A.     Correct.  There is no one in the  
3 room.

4           Q.     Okay.  And neither you,  
5 Mr. David, nor Mr. Aydiner is -- has  
6 opened an audio-video line or chat line  
7 for someone else to be transmitting or  
8 hearing or reviewing your testimony in  
9 realtime?

10          A.     Correct.

11          Q.     Can we confirm that?

12                   MR. AYDINER:  By Counsel, that's  
13 not been done.

14          Q.     Mr. David, you have been placed  
15 under oath.  And as you know, that means  
16 that you must testify fully and truthfully  
17 as if you were in a court of law sitting  
18 before a judge and jury.

19                   Do you understand that  
20 obligation?

21          A.     Yes.

22          Q.     And that, as a result, your  
23 testimony today is subject to the penalty  
24 of perjury if you don't give truthful  
25 testimony.



1                   A. DAVID

2                   Do you understand that?

3           A.       Yes.

4           Q.       And although this is part of a  
5 civil investigation, the New York Attorney  
6 General's Office has criminal enforcement  
7 powers, and as a result, you have the  
8 right to refuse to answer any questions if  
9 you believe doing so would incriminate  
10 yourself.

11                   Do you understand that right?

12           A.       Yes.

13           Q.       However, in a civil proceeding,  
14 a failure to answer a question based on  
15 the right not to incriminate yourself is  
16 something that in a court of law in a  
17 civil proceeding -- noncriminal proceeding  
18 could be held against you.

19                   Do you understand that?

20           A.       Yes.

21           Q.       You have -- you have your lawyer  
22 here today, Mr. Aydiner, and so this is  
23 somewhat of a moot point and there's been  
24 some back and forth about whether -- in  
25 these types of interviews, whether a

1                   A. DAVID

2       witness is entitled to have counsel  
3       present or -- or it's a courtesy that the  
4       Attorney General's Office provides.

5                   From our perspective for  
6       purposes of today, we are fine with  
7       Mr. Aydiner being here. We have not  
8       contacted you other than through your  
9       counsel once we've learned that you had  
10      retained counsel and we don't intend to.

11                  Do you understand that?

12           A.       Yes.

13           Q.       As you can see, you know, we are  
14      doing this virtually and so it's not as  
15      natural as in person. So we just want you  
16      to be sure to make sure you answer the  
17      questions clearly, and even more so than  
18      in an in-person testimony; that you not  
19      answer through nods or mm-hmms or things  
20      of that affect, and provide clear answers  
21      through words.

22                  Do you understand that?

23           A.       Yes.

24           Q.       And if you don't understand a  
25      question that any of us are asking, and I

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A. DAVID

expect most of the questions will come from me, but my colleagues Anne Clark and Jen Kennedy Park may also ask some questions, but if you don't understand the question we're asking, please tell us you don't understand and we will try to be clear.

Do you understand that?

A. Yes.

Q. Okay. And if you do answer a question and don't ask it to be clarified, we'll assume that you understood our question; is that fair?

A. Yes.

Q. Are you taking any medications or drugs today or alcohol that affects your ability to understand and answer questions?

A. No.

Q. Could you -- other than Mr. Aydiner, have you spoken to anyone about the testimony you are giving to us today?

A. No.

1                   A.    DAVID

2           Q.       And what did you do to prepare  
3 for your examination today?

4           A.       I met with my counsel,  
5 Mr. Aydiner, to review documents that I  
6 have produced pursuant to subpoena.

7           Q.       Okay. And how many times did  
8 you meet with Mr. Aydiner?

9           A.       I believe once.

10          Q.       And have you had a chance to  
11 look at the -- the two subpoenas that you  
12 have received: One, a document subpoena;  
13 and, two, a testimonial subpoena?

14          A.       Yes, when I initially received  
15 them. I have not reviewed them recently.

16          Q.       Okay. We sent over to you by  
17 messenger a Redweld with a binder.

18                   Do you have that with you?

19          A.       I do.

20          Q.       Could you go to that and open it  
21 up now?

22          A.       Do I break the seal?

23          Q.       Yes, please.

24                   And it should be a binder with  
25 some documents with tabs next to it.

1                   A.     DAVID

2                   Do you see that?

3           A.     Yes.

4           Q.     Okay.    Could you turn to Tab 23.

5   And if you could flip through that.   And

6   it's a document subpoena.   And if you go

7   to page 7, 7 to 8 has the substantive

8   requests related to this subpoena.

9                   Do you recognize this subpoena

10   as the document subpoena that you received

11   from our office?

12          A.     Without reviewing each and every

13   page in detail, it appears to be the

14   subpoena I received.

15          Q.     Okay.    And what did you do to

16   gather documents in response to this

17   subpoena?

18          A.     I reviewed my e-mails on my

19   personal account as well as my telephone

20   to determine whether I had any electronic

21   messages that would be responsive to the

22   request for documents.

23          Q.     And so the -- your review was of

24   your personal e-mail account?

25          A.     Correct.

1 A. DAVID

2 Q. And is that your Hot mail  
3 account?

4 A. Yes.

5 Q. Okay. And then your cell phone  
6 for texts?

7 A. Correct.

8 Q. Okay. And how long have you had  
9 that Hot mail account?

10 A. Many years.

11 Q. More than five?

12 A. Yes.

13 Q. Do you use any other e-mail  
14 accounts, personal e-mail accounts?

15 A. I have another personal e-mail,  
16 a G-mail, but that is not used often.

17 Q. And did you look in that G-mail  
18 account to see if you had any responsive  
19 documents?

20 A. I did.

21 Q. And then your cellular telephone  
22 that you looked at, how long have you had  
23 that cell phone?

24 A. I've had the telephone number  
25 for a number of years. The actual device,

1                   A.    DAVID

2   probably a year or two.

3           Q.       And do you have any older  
4   devices that you still have with you that  
5   you used prior to that?

6           A.       No.

7           Q.       And after you reviewed your  
8   e-mail account and your phone, what did  
9   you do with the responsive documents?

10          A.       I compiled the responsive  
11   documents and provided them to my counsel.

12          Q.       Okay.  And after doing that,  
13   have you found or learned of any other  
14   documents in your possession that could be  
15   responsive to the subpoena?

16          A.       No.

17          Q.       Okay.  If you can look at the  
18   next tab, Tab 24.

19                    Do you recognize this as the  
20   testimonial subpoena that you received  
21   from our office through your lawyer?

22          A.       This appears, again, to be the  
23   subpoena that I received.

24          Q.       And you understand that it's --  
25   your testimony today is in response to

1                   A. DAVID

2    this testimonial subpoena?

3           A.     Correct.

4           Q.     I think you can put the binder  
5    away for a second.

6                   Can you tell us how far you've  
7    gotten in school?

8           A.     Sure. I have a juris doctorate,  
9    which is a law degree from Temple  
10   University in Philadelphia.

11          Q.     And when did you graduate from  
12   Temple law school?

13          A.     2000.

14          Q.     Can you walk us through your  
15   employment history since graduating law  
16   school in 2000?

17          A.     Sure. Graduated law school in  
18   2000. I clerked for a federal district  
19   court judge, Clifford Scott Green in the  
20   Federal District Court of the Eastern  
21   District of Pennsylvania. I clerked for a  
22   year.

23                   I then worked at a law firm  
24   called Blank Rome in Philadelphia. I  
25   worked at that firm for approximately two



1                   A. DAVID

2       years managing a variety of matters  
3       including contract disputes and  
4       intellectual property and labor disputes.

5                   I then ran a company in  
6       California called the Canyon of Peace  
7       Park. It was likely a year running that  
8       company.

9                   I then joined an organization  
10       called Lambda Legal Defence and Education  
11       Fund, which is a civil rights LGBTQ  
12       organization that litigates impact  
13       litigation cases on behalf of LGBTQ people  
14       all across the country. I then worked  
15       at -- and I worked there for three years.

16                   I then worked at the New York  
17       State Division of Human Rights as the  
18       Deputy Commissioner and Special Counselor  
19       for Administration I think it was the  
20       title. I may have gotten that incorrect,  
21       but it sounds like the title. And I  
22       worked there for about a year.

23                   I then worked at the Attorney  
24       General's Office for -- as Bureau Chief  
25       for Civil Rights and as a Special Deputy

1                   A. DAVID

2   Attorney General for Civil Rights.

3                   I then worked in the Governor's  
4   Office as a Deputy Secretary and Counsel  
5   for Civil Rights. I held that role for  
6   four years.

7                   I then worked as the Chief  
8   Counsel to the Governor for about four  
9   years and a few months. And most  
10  recently, my current role is the President  
11  of the Human Rights Campaign with the  
12  Global LGBTQ Civil Rights Organization.

13                  Q.     So going back to when you joined  
14  the New York Attorney General's Office,  
15  what month and year was that?

16                  A.     I believe it was 2008. I don't  
17  remember the specific month.

18                  Q.     And you said you joined as the  
19  Bureau Chief of Civil Rights?

20                  A.     I believe I came in as a Deputy  
21  Bureau Chief officially for a few months  
22  while the Bureau Chief was transitioning.  
23  I was then officially named as the Bureau  
24  Chief.

25                  Q.     Okay. And how did you get that

1                   A. DAVID

2       job as the Deputy Bureau Chief for Civil  
3       Rights at the Attorney General's Office?

4           A.       I interviewed for the position a  
5       year before and the Attorney General's  
6       Office was -- was not quick to respond to  
7       the application. And I had many other  
8       offers, so I declined advancing my  
9       application further because I worked for  
10      the New State Division of Human Rights.

11                   And after a year of working at  
12      the New York State Division of Human  
13      Rights, there was a shift in governorship.  
14      I was no longer interested in working in  
15      that role. The Commissioner at the time  
16      left, and so I reconnected with the  
17      Attorney General's Office and they  
18      expressed an interest in having me come  
19      and work there in the Civil Rights Bureau.

20           Q.       Did you have to interview for  
21      that job?

22           A.       Yes.

23           Q.       Who did you interview with?

24           A.       Several people. I believe I  
25      interviewed with head of human resources.

1 A. DAVID

2 I don't remember her name at this point.

3 I interviewed with [REDACTED] [REDACTED], who was  
4 Deputy Attorney General at the time, and I  
5 interviewed with [REDACTED] [REDACTED] who was,  
6 I think, maybe a Special Attorney General,  
7 a Special Deputy Attorney General. I  
8 don't remember her title.

9 Q. Okay. And who was the Attorney  
10 General at the time when you joined?

11 A. When I joined, Andrew Cuomo was  
12 the Attorney General.

13 Q. And did you know Andrew Cuomo  
14 before you joined the Attorney General's  
15 Office?

16 A. No.

17 Q. Had you ever met him?

18 A. I don't believe so.

19 Q. Did you meet him during the  
20 interview process?

21 A. No.

22 Q. So when you joined the Attorney  
23 General's Office, who did you report to?

24 A. I reported to [REDACTED] [REDACTED] by --  
25 through [REDACTED] [REDACTED].

1 A. DAVID

2 Q. And so what was [REDACTED] [REDACTED]  
3 title?

4 A. I believe he was the Deputy  
5 Attorney General for Social Justice.

6 Q. And what was [REDACTED] [REDACTED] ?

7 A. Maybe Special Deputy Attorney  
8 General for Social Justice. I don't  
9 remember their specific titles, but she  
10 supervised him. He was responsible for  
11 providing oversight to all of the  
12 departments that were in the Social  
13 Justice Unit.

14 Q. So after you joined, you  
15 started -- you said you started as the  
16 Deputy Bureau Chief and then transitioned  
17 in to becoming -- being the Bureau Chief;  
18 is that correct?

19 A. Correct.

20 Q. And is that the role you stayed  
21 in through the end of your time at the  
22 Attorney General's Office?

23 A. No. I was promoted from Bureau  
24 Chief to Special Deputy Attorney for Civil  
25 Rights.

1 A. DAVID

2 Q. And when did that promotion take  
3 place?

4 A. Either 2009 or 2010.

5 Q. And then is that -- the Special  
6 Deputy Attorney General position, is that  
7 the position you held when you left the  
8 Attorney General's Office?

9 A. Yes.

10 Q. So in the two roles that you had  
11 at the Attorney General's Office, can you  
12 walk us through what your responsibilities  
13 were?

14 A. Sure. As the Bureau Chief for  
15 the Attorney General's Office Civil Rights  
16 Bureau, I was responsible for overseeing  
17 all of the Assistant Attorneys Generals  
18 who investigated and litigated and  
19 processed civil rights complaints. The  
20 Civil Rights Bureau and the Attorney  
21 General generally has jurisdiction over  
22 cases that are patterns and practices. So  
23 those Attorneys Generals would work with  
24 investigators within the office to  
25 identify cases where they thought there

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A. DAVID

was a pattern or practice and they would investigate those cases and litigate those cases as appropriate.

The core function of my job remained the same during my entire tenure at the Attorney General's Office. Becoming a Special Deputy Attorney General simply meant that I was working more on developing policy and identifying policy-related issues in addition to overseeing litigation and investigations.

Q. And during your time there, from 2018 -- from 2008 until 2010 I think, how often did you interact with Andrew Cuomo?

A. There was -- it's difficult to say because it ebbed and it flowed depending on the time of year, depending on the issues that I was working. So it was difficult to -- it certainly wasn't daily. At most, it would have been every other week and then there are instances where we wouldn't interact at all for several months.

Q. And so it ebbed and flowed -- so

1                   A. DAVID

2       it ebbed and flowed based on what was  
3       going on at the time and whether you had  
4       particular matters to discuss with him on  
5       that.

6                   Is that a fair way --

7       A.       Yes.

8       Q.       -- to describe it?

9                   And so at times you wouldn't  
10      interact with him at all for months?

11      A.       It's difficult. I would  
12      certainly say weeks. It could have been  
13      months. I wasn't tracking my level of  
14      interaction with him.

15      Q.       And how about when it was most  
16      frequent?

17      A.       Most frequent I would say once a  
18      week.

19      Q.       And where were you physically  
20      located while you were at the Attorney  
21      General's Office?

22      A.       I don't remember the floor  
23      number. I was on a floor with other  
24      departments that included the Charities  
25      Bureau, the Real Estate Bureau and



1                   A. DAVID

2     other -- and maybe one or two other  
3     bureaus.

4           Q.       Were you located -- were you  
5     physically located near Andrew Cuomo's  
6     office?

7           A.       No. I was on a different floor.

8           Q.       While you were at the Attorney  
9     General's Office, did you work on or  
10    oversee sexual harassment cases or  
11    investigations?

12          A.       I don't believe so. I don't  
13    believe we had any cases on sexual  
14    harassment.

15          Q.       And how about other forms of  
16    discrimination?

17          A.       Yes.

18          Q.       What types of discrimination  
19    cases or investigations did you work on or  
20    oversee?

21          A.       Violations of employment laws,  
22    housing, public accommodations. Those are  
23    some examples.

24          Q.       And what type of violations of  
25    employment law did you work on or oversee?

1                   A. DAVID

2           A.       I don't remember any cases. The  
3 only case that comes to mind that I was  
4 tangentially involved in related to  
5 workers who were looking to speak Spanish  
6 to each other at a gas station and they  
7 were either suspended or terminated or  
8 reprimanded in some way for speaking  
9 Spanish to themselves -- among themselves,  
10 I should say.

11                   I'm sure there are other  
12 employment cases, but that's the one that  
13 comes to mind.

14           Q.       And that was a violation of New  
15 York State law to do that?

16           A.       Yes.

17           Q.       So when did you leave the  
18 Attorney General's Office?

19           A.       I left the Attorney General's  
20 Office at the end of 2010.

21           Q.       Why did you leave?

22           A.       I was offered a position to work  
23 as the Deputy Secretary for Civil Rights  
24 in the Governor's Office.

25           Q.       Who offered you that position?

1 A. DAVID

2 A. I had a discussion with Steve  
3 Cohen, who relayed the offer to me I  
4 believe from the Attorney General at the  
5 time who then became the Governor. But  
6 the conversation was with Steve Cohen.

7 Q. And was there a -- an occasion  
8 or interview process for that position or  
9 was is just Steve Cohen?

10 A. No, there was an interview  
11 process.

12 Q. There was or was not? I'm  
13 sorry.

14 A. There was.

15 Q. Okay. And who did you interview  
16 with?

17 A. I spoke with Steve Cohen I  
18 believe two or three times.

19 Q. Okay. Anyone else?

20 A. I don't remember. I don't  
21 believe so.

22 Q. Was there anyone else who was,  
23 to your knowledge, being considered for  
24 that position?

25 A. I don't know.

1                   A.     DAVID

2           Q.     You don't know?

3           A.     I have no knowledge that someone  
4 else was being considered.

5           Q.     Okay.   And how long were you in  
6 that role as the Deputy Secretary for  
7 Civil Rights?

8           A.     I was in that role for four  
9 years.

10          Q.     And then what was the next  
11 position you held at the executive  
12 chamber?

13          A.     Chief Counsel to the Governor.

14          Q.     You can go back to your -- the  
15 binder you have and look at Tab 8.   It's a  
16 three-page document.

17                   Do you recognize this document?

18          A.     I do.

19          Q.     What do you recognize it as?

20          A.     This appears to be responsive to  
21 the subpoena that was referenced earlier  
22 for documents.

23          Q.     Did you review this document  
24 previously?

25          A.     Yeah.   I believe so, yes.

1 A. DAVID

2 Q. And if you could look through  
3 the answer to the question 10-B which  
4 recites -- which has a description of your  
5 responsibilities as Chief Counsel to the  
6 Governor, and then 10-C, which has a  
7 description of your responsibilities as  
8 Deputy Secretary and Counsel for Civil  
9 Rights for New York State.

10 Can you read the answers there  
11 and then I'll ask you if it fairly and  
12 accurately describes your responsibilities  
13 in those two roles.

14 A. Yes. But there appears to be an  
15 error at C. It says, "the division of  
16 human rights," and should instead say,  
17 "the Office of the Governor."

18 Q. Okay. So the Deputy Secretary  
19 and Counsel for Civil Rights for New York  
20 State is part of the Office of the  
21 Governor?

22 A. Correct.

23 Q. Okay. Other than that, do the  
24 answers to 10-B and C fairly and  
25 accurately describe your responsibilities

1                   A. DAVID

2       in those two roles?

3           A.       Yes. It appears to be, yes.

4           Q.       So looking first at 10-B your  
5       responsibility -- general responsibility  
6       as to Counsel to the Governor, it starts  
7       by saying you "oversaw all significant  
8       legal and policy deliberations affecting  
9       New York State and ensure that state laws,  
10      orders, regulations are being safely  
11      executed."

12                   Do you see that?

13          A.       Yes.

14          Q.       Did your responsibilities as  
15      Chief Counsel include ensuring that state  
16      laws, orders and regulations were also  
17      being faithfully followed within the  
18      executive chamber?

19          A.       No.

20          Q.       That was not one of your  
21      responsibilities?

22          A.       No.

23          Q.       And so what do you mean by  
24      "ensure state laws, orders and regulations  
25      are being faithfully executed"?

1                   A. DAVID

2           A.       So part of my role is drafting,  
3 negotiating legislation with the Senate  
4 and the Assembly both during the budget  
5 process and during the legislative  
6 session. After those bills are passed by  
7 the legislature, I'm responsible for  
8 reviewing them to determine whether or not  
9 they conform with the constitution and any  
10 potential State laws before they're  
11 subsequently submitted for signing.

12                   After they are signed, I'm also  
13 responsible for making sure that they are  
14 advanced to the appropriate State agencies  
15 for implementation.

16           Q.       Was there anyone in the  
17 executive chamber whose job responsibility  
18 included ensuring that within the  
19 executive chamber all relevant State laws,  
20 orders and regulations were being  
21 faithfully followed?

22           A.       I don't know if there was one  
23 person that would be responsible for that  
24 specific function. I believe that there's  
25 certain individuals who are responsible

1                   A. DAVID

2       for different functions.

3                   So as an example, the head of  
4       administrative services would be  
5       responsible for ensuring that employees  
6       are submitting the appropriate information  
7       and documentation to have their files  
8       submitted to the Office of State  
9       Comptroller for processing, or someone  
10      else may be responsible for ensuring that  
11      the State is complying with any regulatory  
12      requirements associated with pick the  
13      State law. But that wouldn't be my  
14      responsibility.

15                  Q.       How about ensuring that the  
16      executive chamber was complying with State  
17      human rights laws, whose -- who, if  
18      anyone, had responsibility within the  
19      executive chamber for that?

20                  A.       Well, there is a requirement  
21      that all state workers, I believe, and  
22      certainly in the executive chamber would  
23      have to go through annual training and  
24      that responsibility fell to the Office of  
25      Administrative Services. So as it relates



1                   A. DAVID

2       to complying with the New York State --  
3       you said Human Rights Law?

4           Q.       Human Rights Laws, yeah.

5           A.       It depends on what you mean by  
6       complying with the New York State Human  
7       Rights Law.   What specific function?

8           Q.       Well, if ensuring that within  
9       the executive chamber that there were not  
10       violations of human rights laws, for  
11       example, sexual harassment law.

12          A.       Any complaints of discrimination  
13       retaliation, harassment of any nature  
14       would be forwarded to the Office of  
15       Administrative Services who would be --  
16       who would work with the Office of  
17       Governor's -- of the Governor's Office of  
18       Employee Relations to determine whether or  
19       not there are any potential violations of  
20       the Human Rights Law.

21          Q.       And I guess the question is who  
22       ensured, if anyone, within the executive  
23       chamber while you were serving at Chief  
24       Counsel ensured that that was being done?

25          A.       Well, each State agency has what

1                   A. DAVID  
2       was called an Affirmative Action Officer,  
3       or at least -- I don't want to say every  
4       State agency but certainly many had what  
5       was called an Affirmative Action Officer.  
6       And that person was responsible for  
7       receiving, reviewing, processing any  
8       claims or complaints of discrimination,  
9       harassment or retaliation within the  
10      chamber or in other State agencies.

11           Q.       Who was the Affirmative Action  
12      Officer for the executive chamber while  
13      you were there?

14           A.       I think it shifted several  
15      times, but I know that the Office of  
16      Administrative Services was involved. I  
17      don't know who the Affirmative Action  
18      Officer was at the specific time, but I  
19      know that it was in the Office of  
20      Administrative Services.

21           Q.       So it was someone located in the  
22      Office of Administrative Services, not an  
23      employee of the executive team?

24           A.       Yes. I don't remember a  
25      specific person being labeled as an

1                   A. DAVID  
2 Affirmative Action Officer.

3           Q.       Another one your  
4 responsibilities at this time was, if you  
5 go down a few lines, "to oversee the  
6 drafting evaluation and implementation of  
7 all executive orders."

8                   Do you see that?

9           A.       Yes.

10          Q.       What does that -- what does that  
11 responsibility entail?

12          A.       So executive orders, of course,  
13 are issued by the executive in instances  
14 where there is a gap or there is a need to  
15 address a specific issue. Executive  
16 orders, as you may know, cannot supercede  
17 statutes. They have to operate within the  
18 confines of the power of the executives.

19                   So to the extent executive  
20 orders need to be issued, say if there was  
21 an emergency or disaster and an executive  
22 order had to be issued, my office would be  
23 responsible for drafting that executive  
24 order, ensuring that an executive order  
25 complied, again, with the statutes and

1                   A. DAVID  
2       constitutional provisions and provide them  
3       to the Governor for review before they're  
4       executed.

5           Q.       And during your time as Chief  
6       Counsel, do you remember working on an  
7       executive order that involved sexual  
8       harassment issues?

9           A.       I don't remember any an  
10      executive order specifically focusing on  
11      sexual harassment. I do remember an  
12      executive order focusing on the Governor's  
13      Office of Employee Relations, which was  
14      responsible for collating, if you will,  
15      and overseeing all complaints of  
16      discrimination, harassment at State  
17      agencies. But I don't recall a specific  
18      executive order on sexual harassment.

19          Q.       The Governor's Office of  
20      Employee Relations is that sometimes  
21      referred to as GOER or can we refer to it  
22      as GOER just for short?

23          A.       Yes.

24          Q.       And what do you remember about  
25      that executive order?

1                   A. DAVID

2           A.       I believe the executive order  
3 was issued to organize Affirmative Action  
4 Officers under the rubric of the  
5 Governor's Office of Employee Relations.  
6 I believe prior to the executive order,  
7 Affirmative Action Officers operated in  
8 the State agencies but did not report to  
9 GOER and the executive order was issued in  
10 an attempt to consolidate oversight of the  
11 Affirmative Action Officers and create a  
12 level of consistency in reviewing claims  
13 or complaints at State agencies across the  
14 State.

15           Q.       Did it also include a  
16 requirement that the GOER would be the  
17 ones to investigate complaints of  
18 employment-related discrimination?

19           A.       Yes.

20           Q.       And were you personally involved  
21 in the drafting or the -- and/or the  
22 ultimate execution of this executive  
23 order?

24           A.       I was involved in the execution  
25 and I believe in some of the editing of

1                   A.    DAVID

2    the executive order.

3                   Q.    And who else within the  
4    executive chamber did you work with in  
5    connection with this executive order?

6                   A.    In the executive chamber, I  
7    likely worked with an Assistant Counsel.  
8    I oversaw at a given time between 10 and  
9    14 Assistant Counsels, and they were all  
10   responsible for different subject areas.  
11   And they also were responsible for working  
12   with specific agencies on legal issues  
13   that arose.

14                   So it's highly likely that an  
15   Assistant Counsel was the original drafter  
16   or the person who shepherded the executive  
17   order through with my review and editing.

18                   Q.    Did you discuss this executive  
19   order with the Governor?

20                   A.    I don't believe I did.

21                   Q.    Do you know if the Governor  
22   reviewed the executive order before  
23   signing it?

24                   A.    I don't know if he did.

25                   Q.    Do you have any knowledge or

1                   A. DAVID  
2     understanding of whether the Governor  
3     understood what the requirements set forth  
4     in the executive order are?

5           A.       No.

6           Q.       So as Chief Counsel to the  
7     Governor whose job included implementation  
8     of all executive orders, you had no  
9     discussions with the Governor about this  
10    executive order?

11          A.       I don't believe we had any  
12    specific conversations about the executive  
13    order. We may have had conversations  
14    about the concept of consolidating  
15    Affirmative Action Officers in the GOER.  
16    But I don't believe we had any specific  
17    conversations about the actual executive  
18    order.

19                    There are instances where  
20    executive orders are drafted and submitted  
21    to his review. There are instances where  
22    there are conversations and there are  
23    instances where there are no  
24    conversations.

25                    I don't recall conversations

1                   A. DAVID

2       about this executive order with him, but  
3       the concept of consolidating Affirmative  
4       Action Officers within GOER likely  
5       happened because I believe it was the  
6       policy that he advanced and it would be  
7       highly unlikely for him to advance a  
8       policy without discussing it.

9           Q.       What discussions do you remember  
10       having with him about the concept of  
11       consolidating this subject GOER?

12           MR. AYDINER:   Just note my first  
13       objection as to privilege. I mean the  
14       question calls for communications  
15       between Mr. David, while an attorney  
16       and engaged as an attorney, and the  
17       Governor. And this has specifically  
18       been discussed between Mr. Fishman and  
19       I, is whether this executive order  
20       comes up, and I'm directed by Mr.  
21       Fishman that the chamber believes this  
22       is privileged and we should assert to  
23       privilege here.

24           MR. KIM:   So you're -- just to  
25       be clear, Mr. Aydiner --



1 A. DAVID

2 MR. AYDINER: Yes, sir.

3 MR. KIM: -- you're directing  
4 your client not to answer questions  
5 about the substance of this executive  
6 order and discussions he had with the  
7 Governor about it?

8 MR. AYDINER: Correct. Based on  
9 a specific conversation I had with Mr.  
10 Fishman about this particular subject  
11 matter.

12 Q. Can you turn to Tab 31 of the  
13 binder.

14 Does that appear to be the  
15 executive order that we've been talking  
16 about?

17 A. Yes.

18 Q. And turning to the last part,  
19 enrollment three, Combatting Harassment  
20 and Discrimination in State Agencies, is  
21 that the part of the order that addresses  
22 the consolidation under GOER that you have  
23 been talking about?

24 A. I have to review this more  
25 specifically. Hold on.

1                   A. DAVID

2           Q.        You're welcome to review it.

3           A.        Yes. It is under Section 3-B  
4 and C.

5           Q.        What do sections 3-B and C --  
6 what was your understanding of what  
7 Section 3-B and C did? What did it change  
8 from before this executive order to this  
9 executive order?

10          A.        What it changed was the  
11 Affirmative Action Officers as a result of  
12 this executive order would moving forward  
13 be required to report to the Governor's  
14 Office of Employee's Relations. Whereas  
15 in the past, those Affirmative Action  
16 Officers reported to the heads of their  
17 respective agencies.

18                   One of the concerns that was  
19 raised -- and this executive order appears  
20 to address an executive order that was  
21 issued in 1983, so it updated that  
22 executive order. What had happened in the  
23 past was that Affirmative Action Officers  
24 were investigating complaints of say  
25 racial discrimination in their State

1                   A. DAVID

2       agencies and then reporting the results of  
3       those claims to their Commissioners rather  
4       than to an independent agency. So that  
5       was one the goals was to consolidate these  
6       Affirmative Action Officers.

7                   The other goal was to ensure  
8       that there was a level of consistency so  
9       that claims were being treated in a  
10      consist matter, regardless of which agency  
11      the complaints -- the claims were filed  
12      in.

13            Q.       So claims of discrimination in  
14      any State -- as this defined, effective  
15      State agency, needed under this executive  
16      order to be referred to and sent to the  
17      GOER so that they could investigate it?

18            A.       Yes.

19            Q.       And the effective State agency  
20      here includes the executive chamber,  
21      correct?

22            A.       Yes.

23            Q.       You can put that -- the binder  
24      to the side, again.

25                    While you were in the executive

1 A. DAVID

2 chamber in either of the two roles, did  
3 you play any role in handling complaints  
4 or claims of discrimination?

5 A. In the chamber?

6 Q. Yes.

7 A. No. I don't believe during my  
8 tenure that there were claims of  
9 discrimination filed in the chamber by  
10 employees of the chamber.

11 Q. How about were you involved in  
12 any claims while you were -- claims of  
13 discrimination while you were in the  
14 executive chamber?

15 A. Can you describe what you mean  
16 "involved"?

17 Q. Well, did you -- let's start  
18 with did you have any awareness of any  
19 matter involving a claim of discrimination  
20 while you were in the executive chamber?

21 A. Yes.

22 Q. How many about?

23 A. Well, the Governor's Office of  
24 Employee Relations publicly released data  
25 showing how many claims of retaliation,

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A. DAVID

discrimination, harassment have been filed in certain agencies. There were also instances where there were specific cases where the chamber was referenced but the case was not relevant to the chamber, meaning the person wasn't employed by the chamber where I was aware of those claims.

Q. Okay. About how many claims that you were aware of?

A. And what's the category? Any type of discrimination?

Q. Yeah. Discrimination or harassment.

A. I would say maybe two or three.

Q. Okay. Which -- what do you remember about the two or three?

A. Well, one case involved a gentleman by the name of [REDACTED] [REDACTED] who worked for another agency. There was a complaint filed against him and the complainant alleged that she had reached out to someone in the Governor's Office to inform them about the complaint.

We subsequently learned that she

1 A. DAVID

2 did not do that. She in fact reached out  
3 to a State agency and the complaint was  
4 referred to GOER for review and  
5 investigation. The -- there was also --

6 Q. When was that about?

7 A. I don't remember. I would be  
8 guessing 2014, '15, '16. I don't  
9 remember.

10 Q. And what is your involvement in  
11 that?

12 A. I was not involved in the matter  
13 other than ensuring it was referred to  
14 GOER for review. And it came to our  
15 attention through the press where the  
16 complainant alleged that she had  
17 complained to someone in the chamber when  
18 in fact she had complained to someone at a  
19 State agency.

20 So again, the matter was  
21 referred to GOER for review. It was also  
22 referred to the Inspector's General  
23 Office, to the Joint Commission on Public  
24 Ethics and there was, I believe, a federal  
25 lawsuit filed. And the case was

1                   A. DAVID

2       subsequently dismissed as being  
3       unsubstantiated.

4           Q.       Did you make public statements  
5       about that case?

6           A.       As it relates to -- yes, I  
7       probably did as it relates to whether or  
8       not the chamber was notified or involved  
9       or aware of the complaint.

10          Q.       Was that something you -- that  
11       was part of your job responsibility is to  
12       speak publicly on behalf of the executive  
13       chamber?

14          A.       I did speak on behalf of the  
15       executive chamber on a number of different  
16       fronts, litigation, legislation, and in  
17       some cases, policy.

18          Q.       Was that part of your job as the  
19       Chief Counsel?

20          A.       I would -- it wasn't an official  
21       part of my job to publicly comment on the  
22       legislation, litigation or policy, but I  
23       often did. I was asked to by the  
24       communications department.

25          Q.       Okay. It was obviously part of

1 A. DAVID

2 your official duties. You weren't  
3 speaking on a -- in a personal capacity?

4 A. Oh, correct. I was not speaking  
5 in a personal capacity.

6 Q. And when you did speak publicly,  
7 did you speak to reporters?

8 A. Yes.

9 Q. Sometimes on the record?

10 A. Yes.

11 Q. Sometimes off the record?

12 A. Yes.

13 Q. Sometimes on background?

14 A. Yes.

15 Q. And did you generally try to be  
16 truthful when you spoke to them?

17 A. I was always truthful.

18 Q. Was there any instances that you  
19 recall when you were less than truthful?

20 A. No.

21 Q. So we talked about [REDACTED] [REDACTED].

22 What else do you remember? You  
23 said two or three?

24 A. The other instance, if you say  
25 any type of claim, would be Lindsey



1 A. DAVID

2 Boylan.

3 Q. And we'll -- we can -- we'll  
4 probably -- we'll get into that in a  
5 little more detail.

6 So why don't we go into any  
7 others that you remember.

8 A. Those are the two that I  
9 remember. I'm searching my memory bank to  
10 see if there's anything else I can  
11 remember.

12 I can only remember those two.

13 Q. Did the executive chamber have  
14 a -- have a human rights -- a human  
15 resources function?

16 A. I don't know what you mean by  
17 human resource function. If you mean  
18 individuals who are responsible for  
19 processing payroll and addressing issues  
20 of accommodation, then I would say yes.

21 Q. Well, at the Human Rights  
22 Campaign, do you have a human resources  
23 department?

24 A. Oh, at my organization right  
25 now, yes.

1 A. DAVID

2 Q. Okay. So what do they do?

3 A. Everything from recruitment to  
4 training to reviewing any claims that may  
5 arise to working with employees on  
6 professional development. They do a  
7 variety of things.

8 Q. So was there any person or group  
9 of people or department or division within  
10 the executive chamber that played those  
11 functions, played those roles while you  
12 were at the executive chamber?

13 A. I would say probably  
14 Administrative Services played many of  
15 those -- served many of those functions.  
16 I don't know if I would say they served  
17 all of them, but they certainly, I think,  
18 coordinated with employees on training. I  
19 believe they were also involved in  
20 recruitment, interviewing, working with  
21 employees on a variety of fronts.

22 Q. Who at Administrative Services  
23 was involved, while you were at the  
24 executive chamber involved in recruitment?

25 A. [REDACTED] was, I believe,

1 A. DAVID

2 the head of Administrative Services, and  
3 then there were other people who worked  
4 with her.

5 Q. And Administrative Services,  
6 where do they fit within the State  
7 bureaucratic structure? Where do they  
8 sit?

9 A. They are within -- I believe --  
10 I believe they're within the operations  
11 construct, operations unit of that,  
12 includes the Director of State Operations  
13 and others.

14 Q. And they, Administrative  
15 Services, cover State agencies beyond just  
16 the executive chamber, correct?

17 A. No.

18 Q. They just cover --

19 A. Just covers the executive  
20 chamber.

21 Q. So Administrative Services  
22 covering the executive chamber was [REDACTED]  
23 [REDACTED] while you were --

24 A. And others who work in that  
25 department, correct.

1 A. DAVID

2 Q. And who are -- how many other  
3 people worked in that department?

4 A. I believe two or three in Albany  
5 and maybe one or two in New York City.

6 Q. And they were involved in  
7 recruiting employees to work at the  
8 executive chamber?

9 A. I don't know. I don't know  
10 their level of engagement on that.

11 Q. Did you engage with them before  
12 you were retained by executive chamber?

13 A. I was -- I worked with the  
14 executive chamber within the new  
15 administration coming in, so there was --  
16 my interaction with Administrative  
17 Services I think related to getting my  
18 access card, in getting my electronic  
19 device and filling out the appropriate  
20 paperwork.

21 Q. You said they were also --  
22 Administrative -- Administrative Services  
23 was also involved in training?

24 A. Yes.

25 Q. What types of training did they

1 A. DAVID

2 do?

3 A. There's annual training, there's  
4 IT training, there's training on cultural  
5 competence. There's a number of different  
6 trainings they conducted throughout.

7 Q. How about training on sexual  
8 harassment?

9 A. Yes.

10 Q. Is that something the  
11 Administrative Services oversaw?

12 A. It's something they managed,  
13 yes.

14 Q. And did you personally complete  
15 training on sexual harassment while you  
16 were in the executive chamber?

17 A. Yes.

18 Q. How often did you do that?

19 A. I believe once a year.

20 Q. Okay. And what form did it  
21 take? Video, in person? What do you  
22 remember?

23 A. I remember doing many trainings.  
24 Some were virtual, some were in person. I  
25 don't specifically recall whether the

1 A. DAVID

2 sexual harassment training was in person  
3 or virtual because I did so many different  
4 types of trainings.

5 Q. Mm-hmm. And during your time  
6 there, were you familiar and aware of a  
7 sexual harassment policy that applied to  
8 the executive chamber?

9 A. There was a policy that was I  
10 believe issued in 2011. It was I believe  
11 called "Rights and Responsibilities of  
12 State Workers." And that policy, if you  
13 will, was issued by the Governor's Office  
14 of Employee Relations, that applied to all  
15 State agencies.

16 Q. Were you familiar generally with  
17 the requirements and the law set forth in  
18 that policy?

19 A. Generally speaking, yes.

20 Q. Do you have a general  
21 understanding of what New York State Human  
22 Rights Law requires in terms of employers  
23 and what constitutes sexual harassment and  
24 what doesn't?

25 A. In a very general way I believe

1 A. DAVID

2 I do.

3 Q. Mm-hmm. And where did that --  
4 your understanding of those issues come  
5 from?

6 A. Well, they certainly, I think,  
7 came in a very cursory way through going  
8 through law school and were supplemented  
9 over time by trainings. I have not  
10 ever -- I've never done a sexual  
11 harassment case, so I don't have that  
12 level of expertise, but I certainly have  
13 gone through the appropriate trainings to  
14 have a general understanding of what the  
15 rules would be for an employer.

16 Q. And now as a -- the head of  
17 Human Rights Campaign, do you -- do you  
18 undergo any training relating to sexual  
19 harassment or have you?

20 A. Yes. We have trainings,  
21 electronic trainings.

22 Q. And are you based in New York or  
23 are you based somewhere else?

24 A. Our main office are -- is in  
25 Washington DC and we have satellite

1                   A. DAVID

2       offices, including in New York.

3           Q.       And where do you work primarily?

4           A.       Well, prior to Covid-19, I was  
5       in Washington DC every week and then I  
6       would travel all over the country. So I  
7       would spend two or three days in  
8       Washington, DC, I would spend two or three  
9       days in another city and then I would  
10       spend maybe a day or two in New York.

11          Q.       While you were at the executive  
12       chamber, were there -- did you maintain  
13       sort of filed personnel files for  
14       individuals, State employees, any State  
15       employees?

16          A.       I did not -- I did not -- when  
17       you say "personnel files," what do you  
18       mean?

19          Q.       Or files on any employees. Did  
20       you ever maintain any files on employees?

21          A.       I maintained files on employees  
22       where I was involved in any significant  
23       interaction that was worth memorializing.

24          Q.       Okay. So what does that mean?  
25       How many -- let me back up.



1                   A. DAVID

2                   How many such files did you  
3 maintain?

4           A.       There may have been six or  
5 seven. I don't remember the number. So  
6 there were -- if there were conflicts, if  
7 I was involved in an issue where I thought  
8 it was important to memorialize, then I  
9 would.

10          Q.       Okay. So if you got involved  
11 with an employee, you would memorialize  
12 interactions and save the document; is  
13 that --

14          A.       Yeah. It was very rare, but --  
15 but, yes.

16          Q.       Okay. And what would you -- by  
17 memorializing and create a file, what did  
18 that mean physically? You made, like, a  
19 physical file or a folder or a --

20          A.       There's a physical -- sorry to  
21 interrupt.

22                   There is a physical file. If  
23 there's a memo, there's a memo in that  
24 file. If there's supportive documents,  
25 supportive documents are in that file.

1                   A. DAVID

2       And in some instances, it would go in  
3       someone's official file, which is held by  
4       human resources.

5           Q.       Again, held by human resources  
6       not you mean Administrative --

7           A.       Oh, Administrative Services.  
8       Same thing.

9           Q.       So you would create a file if  
10       you were involved in some issue with an  
11       employee?

12          A.       Correct.

13          Q.       Sometimes you would just keep it  
14       to yourself, sometimes it would go to  
15       their official file, which the  
16       Administrative Services maintains?

17          A.       Yes. But again, it did -- it  
18       didn't happen that often for there to be  
19       that distinction. But short answer is  
20       yes.

21          Q.       Okay. So when you said -- did  
22       the Administrative Offices maintain a file  
23       for every person in the executive chamber?

24          A.       I don't know that they do. I  
25       assume they do, but I don't know that

1                   A. DAVID

2 fact.

3           Q.       Okay. And when you sent the  
4 file to Administrative Services, who would  
5 you send it to? Who did you send it to  
6 and what did you send?

7           A.       I don't know that I did forward  
8 files to Administrative Services. I don't  
9 remember instances where I would do that.  
10 I can't remember any instance where I did  
11 it.

12          Q.       Okay. So your recollection is  
13 that that second set of sending to  
14 official files is that you don't remember  
15 any?

16          A.       No. That wouldn't be my  
17 responsibility. Again, if I'm involved  
18 with an employee, it's usually others that  
19 are involved and they would be responsible  
20 for doing the appropriate filing and  
21 tracking, but not -- I wouldn't be sending  
22 anything to Administrative Services.

23          Q.       Not trying to suggest it was  
24 your responsibility. I was just following  
25 up on your answer, which was sometimes you

1                   A. DAVID

2       just maintained it, sometimes you sent  
3       over files for -- to put in their file  
4       maintained by Administrative --  
5       Administrative Services.

6                   But it sounds like that second  
7       category you have no recollection of it  
8       ever happening?

9           A.       Yeah. I don't.

10          Q.       So the only thing you remember  
11       is in some instances you maintained a file  
12       because you were involved with an employee  
13       in any particular way?

14       A.       Correct.

15          Q.       And what -- what did you do in  
16       those instances? What did you -- how did  
17       you maintain the files?

18       A.       Well, again, I think, because  
19       they are so limited, there would be  
20       someone in the conversation who would be  
21       responsible for memorializing whatever  
22       they needed to memorialize to a memo.  
23       That memo would then be shared with me and  
24       then I would save a copy of it.

25       Q.       Where would you save it?

1                   A.     DAVID

2           A.     There was a file in my office  
3 filing cabinet.

4           Q.     I see.   A physical filing  
5 cabinet and --

6           A.     Correct.

7           Q.     -- and what did it say?

8           A.     It said nothing other than the  
9 person's name.

10          Q.     I see.   So you would put a --  
11 print out the documents, put it in a  
12 folder and put it in your cabinet with the  
13 person's name?

14          A.     Correct.

15          Q.     And how many of those files do  
16 you remember creating?

17          A.     Personnel, involved in the  
18 chamber personnel?

19          Q.     Involving any personnel, any  
20 State employee.

21          A.     It's too hard to say.   I'd say  
22 maybe five or six where there may have  
23 been a conversation that I may have been  
24 involved in or may have been something  
25 else.

1 A. DAVID

2 Q. So five or six --

3 A. I don't remember -- I don't  
4 remember and you -- I don't want you to  
5 quote me on that because I just don't  
6 remember.

7 Q. Okay. What names do you  
8 remember, if any?

9 A. The one I remember is Lindsey  
10 Boylan. There was -- there was a second  
11 person, [REDACTED] [REDACTED], I believe, who was a  
12 fellow who then subsequently left the  
13 chamber for poor performance. Those are  
14 the two that come to mind.

15 Q. So you remember two names but  
16 you think there was probably five or six  
17 or --

18 A. Yeah. I can't speculate on  
19 that. I just don't remember. I can  
20 certainly -- I remember [REDACTED] [REDACTED]  
21 because I remember there was a memo or a  
22 letter written about that interaction.  
23 And I remember Lindsey Boylan.

24 Q. And when you left the executive  
25 chamber, what happened to your file. Do

1 A. DAVID

2 you know?

3 A. I left them within the chamber,  
4 and I advised folks where my files were.

5 Q. Did you retain any electronic  
6 copies of any documents?

7 A. Yes. I -- I retained electronic  
8 copies of a memo that was written by the  
9 Chief Ethics Officer in the Boylan case  
10 and the supportive documents. And I also  
11 have a copy of the memo or the letter that  
12 was written regarding the [REDACTED] [REDACTED]  
13 matter.

14 Q. What happened with [REDACTED] [REDACTED]?  
15 What was the issue?

16 A. She, I believe, wanted to -- she  
17 was a fellow and all fellows came in  
18 pursuant to a program that paid them a  
19 certain salary. And she wanted to change  
20 the compensation associated with the  
21 fellowship in the middle of the  
22 fellowship, which we couldn't do because  
23 that would put her at an advantage to all  
24 of the other fellows that were operating  
25 at the same salary.

1 A. DAVID

2 Q. And she raised that issue with  
3 you?

4 A. Correct. She was working in my  
5 office.

6 Q. I see. And what -- what did you  
7 say?

8 A. That we could not change the  
9 compensation, that the requirements of the  
10 program limited our ability to make any  
11 changes to compensation, and making  
12 changes to compensation would disadvantage  
13 other fellows that started the program at  
14 the same time.

15 Q. And then what happened -- or how  
16 did this end up being a file as opposed to  
17 just --

18 A. Since there was a letter -- I  
19 believe she wrote a letter and I believe  
20 there was a response to the letter.

21 Q. And what did the letter say?

22 A. Exactly what I just said. Just  
23 sort of memorialized that statement or  
24 those statements, that we could not change  
25 the compensation, that it would create a



1                   A. DAVID

2 competitive disadvantage or advantage, and  
3 that we couldn't -- we couldn't make those  
4 changes. And she subsequently left the  
5 chamber to work somewhere else.

6           Q.       Where did she go?

7           A.       I don't remember. To another --  
8 I don't -- maybe to a District Attorney's  
9 office or to -- I don't remember.

10          Q.       When you were describing her  
11 situation earlier, you described it as,  
12 like, a performance issue. But did she  
13 have performance issues -- it sounds like  
14 you're describing a compensation issue in  
15 terms of what she was asking for but  
16 what -- what were the performance issues?

17          A.       The performance issue, I  
18 believe, she thought that she was doing  
19 more than she had initially thought she  
20 would be responsible for, meaning more  
21 duties. And as a result, she thought  
22 it -- it was appropriate to be further  
23 compensated for that.

24          Q.       What were her duties? Who was  
25 she reporting to and working for?

1 A. DAVID

2 A. She was reporting to an  
3 Assistant Counsel. I don't remember the  
4 structure.

5 Q. Is she someone who had any  
6 interactions with the Governor, to your  
7 knowledge?

8 A. No.

9 Q. Any other files you remember,  
10 Lindsey Boylan and [REDACTED] [REDACTED] ?

11 A. Those are the two.

12 Q. Can we turn to just sort of  
13 physically where you were located, where  
14 your office was -- office was located when  
15 you were working for the executive  
16 chamber?

17 A. Sure. I had two offices. One  
18 is in New York City or was in -- or is in  
19 New York City on 3rd Avenue in Manhattan  
20 and 40th, I believe, and the second was in  
21 Albany in the State capital.

22 Q. And did your office in both --  
23 either of those locations change when you  
24 switched roles within the executive  
25 chamber from the Deputy Secretary for

1 A. DAVID

2 Civil Rights to Chief Counsel?

3 A. Yes.

4 Q. Let's start with as far as when  
5 you were Deputy Secretary for Civil  
6 Rights. Where did you sit and who did  
7 you --

8 A. In New York City I sat on the  
9 38th floor. There are 39 or 40 floors --  
10 39 floors I certainly know in the New York  
11 City office.

12 In Albany, I sat in an office  
13 across the rotunda. I don't know how best  
14 to describe it, but closer to, I think,  
15 Washington Avenue than the other side of  
16 the capital.

17 Q. And then when you became Chief  
18 Counsel, did you move?

19 A. Yes.

20 Q. Okay. In -- in New York City,  
21 where did you move to and in Albany, where  
22 did you move to?

23 A. In New York City, my office  
24 moved from the 38th floor to the 39th  
25 floor. And there is an office two doors

1                   A. DAVID

2       down from the conference room, which is  
3       where prior counsel's occupied. So that  
4       was my office.

5                   And in Albany, my office is the  
6       Counsel's Office, which is on the other  
7       side of the capital from Washington Street  
8       and further down closer to the end, near  
9       the Attorney General's Office.

10            Q.       Who -- who was the Chief Counsel  
11       and executive to the Governor before you  
12       were?

13            A.       The Chief Counsel for a very  
14       short period was [REDACTED] [REDACTED]. And prior to  
15       that, [REDACTED] [REDACTED].

16            Q.       And in your two different roles  
17       in the executive chamber, how often did  
18       you see or interact with the Governor? We  
19       could start with the Deputy Secretary of  
20       Civil Rights initially.

21            A.       Difficult to say as Deputy  
22       Secretary. Once every few months. During  
23       the legislative session or the budget  
24       session, maybe more frequency, but I  
25       didn't see him very often. But he also, I

1                   A. DAVID

2     believe, has public schedules, so it  
3     should tell you how often I was with him.  
4     But it wasn't very often.

5                   As Counsel, I would see him or  
6     talk to him several times a week.

7           Q.     And would you -- were you  
8     physically located -- was your office  
9     physically closer to his office once you  
10    became Chief Counsel either -- first in  
11    New York City?

12          A.     In New York City, his office was  
13    at the opposite end of the hall from my  
14    office. In Albany his office also was the  
15    opposite end of the hall from my office.

16          Q.     So you wouldn't -- in order to  
17    meet and speak to him, you would actually  
18    have to walk over to -- down the hall to  
19    see him?

20          A.     Yeah. In Albany, I would have  
21    to go through three offices, go out the  
22    door, walk in to his office, pass several  
23    different assistants, pass his assistant  
24    before I got to him. That's in Albany.

25                   In New York City, his office was

1                   A.    DAVID

2    three offices and a conference room away  
3    from mine.

4           Q.        So there were a number of other  
5    people who were physically located closer  
6    to the office where the Governor was?

7           A.        Yes.

8           Q.        Who were the -- who were those  
9    people while you were Chief Counsel?

10          A.        So the office closest to his is  
11    in Albany is Stephanie Benton.  Walking  
12    backwards, it would be two or three  
13    executive assistants.  Then you would have  
14    to leave his office and walk into the  
15    hallway to walk back into the corridor.  
16    And then I would have to walk past the  
17    deputy -- the Director of State  
18    Operations, the Chief of Staff, the First  
19    Assistant before you get to my office.

20          Q.        Mm-hmm.

21          A.        In New York City, it was my  
22    office and then there was an office of --  
23    I forgot the title of this person, but  
24    someone who worked in the operations  
25    department.  And then there was another

1                   A. DAVID

2       office of someone who worked on  
3       not-for-profit issues. Then there was  
4       another office of someone who worked in  
5       operations. Then there was a conference  
6       room, and then you would have to go  
7       through Stephanie Benton's office to get  
8       to him.

9           Q.       So when you saw and met with  
10       him, it would be, generally speaking, for  
11       specific prearranged appointments because  
12       you had to go over there? You wouldn't  
13       sort of in regular courses run into him?

14          A.       Correct. I would meet with him  
15       under two circumstances: One, he requests  
16       a meeting with me or he asked for me, or  
17       the meeting is scheduled in advance.

18          Q.       Okay. And so remind me again.  
19       You said as Chief Counsel, how often would  
20       you meet or see him?

21          A.       On average, once a week. It may  
22       increase with frequency, but that meeting  
23       also did not only include me. There was a  
24       period of time where he met with his  
25       entire senior staff, and so I would be in

1                   A. DAVID

2       that meeting. And there could be weeks  
3       where I wouldn't meet up with him at all  
4       other than that meeting.

5           Q.       Mm-hmm. How often were you  
6       alone with him?

7           A.       Without anyone else present?

8           Q.       Correct.

9           A.       Not very often.

10          Q.       How often?

11          A.       It's different to speculate.  
12       Again, I think these public records are  
13       available, so I don't want to get this  
14       wrong, but I don't believe it was often at  
15       all.

16          Q.       The public record wouldn't  
17       reflect if he called, say, "Come over. I  
18       want to talk to you," or something, right?

19          A.       I don't know the answer to that.  
20       In some cases it might. I don't know.  
21       But the public record really reflects the  
22       frequency of the times that I met with  
23       him.

24          Q.       So you're saying some cases --  
25       go ahead.



1                   A.     DAVID

2           A.     It was rare that he would --  
3     it's difficult to answer the question  
4     because during the budget season, for  
5     example, when you're negotiating a budget,  
6     I may see him four times in one day.  
7     Where there's a bill, where there's the  
8     Senate or the Assembly negotiating a bill.  
9     And that, as you said, wouldn't be  
10    scheduled or on the calendar. So you're  
11    absolutely correct. But outside of the  
12    budget or the legislative session it -- it  
13    would in most cases be scheduled.

14          Q.     So internal meetings with you  
15    and the staff would be in his public  
16    schedule?

17          A.     Yes.

18          Q.     And how would it -- you said  
19    there was a weekly meeting generally with  
20    senior staff?

21          A.     Yes. There were -- I believe  
22    they were on Mondays.

23          Q.     And who would attend those  
24    senior staff meetings?

25          A.     A lot of people. Secretary to

1                   A. DAVID  
2     the Governor, the Director of State  
3     Operations, the head of communications,  
4     the Division of Budget. There were some  
5     special advisors who would attend those  
6     meetings. The composition in some cases  
7     shifted depending on what the focus of the  
8     meeting was.

9           Q.     And where did those weekly  
10    meetings take place?

11          A.     The meetings occurred depending  
12    on where he was. So during the  
13    legislative sessions and the budget  
14    sessions, those meetings would largely  
15    take place in Albany. During the  
16    non-legislative session, they would take  
17    place in New York City.

18          Q.     And if they took place in New  
19    York City, where? Where in the New York  
20    City office would you meet?

21          A.     In his conference room. As I  
22    indicated to you before, it's the one  
23    closest to his office on the 39th floor.

24          Q.     How about in Albany?

25          A.     In Albany, it would take place

1                   A. DAVID  
2     in his conference room.

3           Q.       And did you ever while you were  
4     Chief Counsel -- let me take that back.  
5     You said it's very rare that you were just  
6     meeting with him one-on-one? Not often?

7           A.       Not often. But, again, I think  
8     all of these answers are -- require the  
9     caveat that if it's during the budget  
10    season or if it's during the legislative  
11    season where I'm negotiating bills or  
12    drafting bills, I may see him more often.

13                   And just to give you context.  
14    Before I left the chamber, I believe one  
15    year there were 700 legislative bills that  
16    were passed by the legislature. 700. So  
17    there may have been many instances where  
18    he was engaged in legislation where he  
19    may -- I may receive a phone call "The  
20    Governor wants to see you to talk about a  
21    bill or to talk about a policy issue."  
22    That would be during the legislative  
23    session, during the budget. During the  
24    non-legislative session in the budget,  
25    most of my interactions with him were

1                   A. DAVID

2       scheduled.

3           Q.       And so on those -- in the  
4       legislative session -- during the  
5       legislative sessions when he would call  
6       and want to talk about a bill, sometimes  
7       those meetings would be one-on-one?

8           A.       Sometimes, but not often.  
9       Because those bills, if it was during the  
10      budget, it would involve the direct --  
11      Director of Budget. If it was during the  
12      legislative session, it may involve a  
13      policy person. If it was economic  
14      development or housing, it may be a policy  
15      person in the meeting as well. So it  
16      depended on the issue.

17          Q.       So going back to the original  
18      question. So did you -- how often did you  
19      meet with him one-on-one?

20          A.       I can't answer that question  
21      with any degree of specificity because it  
22      changes depending on the season. And I  
23      don't think I met with him often during  
24      the non-legislative season often alone.

25          Q.       Okay. How about socially, did

1                   A. DAVID

2     you -- how often did you go out with him  
3     for meals?

4           A.     I don't believe -- well, in New  
5     York City, there were instances where we  
6     would meet for a meal on the first floor.  
7     There's a restaurant called --

8           Q.     Docks?

9           A.     Docks. There's a restaurant  
10    called Docks. So there may have been  
11    instances where he was leaving the office  
12    and he would say, "I'm going to have a  
13    meal. Would you like to join?"

14                   In Albany, I don't believe -- I  
15    don't recall any instances where we met  
16    out of the executive chamber or the  
17    mansion where there were public events  
18    with stakeholders and I would attend or  
19    there were meetings that turned into  
20    dinners at the mansion.

21           Q.     How often did you have dinner or  
22    a meal with him one-at-one at Docks or  
23    anywhere else?

24           A.     I don't think I've ever had meal  
25    or dinner with him alone.

1 A. DAVID

2 Q. I see. So --

3 A. I can't remember an instance  
4 where it was just only the two of us.

5 Q. So in the instances when he  
6 said, "I'm grabbing something to eat  
7 downstairs at Docks. Why don't you come  
8 along," that was with others?

9 A. Yes.

10 Q. Who would it be?

11 A. Melissa DeRosa, Stephanie  
12 Benton, maybe Jill DeSrosiers, maybe  
13 Dani Lever. There was -- it was -- it  
14 changed. There was no consistency there  
15 and it didn't happen that often.

16 Q. But you don't remember ever  
17 having a meal one-on-one with him?

18 A. No. I don't recall a meal with  
19 him alone and no one else.

20 VIDEOGRAPHER: Excuse me,  
21 Counselor.

22 MR. KIM: Yeah.

23 VIDEOGRAPHER: Just a two-minute  
24 warning. I have to change out the  
25 media unit.

1 A. DAVID

2 MR. KIM: Sure.

3 Why don't we -- if it's okay  
4 with you, Mr. David, we'll take, like,  
5 a five-minute break.

6 THE WITNESS: Yeah. We'll break  
7 for comfort. Five minutes. Thank  
8 you.

9 MR. KIM: Break for five. So  
10 maybe we'll try to get back on at  
11 4:40.

12 THE WITNESS: Yes, sir. You've  
13 got it.

14 VIDEOGRAPHER: Stand by. Stand  
15 by to go off the record. This is the  
16 end of Media Unit Number 1. We are  
17 now off the record at 4:35 p.m.

18 [Discussion held off the  
19 record.]

20 VIDEOGRAPHER: This is the  
21 beginning of Media Unit Number 2. We  
22 are now on the record at 4:43 p.m.  
23 Thank you.

24 BY MR. KIM:

25 Q. So, Mr. David, did you

1                   A. DAVID

2       communicate with anyone during that break?

3           A.       No.    Other than my counsel, no.

4           Q.       So when did you leave the  
5       executive chamber?

6           A.       I left the chamber in July of  
7       2019.

8           Q.       And what was the reason for your  
9       leaving the chamber?

10          A.       I received an offer to join the  
11       Human Rights Campaign as the assistant  
12       president.

13          Q.       And when you left, you mentioned  
14       two files that you took with you.  
15       Anything else that you took with you in  
16       terms of documents, either electronic or  
17       hard copy from the executive chamber?

18          A.       No.    The executive chamber's  
19       records should be in its possession.    I  
20       might have, you know, my documents with  
21       respect to my separation.    I'm going to  
22       have other things that are related to my  
23       work, but none of the State agency's  
24       records are in my possession.    They're all  
25       in the State's possession.



1 A. DAVID

2 Q. Okay. You mentioned that you  
3 kept with you or took with you the files  
4 relating to Lindsey Boylan, correct?

5 A. No. I have copies -- I have --  
6 I have copies of memos that were written  
7 regarding Lindsey Boylan. The files  
8 associated with Boylan are in possession  
9 of the State.

10 Q. Okay. What's the difference  
11 between copies of the documents and the  
12 files?

13 A. Well, the original memo was  
14 written by an Assistant Counsel, so she  
15 has possession of the original document.  
16 The supportive documents were also  
17 supplied by a third party, I believe  
18 Camille Varlack, so those should be in the  
19 possession of the State. I have copies of  
20 those documents.

21 Q. Okay. What other copies of  
22 documents did you retain when you left the  
23 executive chamber, other than copies of  
24 the documents relating to Lindsey Boylan?

25 A. I may have copies of, as I said

1 A. DAVID

2 before, my employment application, my  
3 separation documents, things like that.

4 Q. The employment application,  
5 separation documents, anything else you  
6 remember you kept copies of?

7 A. Nothing that would be relevant  
8 to the State, no.

9 Q. And Lindsey -- and copies of  
10 Lindsey Boylan -- related to Lindsey  
11 Boylan?

12 A. Correct.

13 Q. You also mentioned [REDACTED] [REDACTED] ?  
14 You kept copies of her documents?

15 A. Correct. Well, there's two --  
16 there's two letters in [REDACTED] [REDACTED] -- in  
17 the issue -- in the issue relating to  
18 [REDACTED] [REDACTED] .

19 Q. Why did you keep copies of  
20 Lindsey Boylan's documents?

21 A. As I said before, it was rare.  
22 I think this may have been the only  
23 instance where I was actually involved in  
24 a counseling of an employee when I was in  
25 the executive chamber. And it was unusual

1                   A. DAVID

2       and I wanted to make sure that I could  
3       refresh my memory, provide any feedback if  
4       I needed to on that matter given that it  
5       was really the only instance where I can  
6       recall where there was an issue regarding  
7       a complaint against an employee who  
8       subsequently resigned as a result of that.

9           Q.       Did you think that -- do you  
10       think -- you thought it might come up  
11       again as an issue that you wanted to have  
12       documents to refresh your recollection  
13       with?

14          A.       I didn't think it would come up  
15       again, but as an attorney I wanted to make  
16       sure that, given that I was involved in  
17       the matter, I certainly didn't want to  
18       rely on any third party to be responsible  
19       for representing, you know, what may or  
20       may not have happened.

21                   I've practiced law for a long  
22       time, so I wanted to certainly make sure  
23       that I was in the position to represent  
24       any facts as I saw appropriate. Again, I  
25       didn't have any belief that it would come

1                   A.     DAVID

2     up again.    I didn't have any inclination  
3     that it would come up again.    But I  
4     certainly knew that it was unique given  
5     the circumstances.

6            Q.     So what did you act -- what did  
7     you physically do?    So you -- you read,  
8     you made a photocopy of the entire  
9     document for Lindsey Boylan?

10          A.     Yes.

11          Q.     And you kept them.    What did you  
12     do with the original file?

13          A.     It's in my office.    It was left  
14     in my office.

15          Q.     I see.    You -- you left it in  
16     your office in a -- it's in a filing  
17     cabinet?

18          A.     Yes.

19          Q.     And who, if anyone, did you tell  
20     about that file?

21          A.     I believe the Assistant Counsel,  
22     who is the Chief Ethics Officer, either  
23     had the file or had access to the file.  
24     And then it was provided to the new  
25     counsels or the new Assistant Counsels who

1                   A. DAVID

2       came in.

3           Q.       And who was the Chief Ethics  
4       Officer?

5           A.       Julia Kupiec.

6           Q.       Did you tell anyone else about  
7       the existence of that file?

8           A.       I'm sure I did. I don't know  
9       who though. As I transitioned from the  
10      job, I'm sure I told people in my office  
11      where things were. I just can't recall  
12      the specific people that I talked to.

13          Q.       Did you tell Melissa DeRosa?

14          A.       Yes, I'm pretty sure I did.  
15      Well, she was certainly aware that there  
16      was a memo that was written. I don't know  
17      that I had a specific conversation with  
18      her about where the file was before I  
19      left. But she was aware of its existence.

20          Q.       Anyone else you told about the  
21      file, do you remember?

22          A.       None that come to mind.

23          Q.       Stephanie Benton?

24          A.       Stephanie Benton was probably  
25      aware as well at the time that there was a

1                   A. DAVID

2       memo that was created, but I don't know  
3       that she -- I don't know that she knew  
4       where the physical file was either.

5           Q.       How about Richard Azzopardi?

6           A.       Richard Azzopardi was probably  
7       aware that she was counseled. Whether or  
8       not he was aware that there was -- it was  
9       memorialized in a file in a memo, I don't  
10      know.

11          Q.       How about the Governor?

12          A.       I never had a conversation with  
13      the Governor about it, so I couldn't -- I  
14      don't know what he knows or doesn't know.

15          Q.       Did you ever have any  
16      conversations with the Governor about  
17      Lindsey Boylan at all?

18          A.       Well, to the extent about  
19      Lindsey Boylan probably -- I'm trying to  
20      think about what those conversations would  
21      have been. Nothing that comes to mind  
22      specifically.

23          Q.       How about her allegations?

24          A.       About her allegations against  
25      him?

1 A. DAVID

2 Q. Yeah.

3 A. No.

4 Q. Any communications with the  
5 Governor about -- I think I used the word  
6 spoke. So any communications with the  
7 Governor about the allegations that  
8 Lindsey Boylan had made against --

9 A. No. I have not spoken with the  
10 Governor.

11 Q. Or communicated in any other  
12 way?

13 A. I have not spoken or  
14 communicated with the Governor in any way  
15 regarding Lindsey Boylan and her  
16 allegations.

17 MS. KENNEDY PARK: Joon, can I  
18 ask a question?

19 MR. KIM: Sure.

20 MS. KENNEDY PARK: Thank you.

21 Mr. David, did you tell anyone  
22 that you were taking copies of the  
23 documents related to Lindsey Boylan?

24 THE WITNESS: I don't believe  
25 so.

1 A. DAVID

2 MS. KENNEDY PARK: Why not?

3 THE WITNESS: I don't believe  
4 there was any reason for me to tell  
5 anyone that I was retaining copies of  
6 a memo that related to a meeting that  
7 I was the involved in.

8 MS. KENNEDY PARK: Is there any  
9 policies regarding personal retention  
10 of executive chamber documents that  
11 you're aware of?

12 THE WITNESS: There is a policy  
13 with respect to retention of records.  
14 There is a State policy that applies  
15 to the State Department of Archives  
16 and it relates to State records. And  
17 original records have to be maintained  
18 for a certain period of time in the  
19 possession of the State.

20 I don't believe and I'm not  
21 aware of any policy with respect to  
22 copies of documents relating to  
23 someone's either work product or  
24 communications regarding a meeting  
25 that they had.



1 A. DAVID

2 Q. How about the copies of  
3 documents relating to [REDACTED] [REDACTED]. Why  
4 did you -- why did you keep those?

5 A. Again, I was involved in a  
6 personnel-related matter. There were very  
7 few, that I can now only recall two, and  
8 given the unique nature of those I wanted  
9 to make sure that I had the facility to  
10 remember to the extent there were any  
11 issues that arise in the future.

12 During my time in the executive  
13 chamber, I was not involved in  
14 personnel-related matters in the chamber,  
15 so to the extent those issues arose, they  
16 were unique by their very nature.

17 Q. Did you tell anyone that you  
18 were retaining copies of documents  
19 relating to [REDACTED] [REDACTED]?

20 A. No.

21 Q. You mentioned earlier that you  
22 were aware of the New York State Employee  
23 Handbook.

24 A. Mm-hmm.

25 Q. Remember that? And that

1 A. DAVID

2 handbook included policies relating to  
3 sexual harassment?

4 A. Mm-hmm. Yes.

5 Q. Can you turn to -- can you turn  
6 to Tab 1 in your binder?

7 A. Yes.

8 Q. And you see this is a document  
9 called a "Handbook for Employees of New  
10 York State Agencies"?

11 A. Yes.

12 Q. Is this the -- the document that  
13 you were referring to earlier?

14 A. This document is dated May 2020,  
15 so I've never seen this document before,  
16 but I certainly can state that there was a  
17 document created in December of 2011 and I  
18 suspect that it's similar. But this --  
19 the date on this is different than the  
20 document I'm familiar with.

21 Q. Right. So you're familiar with  
22 prior versions of this document?

23 A. Without reviewing the entire  
24 document, I would suspect that it is an  
25 updated version of a prior document that I

1                   A.    DAVID

2    have reviewed, but I have not had the  
3    opportunity to review this document.

4            Q.       Okay.  Can you turn to page 11  
5    of this document?

6            A.       Okay.

7            Q.       You see there's a section on  
8    sexual harassment?

9            A.       Yes.

10          Q.       And you see in the middle it  
11    says, "Sexual harassment is prohibited as  
12    a form of sexual discrimination under  
13    Human Rights Law 296.1."  And then under  
14    provisions that apply to interns and  
15    nonemployees who work at the workplace and  
16    Federal Civil Rights Act of 1964 Title  
17    VII.

18          A.       Mm-hmm.

19          Q.       That's consistent -- is that  
20    consistent with your understanding of New  
21    York State law, that sexual harassment is  
22    prohibited as a form of sex  
23    discrimination?

24          A.       Yes.

25          Q.       And then the bottom part starts,

1                   A. DAVID

2       "Sexual harassment includes unwelcomed  
3       conduct which is either of a sexual nature  
4       or which is directed at an individual  
5       because of that individual's sex when one  
6       of the," first bullet, "Such conduct has  
7       the purpose or effect of unreasonably  
8       interfering with an individual's work  
9       performance or creating an intimidating or  
10      hostile work environment even if the  
11      reporting individual is not the intended  
12      target of the harassment." Two, second  
13      bullet, "Such conduct is made either  
14      explicitly or implicitly a term of  
15      condition of employment, or, third bullet,  
16      "Submission to or rejection of such  
17      conduct is used as the basis for  
18      employment decisions affecting an  
19      individual's employment."

20                   Is that statement generally  
21      consistent with your understanding of what  
22      constitutes sexual harassment in the  
23      workplace in New York?

24           A.       Yes.   Generally speaking, yes.

25           Q.       And then the next sentence there

1                   A. DAVID  
2       says, "Actions that may constitute sexual  
3       harassment based upon a hostile work  
4       environment may include but are not  
5       limited to words, signs, jokes, pranks,  
6       intimidation or physical violence which  
7       are of a sexual nature or which are  
8       directed at an individual because of that  
9       individual's sex."

10                   Is that consistent with your  
11       general understanding as well?

12                A.     Yes.

13                Q.     It also goes on to say, "Sexual  
14       harassment also consists of" an -- "of any  
15       unwanted verbal or physical advances,  
16       sexually explicit derogatory statements,  
17       or sexually discriminatory remarks made by  
18       someone which are offensive or  
19       objectionable to the recipient, which  
20       cause the recipient discomfort or  
21       humiliation or which interfere with the  
22       recipient's job performance."

23                   Is that statement also  
24       consistent with your general understanding  
25       of the law -- of the law?

1 A. DAVID

2 A. Yes.

3 Q. And then if you go on to the  
4 next paragraph it says -- the second  
5 sentence says, "Sexual harassment need not  
6 be severe or pervasive to be unlawful and  
7 can be any sexual harassing conduct that  
8 consists of more than petty slights or  
9 trivial inconveniences."

10 Do you see that?

11 A. Yes, I think I see that.

12 Q. The second sentence in the next  
13 paragraph?

14 A. Oh, I see that, yes.

15 Q. Is that consistent with your  
16 understanding of the law?

17 A. General speaking, yes.

18 Q. Okay. Do you recall, while you  
19 were the Chief Counsel for the Governor,  
20 that in October -- I'm sorry, when did you  
21 leave? You left in --

22 A. I left in July of 2019.

23 Q. Okay. Are you aware in October  
24 of 2019, the Governor signed a law that  
25 amended New York State's Human Rights Law

1                   A. DAVID

2       to make clear that conduct need not be  
3       severe or pervasive to be considered  
4       sexual harassment? Is that something you  
5       were aware of?

6           A.       As a general matter, yes. But I  
7       was no longer with the chamber at the  
8       time.

9           Q.       Is that something you had been  
10      working on or had any involvement in  
11      before you left?

12          A.       It is something that I had some  
13      engagement on, yes, generally.

14          Q.       To make a standard for sexual  
15      harassment lower, that doesn't -- to make  
16      it clear that it does not need to be  
17      severe or pervasive to be unlawful?

18          A.       Yes. I believe there was a  
19      legislative proposal to make it much  
20      easier for victims or survivors of  
21      harassment to file complaints in the  
22      State.

23          Q.       And did you have discussions  
24      with the Governor about that?

25          A.       I don't remember having specific

1                   A. DAVID  
2       conversations with him outside of  
3       discussions with the Legislators, the  
4       leaders of both houses about the proposal.

5           Q.       So what discussions -- did you  
6       personally have discussions with leaders  
7       of both houses about this statute?

8           A.       I have to be careful here about  
9       deliberative privilege, but what I can say  
10      is this: During the course of the  
11      legislative session or during the budget  
12      there are meetings with the head of the  
13      assembly and the head of the senate, and  
14      during those discussions they bring their  
15      respective counsels to discuss proposals  
16      that are up for review in either or both  
17      houses.

18                   During the course of the  
19      legislative session I certainly recall  
20      that there were conversations about this  
21      proposal and specific issues related to  
22      where they're negotiating the bill.

23           Q.       And who was involved in those  
24      discussions from the executive chamber  
25      other than yourself?



1                   A. DAVID

2           A.        The Assistant Counsel who  
3 negotiated the bill, and I don't remember  
4 that Assistant Counsel's name. But there  
5 was an Assistant Counsel assigned to  
6 review, draft, edit, negotiate the bill.

7                   I know Melissa DeRosa was likely  
8 in those meetings with the legislative  
9 leaders. I suspect, though I cannot  
10 remember, that Robert Mujica may have been  
11 in those meetings as well. And, of  
12 course, the Governor would be in meetings  
13 with the legislature's leaders.

14          Q.        How about did Jill DeSrosiers  
15 play any role or -- in that?

16          A.        I don't remember that she did.  
17 It would be unusual for her to engage in  
18 legislative discussions. I don't remember  
19 a single instance where she was in the  
20 leader's -- what they call the leader's  
21 meeting.

22          Q.        How about Judy Mogul? Did you  
23 overlap with her at all?

24          A.        I did. I don't believe Judy  
25 Mogul was involved either in those

1                   A. DAVID

2       conversations where I was present.

3           Q.       Any discussions about this law  
4       with the Judy Mogul -- this change in the  
5       law?

6           A.       I don't remember having  
7       discussions with Judy Mogul about this  
8       law.

9           Q.       How about Jill DeSrosiers?

10          A.       I don't remember having  
11       conversations with her either.

12          Q.       Just going -- continuing on this  
13       page, it goes on to say, "It is not a  
14       requirement that an individual tell the  
15       person who is sexually harassing them that  
16       the conduct is unwelcome."

17                   Is that consistent with your  
18       general understanding of the law?

19          A.       Yes.    Again, I haven't read the  
20       law recently and I know I'm just here as a  
21       fact witness.    So I'm trying to give you  
22       responses, but I can't tell you  
23       definitively that that is what the law is  
24       without reviewing --

25          Q.       Right.   But it's generally

1 A. DAVID

2 consistent with your understanding of the  
3 law?

4 A. Generally speaking, yes.

5 Q. Okay. And the next sentence,  
6 "In fact, the Human Rights Law now  
7 provides that even if a recipient of  
8 sexual harassment did not make a complaint  
9 about the harassment to the employer,  
10 failure of the employee to complain shall  
11 not be determinative of whether the  
12 employer's liable."

13 Is that also generally  
14 consistent of your understanding of the  
15 law?

16 A. Generally speaking, without  
17 looking at the law, yes.

18 Q. If you can go the next page,  
19 page 13.

20 A. Mm-hmm.

21 Q. Which is under the section  
22 "Reporting Sexual Harassment," you see the  
23 last two sentences of the first paragraph.  
24 It reads, "Any complaint with a verbal or  
25 written must be investigated by GOER or

1                   A. DAVID  
2       pursuant to the employing agencies policy;  
3       furthermore, any supervisory or managerial  
4       employee who observes or otherwise becomes  
5       aware of conduct of a sexually harassing  
6       nature must report such conduct so that it  
7       can be investigated."

8                   Is that also generally  
9       consistent with your understanding of the  
10      law?

11                  A.       That is consistent with my  
12      understanding of the policy. I don't know  
13      that this is actually reflected in the law  
14      because I would have to look at it. But I  
15      certainly know it's consistent with the  
16      policy.

17                  Q.       And it seems consistent with the  
18      executive order that we talked about  
19      earlier, which is consolidating the  
20      investigative function with the GOER,  
21      correct?

22                  A.       Oh, with respect to GOER  
23      investigating, certainly. With respect to  
24      the specifics that you just referenced  
25      there, I'm not sure that's actually in the

1 A. DAVID

2 law. I'm not sure if it's in a policy or  
3 an executive order.

4 Q. These last two sentence are  
5 consistent with your understanding of New  
6 York State policy that apply to the  
7 executive chamber?

8 A. Yes.

9 Q. And if you can go to page 39 of  
10 this document.

11 A. Okay.

12 Q. Under the section "Retaliation"?

13 A. Mm-hmm.

14 Q. "Retaliation is prohibited."  
15 Do you see that?

16 A. Yes.

17 Q. Okay. That's consistent with  
18 your understanding of the law, correct?  
19 You can't retaliate against people for  
20 bringing claims of harassment.

21 A. Yes. Retaliation is defined  
22 under the law, and I think there's a  
23 reference here to what it is.

24 Q. Yeah. And it reads,  
25 "Retaliation occurs when an adverse action

1 A. DAVID

2 or actions are taken against an employee  
3 as a result of filing a discrimination  
4 complaint or participating in the filing  
5 of or investigation of a discrimination  
6 complaint or requesting an accommodation."

7 Do you see that?

8 A. Yes.

9 Q. And it says -- it goes on to  
10 say, "The adverse action does not need to  
11 be job-related or occur in the workplace.  
12 Retaliation can be any action more than  
13 trivial and would have the effect of  
14 dissuading a reasonable person for making  
15 or supporting an allegation of  
16 discrimination. Such action may be taken  
17 by an individual employee."

18 Does that paragraph reflect your  
19 general understanding of the law relating  
20 to retaliation?

21 A. It certainly reflects my general  
22 understanding of the policy. It's  
23 difficult to answer these questions  
24 because you're asking me to opine on what  
25 my understanding of the law is without

1                   A. DAVID

2       looking at the law. And so I don't want  
3       to suggest that I'm giving you answers as  
4       a legal expert.

5                   I understood I was here just to  
6       provide factual responses, and I don't  
7       want to give you information that may not  
8       be accurate. And so I'm trying to be very  
9       careful and not make suggestions that may  
10      not necessarily be accurate.

11                  So I just want to make sure  
12      that's on the record.

13                 Q.       Yes. As a factual matter,  
14      this -- this -- does this paragraph, is it  
15      consistent with your understanding of  
16      the sexual harassment policy that  
17      governed --

18                 A.       Yes.

19                 Q.       -- State agencies?

20                 A.       Yes.

21                 Q.       And the next paragraph says,  
22      "Actionable retaliation by an employer can  
23      occur after the individual is no longer  
24      employed by that employer. This can  
25      include giving an unwarranted negative

1                   A. DAVID

2       reference for a former employee."

3                   Is that statement or those two  
4       sentences also consistent with your  
5       understanding of the policy -- the policy  
6       that governs State agencies?

7           A.       Yes.

8           Q.       And while you were in the  
9       executive chamber, did you -- you said you  
10      participated in -- or you took sexual  
11      harassment-related training.

12                   Did you ever participate in  
13      giving it to anyone?

14          A.       I don't believe I did. I don't  
15      believe I was trained to provide training,  
16      so I don't believe I did.

17          Q.       Can you hold for a second. I'm  
18      just going to close these blinds I have.  
19      It's very bright.

20          A.       Sure.

21          Q.       Sorry. I'm back.

22                   So you don't remember ever  
23      participating in providing training to  
24      anyone?

25          A.       No, I don't believe so.



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2 Q. Okay. But you do remember  
3 receiving training on sexual harassment  
4 policies, correct?

5 A. Yes.

6 Q. And on sexual harassment  
7 policies in particular, do you remember  
8 the manner in which you received the  
9 training, whether it was in person or  
10 video? And I apologize if I've asked this  
11 before but I think I may have asked it  
12 more generally.

13 But with respect to sexual  
14 harassment policies, do you remember  
15 whether you did it sort of video,  
16 virtually, in person or otherwise?

17 A. I don't remember. I do know  
18 that there was a point in time where there  
19 was more virtual trainings than in person.  
20 I just don't remember which training I did  
21 in person versus virtual. I certainly  
22 know that I did them. I just can't  
23 remember which mode of -- which template  
24 or framework we ended up using.

25 Q. Do you remember doing sexual

1                   A. DAVID

2 harassment training annually?

3           A.       You're testing my memory. I  
4 don't remember. I know that there was  
5 training every two years for certain  
6 things; there were trainings every year  
7 for certain things. I just don't remember  
8 the frequency of the trainings.

9           Q.       Mm-hmm. But presumably you --  
10 you -- or do you remember doing sexual  
11 harassment training at least more than  
12 once during your time?

13          A.       Yes. Yes.

14          Q.       And was it your understanding  
15 that everyone in the executive chamber  
16 needed to undergo that training?

17          A.       Yes.

18          Q.       And that included the Governor?

19          A.       Yes.

20          Q.       Melissa DeRosa?

21          A.       Yes.

22          Q.       And is it your recollection that  
23 you did certify once you completed that  
24 training when you did to say you did?

25          A.       I did remember signing documents

1 A. DAVID

2 certifying training either electronically  
3 or on paper. Which trainings, I couldn't  
4 tell you, but I do remember signing some  
5 type of certifications.

6 Q. Okay. And in any of the  
7 trainings that you took was there any  
8 training material that in substance stated  
9 that questions about the sexual  
10 experiences of a subordinate is an  
11 appropriate subject of conversation in the  
12 workplace?

13 A. Ask me the question again.

14 Q. In any training that you  
15 received while you were in the executive  
16 chamber --

17 A. Mm-hmm.

18 Q. -- was there anything that  
19 suggested or stated that an employer could  
20 ask a subordinate about their sexual  
21 experiences in the workplace, that that  
22 would be appropriate under the policy?

23 A. No. I don't recall any training  
24 that suggested that.

25 Q. Any policy that could suggest

1                   A. DAVID

2           that?

3           A.       No. I don't recall any policy  
4           that would have suggested that either.

5           Q.       Any training that could suggest  
6           that questions about age differences in  
7           sex partners could be an appropriate  
8           subject of conversation in the workplace?

9           A.       I don't remember the substance  
10          of these trainings, so I couldn't tell  
11          you. They were all hypothetical  
12          trainings, so I couldn't tell you if there  
13          were any that related to that. I would be  
14          surprised. I don't believe so. But I  
15          don't remember the substance of the  
16          trainings.

17          Q.       You would be surprised because  
18          I -- well, why would you be surprised if  
19          that was a hypothetical?

20          A.       I haven't heard it framed that  
21          way, so it doesn't trigger anything in my  
22          memory to say that there was training that  
23          suggested that.

24          Q.       But any policy that would  
25          suggest that there were circumstances

1                   A. DAVID

2       under which a State employee could ask a  
3       subordinate about, you know, their  
4       preferences, sexual preferences and age  
5       differences?

6           A.       I don't believe that I've seen  
7       any policy that suggested that.

8           Q.       Any training that you took that  
9       could suggest that questions about age  
10      differences and sex partners could be an  
11      appropriate subject to discuss with a  
12      subordinate as part as mentoring?

13                   Is that something that you  
14      recall ever being suggested in any  
15      training?

16          A.       I don't recall any training  
17      making that suggestion.

18          Q.       How about any policy that could  
19      suggest that that be appropriate as a  
20      mentoring tool?

21          A.       No, I don't recall any policy.

22          Q.       And how about any training that  
23      suggested that talking about age  
24      differences in sex partners could be an  
25      appropriate subject of jokes with a

1                   A. DAVID

2 subordinate?

3           A.       I don't recall any trainings  
4 that would have made that suggestion.

5           Q.       How about any policies?

6           A.       I don't recall any policies that  
7 would have made that suggestion either.

8           Q.       Would you turn to page 41 of  
9 this document you have?

10                   It reads at the top, "All  
11 discrimination complaints and  
12 investigations will be kept confidential  
13 to the extent possible."

14                   Was that your understanding  
15 while you were at the executive chamber?

16           A.       Generally, yes.

17           Q.       And you say "generally, yes."  
18 Were there circumstances where you  
19 understood that discrimination complaints  
20 and investigations did not need to be kept  
21 confidential?

22           A.       I think generally yes, because I  
23 don't remember any discrimination  
24 complaints and investigations in the  
25 chamber as I said before. Certainly that

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2   happened in State agencies.

3                   So I'm not aware of any  
4   instances where there would have been a  
5   need to keep them confidential or not.

6           Q.       But generally -- this is  
7   generally consistent with your  
8   understanding of the policy, correct?

9           A.       Correct. Correct.

10          Q.       It goes on to say in the third  
11   sentence, "Any individual involved in an  
12   investigation is advised to keep all  
13   information confidential. Breaches of  
14   confidentiality may constitute  
15   retaliation, which is a separate and  
16   distinct category of discrimination."

17                   Is -- are those statements  
18   consistent with your general understanding  
19   of the policy?

20          A.       Yes. It's what -- what the  
21   policy says, yes.

22          Q.       And going on to the bottom, it  
23   says, "The procedures for reporting  
24   discrimination complaints are designed to  
25   ensure the State's antidiscrimination

1                   A. DAVID

2 policies are followed, including the  
3 State's policies forbidding retaliation."

4                   Is that consistent with your  
5 general understanding of the policy?

6           A.       As it's reflected on this  
7 document, yes.

8           Q.       Okay. And it goes on to say,  
9 "The complaint investigation procedures  
10 provide for a prompt and complete  
11 investigation, answer the complaint of  
12 discrimination and for prompt and  
13 effective remedial action where  
14 appropriate."

15                   Do you see that?

16       A.       Yes.

17       Q.       And does the need for prompt and  
18 remedial action where appropriate, one of  
19 the -- being one of the purposes of  
20 reporting complaints, is that consistent  
21 with your general understanding of the  
22 policy and the purpose behind it?

23       A.       I can't comment on that. I  
24 don't know what the ultimate purpose is of  
25 the policy as it relates to effective



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2 remedial action.

3           Q.       Well, it does -- it states here  
4 the complaint investigations and  
5 procedures "provide for a prompt and  
6 complete investigation as to the complaint  
7 of discrimination and for prompt effective  
8 remedial action where appropriate."

9           A.       Yes. I can say that's what this  
10 document says, but I think you have asked  
11 a different question. I just want to be  
12 careful I'm not opining on the purpose of  
13 why whoever drafted this drafted this.

14          Q.       So your understanding is that  
15 taking prompt and effective remedial  
16 action is not necessarily one of the  
17 purposes for reporting harassment out of  
18 claims?

19          A.       Well, again, I can't comment on  
20 the purposes of reporting harassment  
21 complaints as it relates to this document.

22          Q.       I'm asking your understanding of  
23 the purposes. And maybe you're saying you  
24 have no understanding of why there is a  
25 policy requiring reporting; that's an

1                   A. DAVID

2    answer or --

3           A.       Well, if you're asking me  
4    generally why would you have a complaint  
5    process for people to report complaints,  
6    there are a variety of reasons. You want  
7    a complaint process so that people have a  
8    venue to file complaints; you want a  
9    complaint process so that there's clarity  
10   with respect to where people should file  
11   complaints. You want a complaint process  
12   so there's a level of consistency. You  
13   want -- I mean, there are so many  
14   different reasons, the question is --

15         Q.       All right. My question is --

16         A.       I don't know what you're asking.

17         Q.       Okay. My question is your  
18   understanding: Is one of the purposes  
19   behind having a reporting policy to ensure  
20   that you can take prompt and effective  
21   remedial action where appropriate?

22         A.       Yes. That's one of the reasons,  
23   yes.

24         Q.       And then you go on -- it goes on  
25   to say, "An employee with supervisory

1                   A. DAVID

2       responsibility has a duty to report any  
3       discrimination that they observe or  
4       otherwise know about."

5                   Is that consistent with your  
6       understanding of the policy?

7           A.       Yes.

8           Q.       It also says, "The supervisor  
9       who has received a report of workplace  
10       discrimination has a duty to report it to  
11       GOER or in accordance with the employing  
12       agencies policy even if the individual  
13       who" complains -- "complained requests  
14       that it not be reported."

15                  Is that consistent with your  
16       understanding of the policy?

17          A.       Yes.

18          Q.       So -- and I think you've  
19       answered this question before and I  
20       apologize if I'm asking it again.

21                  When you were at the chamber  
22       that you were not involved in any  
23       reporting of or investigating of any  
24       sexual harassment claims?

25          A.       Correct.

1 A. DAVID

2 Q. Any claims of racial harassment?

3 A. When you say "racial  
4 harassment" --

5 Q. Or harassment based on race.

6 A. Harassment based on race.

7 Q. Or race discrimination.

8 A. Race discrimination. No. I  
9 don't believe that there were any  
10 complaints involving race discrimination  
11 when I was in the chamber.

12 MS. CLARK: Joon, could I just  
13 jump in?

14 MR. KIM: Sure.

15 MS. CLARK: If you could turn to  
16 page 17, and at the top of that page,  
17 there is a reference to dress code,  
18 uniforms, grooming and appearance  
19 standards.

20 THE WITNESS: Mm-hmm.

21 MS. CLARK: And it says, "State  
22 agencies may not require dress,  
23 uniforms, grooming or appearance that  
24 differ based on gender, sex or sex  
25 stereotypes. Any dress code must be

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applied consistently regardless of gender or gender identify."

Was that your understanding of policy when you were at the executive chamber?

THE WITNESS: Yes. The only reason I hesitate is because I think there was -- there was a change in policy and/or law as it relates to gender identify. But I believe this is generally correct.

MS. CLARK: Sticking with gender as opposed to gender identity for the moment.

THE WITNESS: Mm-hmm.

MS. CLARK: Your understanding that under executive chamber or State policy, it would be a violation of policy for a managerial employer -- employee to tell a female employee that she should wear a dress instead of a pantsuit to work.

THE WITNESS: I -- I can't draw that conclusion. That's a legal

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conclusion that I'm not going to draw.

MS. CLARK: I'm asking a policy.

Would it comport with the executive chamber or State policy for a manager to tell a female employee that she should wear a dress as opposed to a pantsuit to work?

THE WITNESS: I can't answer hypotheticals because, as we all know, it would be drawing a legal conclusion based on a hypothetical that I just wouldn't be comfortable answering.

MS. CLARK: Can you think of any situation in which there would be a work-related reason for a manager in the executive chamber or in the State government to tell a female employee that she needed to wear a dress to work as opposed to pants?

THE WITNESS: A work-related reason? I can't speculate. I don't know. The difficulty in responding to hypotheticals under oath is that I am going to make a representation that is

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2           not going to be comprehensive and I'm  
3           drawing a legal conclusion that I  
4           don't want to draw because it's not  
5           going to be potentially accurate.

6                   So I don't mean to be difficult,  
7           I just -- as a lawyer, I don't want to  
8           answer questions about hypotheticals  
9           where there may be an exception that I  
10          haven't thought through, I haven't  
11          reviewed the law extensively, I  
12          haven't reviewed the regulations.

13                   So that's why I want to just be  
14          careful and just answer the questions  
15          with respect to the facts that I may  
16          or may not know rather than  
17          hypotheticals.

18                   MS. CLARK: Is it your  
19          understanding that, given the  
20          understanding as to whether under  
21          executive chamber or State policy it  
22          would be a violation of policy to  
23          require female employees to dress in a  
24          way that accentuated their sexuality  
25          or their attractiveness and not to

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require such -- impose such a requirement upon men in the office.

THE WITNESS: Again, I think -- I think I can certainly imagine instances where there is such a policy that would violate the law, but it depends on what that policy is and how it is drafted and enforced. And without more detail, it's -- I don't want to draw a legal conclusion that may be subject to modifications.

MS. CLARK: I'm asking about the law. I'm asking about your understanding of policy when you were either Chief Counsel to the Governor or in charge of civil rights for the executive chamber.

What was your understanding of the policy that applied to you and your co-workers at that time.

THE WITNESS: Well, the policy is reflected in these documents. So I can certainly attest -- and again, this is a May 2020 document. But I



1                   A. DAVID

2                   certainly attest to what the policy  
3                   was in 2011.

4                   But what I don't want to do is  
5                   to comment on hypotheticals that may  
6                   result in a different answer depending  
7                   on what the facts are.

8 BY MR. KIM:

9                   Q.       Let me ask you a factual  
10                  question.

11                  Do you remember anyone in the  
12                  executive chamber asking someone in  
13                  substance, you know, to wear a dress --

14                  A.       No.

15                  Q.       -- instead of a pantsuit?

16                  A.       No.

17                  Q.       Do you remember anyone in the  
18                  executive chamber commenting on the attire  
19                  of a female employee's?

20                  A.       When you say commenting, would  
21                  it be, "you look nice," or would it --  
22                  what do you mean by "commenting."

23                  Q.       Well, let's cover all of them.

24                  A.       Okay.

25                  Q.       What comments do you remember

1                   A. DAVID

2       about people's clothing?

3           A.       Everything from "that is a very  
4       nice suit" to "I like the color of your  
5       shirt" to "I like the color of your tie"  
6       to "that's a very nice dress" to "that's a  
7       very nice color scarf." I certainly  
8       remember instances where people would  
9       comment in a very positive way about what  
10      people were wearing and I also remember  
11      instances where people would comment on  
12      shoes or hairstyle or makeup or something  
13      else.

14          Q.       Let's start with the Governor.  
15                    Do you remember any instances  
16      where the Governor commented on people's  
17      clothing?

18          A.       He certainly commented on mine.

19          Q.       What kind of comments?

20          A.       "Very nice suit" or "why is it  
21      that your shoes are not shined" if my  
22      shoes were not shined and I -- I was  
23      walking in the rain.

24                    He certainly commented on the  
25      appearance of some of the other senior

1                   A. DAVID

2 members. So I remember those instances.

3           Q.       What other senior members?

4           A.       Robert Mujica, he would say  
5 "nice shirt" or "nice tie."

6                   There were instances where I  
7 would grow a beard during the State budget  
8 process and he would -- and he might ask  
9 me "did you lose your razor?"

10                   Just senior staff, so Robert,  
11 me, maybe Melissa. Maybe Stephanie.

12           Q.       What kind of comments to  
13 Stephanie did you hear?

14           A.       "That is a very nice dress" or  
15 "nice coat" or something like that.

16           Q.       How about Melissa?

17           A.       Same. There was nothing  
18 distinctive. It -- I remember the  
19 comments as it related to me because I  
20 think there was a comment about my shoes  
21 not being shined and after that incident,  
22 I think my shoes were always shined. But  
23 with respect to the other employees, there  
24 was nothing noticeable or distinctive that  
25 I would remember to recall at point.

1 A. DAVID

2 MS. CLARK: Do you recall the  
3 Governor ever making any comments  
4 about anyone's clothing as it related  
5 to their body, such as that it showed  
6 off somebody's legs or showed off  
7 their figure or anything along those  
8 lines?

9 THE WITNESS: No. No.

10 MS. CLARK: Did you ever hear  
11 anyone say there was an expectation  
12 that women who worked in the  
13 Governor's Office wear high heels at  
14 work when the Governor is going to be  
15 around?

16 THE WITNESS: No. I read that  
17 in the newspaper, but I was not aware  
18 of that.

19 BY MR. KIM:

20 Q. Is that consistent with your  
21 observations from that side, that they  
22 generally did?

23 A. No. Well, Melissa DeRosa  
24 certainly wears high heels and Jill  
25 DeSrosiers doesn't. Mine was often with

1                   A. DAVID

2       the Governor. My Assistant Counsel didn't  
3       wear high heels either and some of them  
4       were -- did interface with him as well.

5                   So I didn't -- I didn't see a  
6       level of consistency among the woman and I  
7       wasn't paying attention to track what  
8       people were wearing. But I don't recall  
9       that all of the woman were wearing high  
10      heels. I think quite -- I don't -- I  
11      don't -- I didn't get that impression.

12                  Q.       How about the Executive  
13      Assistants who would generally sit right  
14      outside his office?

15                  A.       I didn't have occasion to see  
16      or -- see what the Executive Assistants  
17      were wearing in most cases. I mean, they  
18      were sitting behind desks. So I don't  
19      know what they were wearing on their feet.  
20      I couldn't tell you.

21                  Q.       Let me ask you about your  
22      recollection of the record retention  
23      policy with the -- at the executive  
24      chamber.

25                  A.       Mm-hmm.

1                   A. DAVID

2           Q.       What do you remember about the  
3 record retention policy?

4           A.       I know that -- this is, again,  
5 testing my memory. But I know that the  
6 State archives requires that State  
7 agencies retain records for a certain  
8 number of years, maybe six years. And  
9 there was a chamber policy that conformed  
10 with that.

11                   And there was a policy  
12 encouraging employees to engage in some  
13 type of e-mail management system, and I  
14 think their recommendation was 90 days for  
15 e-mails. That was a policy that I think  
16 went through a few different iterations,  
17 but I think -- I remember it being  
18 somewhere around 90 days.

19           Q.       Do you remember that 90-day  
20 policy becoming an issue with -- publicly?  
21 It wasn't --

22           A.       Yeah, I do.

23           Q.       What do you remember about that?

24           A.       I know that the policy was in  
25 place when the Governor came into office.

1                   A. DAVID

2       It was a 90-day policy for e-mails being  
3       retained that were not records. But it  
4       was -- it was -- I don't know if it was  
5       enforced or not enforced or -- it  
6       certainly was manual, so that employees  
7       independently determined how to enforce  
8       the policy.

9                   I believe at some point it  
10       was -- it shifted from a manual policy to  
11       an automatic deletion policy. And I think  
12       that caused a fair amount of concern, and  
13       so it was shifted back to be a manual  
14       policy where employees control when -- how  
15       they implement the policy.

16                Q.       And did you participate in any  
17       research on how other states retained  
18       e-mails and their retention policies?

19                A.       I know the members of my staff  
20       did. They did some research on what other  
21       States do. And I do recall generally that  
22       there was a fair amount of inconsistency.

23                   There were states that have  
24       policies with -- you know, for a few -- a  
25       week or two weeks and there were others

1                   A. DAVID

2       that have policies for several years. I  
3       don't believe -- I don't remember that  
4       there was a clear consistent policy among  
5       the states.

6           Q.       Do you remember being part of a  
7       decision to eliminate the 90-day retention  
8       policy?

9           A.       I remember that there were  
10      conversations --

11          Q.       What do you remember about --

12          A.       -- about the modification of the  
13      policy, yes.

14          Q.       And was the view that 90 days  
15      was not long enough?

16          A.       I think -- I'm not sure if that  
17      was the conversation, but I'm also not  
18      sure that I can get into the details of  
19      those conversations given privilege.

20          Q.       But that was the criticism was  
21      that 90 days was not -- is not long  
22      enough?

23          A.       Well, the criticism I think was  
24      that the policy had shifted from a manual  
25      policy to an automatic policy, that's what



1                   A. DAVID

2       I remember. But I think there has been --  
3       prior to that debate, I think there had  
4       been some interest in extending the policy  
5       beyond the 90 days.

6                   So there are two different  
7       issues, but I believe that those -- both  
8       issues were raised during that debate.

9           Q.       And do you recall that there  
10       were states with mandatory deletion  
11       policies of less than 90 days?

12          A.       I don't remember. I know that  
13       there were states that had policies of  
14       less than 90 days. I don't know if they  
15       were automatic deletion policies.

16          Q.       So you think there were states  
17       that had policies that allowed for  
18       individuals to delete state records in  
19       less than 90 days?

20          A.       No. No. So there's a clear  
21       distinction in the law between records and  
22       nonrecords.

23                   So records have to be retained  
24       for, in many cases, a long period of time.  
25       I believe it's several years, as opposed

1                   A. DAVID

2       to nonrecords, there is a wide variation  
3       in what states do. There were some states  
4       that I think were 30 days, there were  
5       other states that were several years.

6           Q.       Did you -- while you were  
7       working in the executive chamber as the  
8       Chief Counsel, what devices did you use?

9           A.       I was assigned a BlackBerry.

10          Q.       Any other devices?

11          A.       I was assigned -- I received an  
12       iPad as well and a computer.

13          Q.       An iPad you said?

14          A.       Yeah.

15          Q.       And how did you generally  
16       communicate with the Governor?

17          A.       I communicated through what's  
18       called PINs. It's a feature on  
19       BlackBerry. It's an equivalent of a text  
20       on a BlackBerry.

21          Q.       And did you communicate with  
22       anyone else through BlackBerry PINs?

23          A.       Yes, I did.

24          Q.       Who else?

25          A.       Melissa DeRosa. Senior staff

1                   A. DAVID

2 primarily if it was anything that was  
3 potentially confidential.

4           Q.       Okay. And these would be  
5 exchanges relating to office business,  
6 correct?

7           A.       Yes.

8           Q.       And you said if it's  
9 confidential, you would use PINs?

10          A.       Not necessarily. There may --  
11 someone may have sent a PIN that said,  
12 "would you like to go to dinner?" Or it  
13 may be something that's -- there may be a  
14 meeting with a member of the legislature,  
15 or it may be something else. It ran the  
16 gamut.

17          Q.       Or it could be substantive?

18          A.       Or it could be substantive,  
19 correct.

20          Q.       Okay. And was there any concern  
21 that -- what's your understanding of the  
22 retention of BlackBerry PINs?

23          A.       Could I -- I have to deal with a  
24 minor urgent matter with work. Can I just  
25 take 30 seconds to respond to this?

1 A. DAVID

2 Q. Sure.

3 MR. KIM: Why -- we can take --  
4 why don't we take a five-minute break?

5 VIDEOGRAPHER: Stand by to go  
6 off the record. We are now off the  
7 record at 5:43 p.m.

8 [Discussion held off the  
9 record.]

10 VIDEOGRAPHER: We are now on the  
11 record. The time is 5:52 p.m. Back  
12 from break.

13 MR. KIM: Can I have that  
14 question again right before we took a  
15 break?

16 [Whereupon, a portion of the  
17 testimony was read back.]

18 Q. What's your understanding of  
19 BlackBerry PINs, how -- how long they are  
20 retained or not?

21 A. I don't have any -- I don't know  
22 what their policy is -- what the policy is  
23 on BlackBerry PINs.

24 Q. How about just the practice.  
25 Did you -- you used -- you used it, right?

1                   A.     DAVID

2           A.     Sure.

3           Q.     When you would use -- when you  
4 would send BlackBerry PINs and receive  
5 them, what did you see about how long they  
6 were kept on the device?

7           A.     I don't know that the device  
8 itself operated in the way to take action  
9 on the PINs. I think the actor had to  
10 either clean out their e-mail system, and  
11 I did that regularly just to make sure I  
12 didn't have 5,000 e-mails. So I would go  
13 through e-mail management and make sure I  
14 wasn't saving everything that wasn't  
15 need -- that didn't need to be saved.

16                   But I don't think that there was  
17 a general understanding of how people  
18 treated PINs.

19           Q.     You had an understanding that  
20 BlackBerry PINs were not getting picked up  
21 by the executive chamber like e-mail  
22 servers, correct?

23           A.     I don't know that I knew that.

24           Q.     Well, you mentioned that for --  
25 for particularly confidential

1                   A.     DAVID

2     communications you would use PINs, right?

3             A.     Well, yes. I would use PINs for  
4     all communications with the Governor. He  
5     did not have an e-mail. So I -- there was  
6     no other way to communicate with him but  
7     through PINs.

8             Q.     Mm-hmm.

9             A.     For others, we communicated  
10    through PINs, through e-mails, sometimes  
11    both. Everything I did, in most cases,  
12    was through the lens of Counsel, so it  
13    would have been confidential anyway. It  
14    didn't really matter what form I used.

15            Q.     Was there any discussion about  
16    using PINs for particularly confidential  
17    communications?

18            A.     No. Not with me.

19            Q.     Okay. So -- but you said that a  
20    few moments ago. Where did that come  
21    from?

22            A.     The very nature of the work that  
23    I do and also the only way that I  
24    communicate with the Governor would be  
25    using PINs.

1 A. DAVID

2 Q. But you said that in the context  
3 of communicating with others in the  
4 executive chamber?

5 A. No. The people that I  
6 communicated with using PINs were limited  
7 really to the senior staff. I didn't  
8 communicate using PINs with others.

9 Q. Mm-hmm. So there were no  
10 discussions that you -- about when to use  
11 PINs and when not to.

12 Is that your testimony?

13 A. I don't remember some of -- a  
14 conversation about instructing me how to  
15 use PINs.

16 Q. Or a general understanding of  
17 when to use PINs and when to use other  
18 means of communication?

19 A. No. No. Not with me.

20 Q. Was there any concern on your  
21 part that using BlackBerry PINs might not  
22 result in proper preservation or retention  
23 of office-related communications?

24 A. No. Because under the State  
25 archives process and under the law,

1                   A. DAVID

2       records are clearly defined, and you would  
3       have to preserve those records consistent  
4       with the law.

5           Q.       And were you going through your  
6       PINs to determine if any of those might  
7       constitute records or not?

8           A.       Yes. I think, though the  
9       definition of records are fairly  
10      prescribed. I don't believe that any of  
11      the PINs that I had would constitute  
12      records, at least at the time when I was  
13      drafting them or receiving them.

14          Q.       So it was your understanding  
15      that other than records defined as you  
16      said pretty narrowly as you described,  
17      that there was no obligation otherwise to  
18      retain any other office-related  
19      communication?

20          A.       Absent litigation or a  
21      litigation hold, those are the two  
22      instances where there was an obligation to  
23      retain, where it was a record under the  
24      law or there was a litigation or  
25      anticipation of litigation, and in those



1                   A. DAVID

2 instances, litigation holds would be  
3 submitted to the relevant people.

4           Q.       Mm-hmm. So what was your  
5 understanding about the sort of public  
6 outcry about the 90-day auto deletion?

7           A.       Well --

8           Q.       I guess, it wasn't -- it wasn't  
9 specific to records as you've defined it,  
10 right? It was relating generally to the  
11 auto deletion after 90 days?

12          A.       I think -- I think, again, the  
13 concern was twofold based on my memory.  
14 One was that the policy was shifting from  
15 a manual policy to an automatic policy,  
16 which could potentially implicate records  
17 and so there was a concern there. And I  
18 think the second concern is there had been  
19 some advocacy to extend the -- the e-mail  
20 policy beyond 90-days, and I think that  
21 advocacy began before the Governor came  
22 into office and it may continue today. I  
23 don't know.

24          Q.       How about the use of personal  
25 e-mails, e-mail addresses, e-mail

1                   A. DAVID

2       accounts?   What was your understanding of  
3       the rules governing use of personal  
4       e-mails?

5           A.       Personal e-mails were generally  
6       not encouraged.   The -- if I recall  
7       correctly, the -- either there was  
8       training about this or maybe there was  
9       some direction from IT.   I don't remember.

10                   But I do recall that there was  
11       some understanding that there was a  
12       preference for people to use government  
13       e-mails when they were engaging in  
14       official work business as opposed to  
15       personal e-mails.

16           Q.       Mm-hmm.   And you understood it  
17       merely as a preference as opposed to a  
18       rule?

19           A.       I don't know that I saw a rule  
20       or policy.   I can't remember.   It may be a  
21       policy; it may be a rule.   I know that  
22       that was my practice.

23           Q.       Did you ever use your personal  
24       e-mail account to conduct official  
25       government communications?

1                   A. DAVID

2           A.       I cannot say ever just simply  
3 because it's too definitive, but I can  
4 certainly say that in most instances I've  
5 used government e-mail.

6           Q.       Were there instances where you  
7 used personal e-mail?

8           A.       I don't recall, but I'm -- there  
9 may be an instance where I may have been  
10 traveling out of the country and may have.  
11 I just don't know. But under normal  
12 circumstances, no.

13          Q.       Were there other people in the  
14 executive chamber who did use their  
15 personal e-mail accounts that you observed  
16 for government business?

17          A.       There were occasions where  
18 people would use their personal e-mails  
19 and then they were either advised to stop  
20 doing it. In some instances when you're  
21 typing an e-mail, the e-mail auto  
22 populates, and so someone may  
23 inadvertently send an e-mail to someone's  
24 personal e-mail. So under those  
25 circumstances, someone would say in

1                   A. DAVID

2       response to an e-mail "deleting my  
3       personal e-mail, responding with my  
4       official work e-mail." So I remember some  
5       instances there.

6                   I don't know that -- yeah.

7           Q.       You don't recall anyone in the  
8       executive chamber more regularly using  
9       personal e-mails?

10          A.       For official work business?

11          Q.       Yeah.

12          A.       Official chamber business? No.  
13       I don't -- I don't recall that people did  
14       that. I'm not saying they didn't. I just  
15       don't recall them doing that. Not with me  
16       on a regular basis.

17          Q.       But you said some people used  
18       personal e-mails and were told not to.  
19       Who do you remember that happening to?

20          A.       I can't -- I mean this has been  
21       several years. I can't remember. I  
22       just -- when -- when I received the  
23       question, I remember instances where  
24       someone would respond to an e-mail with  
25       their official work e-mail because someone

1 A. DAVID

2 may have inadvertently e-mailed them at  
3 their personal e-mail.

4 Q. But mostly your recollection is  
5 inadvertent use, you said the auto  
6 populating?

7 A. Yeah. I don't remember people  
8 using their personal e-mails for official  
9 work business as a -- as a matter of  
10 course.

11 Q. Do you remember this ever being  
12 the subject of public scrutiny, the fact  
13 that people in the executive chamber were  
14 using personal e-mails for official  
15 business? That's not something you  
16 remember?

17 A. No. I remember the e-mail  
18 policy. I remember there was -- this may  
19 have happened around the same time, that  
20 there were some concerns about Hillary  
21 Clinton using personal e-mails. I  
22 remember that. I -- I don't remember that  
23 there was a concern about, as a matter of  
24 practice, chambers always using personal  
25 e-mail. I don't remember that.

1                   A.     DAVID

2           Q.     Okay.

3                   MR. KIM:    Soo Jee, could we  
4     display Tab 37.

5                   Sorry.    I think this is one  
6     that's not in the binder.    It's an  
7     article.

8                   If we could just pull it up.

9           Q.     So this is an article from  
10    August of 2014.

11                   You wouldn't yet have been Chief  
12    Counsel, correct?    You would --

13           A.     Correct.

14           Q.     And if you can give this a read.  
15    It's not a very long article.    And we'll  
16    scroll down when you -- when you get to  
17    it.

18           A.     Okay.    You can scroll down.

19           Q.     Okay.    So going back up to the  
20    second page where it says, "Using personal  
21    e-mail accounts can help officials hide  
22    communications that's supposed to be  
23    available to the public.    It also violates  
24    New York State technology policy unless it  
25    is explicitly authorized."

1 A. DAVID

2 A. Mm-hmm.

3 Q. Is that something you remember  
4 ever being discussed, the fact that people  
5 thought that personal e-mail accounts were  
6 being used to hide communications that  
7 were supposed to be available to the  
8 public?

9 A. No. This is the first time I'm  
10 reading this article and I didn't know  
11 these facts. This is the first time I'm  
12 seeing this.

13 Q. So you don't remember any  
14 discussions about this while you were at  
15 the executive chamber?

16 A. No. This happened in, it  
17 appears, 2014. I was a Deputy Secretary  
18 at the time.

19 Q. But you were in the executive  
20 chamber, right?

21 A. I was in the executive chamber  
22 as a Deputy Secretary but I don't -- I've  
23 never seen this article before. I've  
24 never read it before.

25 And it now says that it also

1                   A. DAVID

2       violates the technology policy unless  
3       explicitly authorized. So there you go.

4           Q.       But this subject you don't  
5       remember ever coming up or being discussed  
6       with anyone?

7           A.       Not with me present.

8           Q.       Okay. Lower down it says,  
9       "Underscoring the Cuomo camps pension for  
10      secrecy, another aide reportedly  
11      encouraged other government officials to  
12      use personal e-mail accounts for  
13      politically sensitive communications."

14                   Is that -- does that jog your  
15      memory at all as to whether there were any  
16      discussions that you were a part of --

17          A.       No.

18          Q.       -- on using personal e-mail  
19      accounts?

20          A.       No.

21                   MR. KIM: Can we go back up to  
22      the top.

23          Q.       And it says, "In its response  
24      this March, Cuomo's office issued a  
25      blanket denial. 'Staffers do not use



1                   A. DAVID

2       their personal e-mail accounts for  
3       government business.'"

4                   Is that statement consistent  
5       with your experience while you were with  
6       the executive chamber?

7           A.       I can't speak for staffers. I  
8       can speak about my experience, what I did  
9       and what my lawyers did. I can't account  
10      for what other people did. I'm not  
11      familiar with people using on a regular  
12      basis or as a matter of course their  
13      personal e-mail accounts for government  
14      business.

15          Q.       But you -- you received e-mails  
16      from people, correct?

17          A.       Certainly did --

18          Q.       Yeah. And sometimes they were  
19      from personal e-mail accounts, correct?

20          A.       Again, without showing me a  
21      document, I can't recollect any specific  
22      instance and I can't give you a degree of  
23      frequency. It's been years and I just  
24      don't remember this happening on a level  
25      of frequency that would have jogged my

1                   A. DAVID

2       memory.

3           Q.       Did you -- did you recall  
4       receiving e-mails from personal e-mail  
5       accounts from other staffers for  
6       nongovernment business?

7           A.       Nongovernment business?    Sure.

8           Q.       What types of e-mails?

9           A.       Someone's birthday, personal  
10       issues, a get together, those types of  
11       things.

12          Q.       So generally speaking, if people  
13       were e-mailing you from their personal  
14       account, it was generally non -- your  
15       recollection, it's generally  
16       nongovernmental business?

17          A.       As a general matter, correct.

18          Q.       Other than instances where you  
19       think people autopopulated by mistake?

20          A.       Those are the instances that I  
21       recall.

22                   MR. KIM:   You can put that down.

23           Thank you.

24          Q.       So we were talking a little bit  
25       earlier about your personal interactions

1 A. DAVID

2 with the Governor.

3 A. Mm-hmm.

4 Q. Did you ever travel with him?

5 A. Yes.

6 Q. How often did you travel with  
7 him?

8 A. My travels would all be  
9 reflected in the public records. I don't  
10 want to guess, but I would -- it also  
11 depended on the time of season; it  
12 depended on the issues that we were  
13 working on. It's hard to say. Not  
14 regularly.

15 Q. Mm-hmm.

16 A. I generally travel by car.

17 Q. But sometimes you were on a  
18 plane with him from New York -- in New  
19 York State to Albany?

20 A. Yes.

21 Q. How often did you think that  
22 happened?

23 A. As Counsel -- well, first, as  
24 Deputy Secretary, I don't remember it  
25 happening at all. It may have happened

1                   A. DAVID

2       once or twice.

3                   As Counsel, twice a quarter,  
4       maybe. That's a guess. Again, I think  
5       the best source would be the public  
6       records.

7           Q.       How about on the helicopter?  
8       Have you ever taken the helicopter with  
9       him?

10          A.       I have.

11          Q.       How many times?

12          A.       Again, I don't remember. I  
13       think the public records would be best. I  
14       don't want to give you an answer that's  
15       just not accurate. But I would also guess  
16       two, three times a quarter. But that's a  
17       guess.

18          Q.       How about international travel?  
19       Did you ever travel with him outside of  
20       the United States?

21          A.       No.

22          Q.       How about --

23          A.       Well, I did travel with him  
24       to -- I spoke too soon. This is why I  
25       would strongly advise looking at the

1                   A. DAVID

2 public records because I don't want to say  
3 anything that's not accurate.

4                   I believe I traveled with him to  
5 the Virgin Islands after the hurricane and  
6 to Puerto Rico, which is a territory of  
7 the United States as we all know. I  
8 believe those are the only two instances  
9 that I did, but the public records would  
10 be the best source.

11           Q.       How about Israel?

12           A.       No, I did not travel to Israel.

13           Q.       And Virgin Islands, who went on  
14 that trip with you from the executive  
15 chamber?

16           A.       I -- I know Melissa DeRosa went.  
17 I can't remember the others. I just  
18 remember where she sat in the plane. I  
19 don't remember the others who went.

20                   And Puerto Rico were others.  
21 Robert Mujica went and there may have been  
22 others.

23           Q.       And on Virgin Islands and Puerto  
24 Rico, do you know who had their hotel  
25 rooms next to the Governor's?

1                                   A.    DAVID

2           A.       No.

3           Q.       You had -- you had no knowledge?

4           A.       No.

5           Q.       In your personal interactions  
6 with the Governor, did he -- did he ever  
7 speak harshly to you or yell at you ever?

8           A.       No.  I -- I remember one  
9 argument that we had in my 12 years of  
10 working with him and it was on a policy  
11 issue.  But I don't -- no, generally, no.

12          Q.       What was that policy issue?

13          A.       I don't remember specifically.  
14 It was on a policy issue and it was in New  
15 York City, that I remember.

16          Q.       In that instance you -- which  
17 was it?  I guess I had asked a compound  
18 question.  Did he ever harsh -- ask --  
19 speak harshly to you or yell at you?

20          A.       We just had an argument.  We had  
21 an argument about a policy issue and --  
22 but that was it.

23          Q.       Mm-hmm.  How about joking?  Did  
24 he ever joke around with you?

25          A.       I'm sure he did, yes.  I mean,

1                   A. DAVID  
2       he would joke about my beard during the  
3       course of the budget season or he would  
4       joke about the fact that my eyes were  
5       closing during the budget season because I  
6       hadn't slept in two or three weeks. So  
7       he -- yeah, he would joke about certain  
8       things.

9           Q.       Did he ever make any comments in  
10       your presence or jokes of a sexual nature?

11          A.       No.

12          Q.       How about, you know, jokes or  
13       comments that were suggestive sexually in  
14       any way?

15          A.       No.

16          Q.       Okay. And I hate to use a term  
17       coined by Melania Trump, but locker room  
18       talk, you know, that type of conversation  
19       in your presence?

20          A.       I don't know what that means  
21       actually.

22          Q.       Okay. Did he ever joke in your  
23       presence that he was the one -- he was the  
24       one who legalized sodomy?

25          A.       No.

1 A. DAVID

2 Q. Any joke or comment remotely  
3 similar?

4 A. I don't remember him ever saying  
5 that. I -- no. That is something that I  
6 think I would remember. No, I don't  
7 believe so.

8 Q. Okay. Any discussions about,  
9 for example, playing strip poker?

10 A. No.

11 Q. You don't remember that?

12 A. No. That did not -- I have no  
13 recollection of that ever happening.

14 Q. So you don't remember -- how  
15 about any jokes about the size of his  
16 hand, for example?

17 A. I do remember that there were  
18 jokes that -- about his hands being sort  
19 of, I don't want to say deformed but sort  
20 of, you know, not I think attractive.  
21 Some people, I think his brother would  
22 joke about his hands and he would say  
23 that. But that was in that context.

24 Q. How about jokes about his hands  
25 being big?



1                   A. DAVID

2           A.       I -- I don't -- I mean, I don't  
3 remember that, but I -- what I do remember  
4 are, you know, his brother or someone  
5 joking about his hands being sort of --  
6 look like gloves almost.

7           Q.       Do you remember him ever showing  
8 you or talking about a cigar box in his  
9 office -- in the offices.

10          A.       I remember that he did point to  
11 certain objects in his office, paintings,  
12 different items that he received from  
13 people and a cigar -- the cigar box was  
14 one of them.

15          Q.       A cigar box from Bill Clinton,  
16 correct?

17          A.       Yeah. I remember that because I  
18 don't smoke and I think I -- he -- either  
19 he had offered me a cigar and I said, "No,  
20 I don't smoke." I think it was with  
21 Robert and others who do. And he had  
22 mentioned he had gotten it from Bill  
23 Clinton.

24          Q.       Who -- how many time -- how many  
25 times had you heard him talk about that

1                   A.     DAVID

2     cigar box?

3             A.     Once or twice.

4             Q.     In whose presence?

5             A.     I think the one -- one instance,  
6     it -- I was in the room with maybe Robert  
7     and maybe one or two other people. And  
8     then there was another instance where I  
9     believe he was giving a tour of his  
10    office. I don't know to who, but  
11    certainly to an external person, like an  
12    advocate or someone out of New York. He  
13    was giving a tour. "I received this  
14    painting from the mother and I received  
15    this from Bill Clinton, I received that  
16    from my father." And so I recall the box  
17    being referenced there as well.

18            Q.     Mm-hmm. Any woman that he  
19    referred it to?

20            A.     Not that -- no. Not that I can  
21    recall.

22            Q.     You are aware of the allegations  
23    about Bill Clinton and cigars and Monica  
24    Lewinsky, right?

25            A.     Vaguely.

1                   A. DAVID

2           Q.       What do you -- what do you  
3 vaguely know?

4           A.       Well, I think it's more  
5 appropriate for you to tell me.

6           Q.       Actually, I would like to know  
7 what you know. What I know is irrelevant.

8           A.       I think I know that it involved  
9 Monica Lewinsky in some way. I don't know  
10 the facts and I don't know the details,  
11 but I do know there is some reference to  
12 Monica Lewinsky and a cigar box.

13          Q.       Did you ever see the Governor  
14 touch anyone? We'll start with staff.

15          A.       Touch anyone. Yes. He -- he  
16 would hug me after the legislative session  
17 or give me a hug after the budget. He  
18 would do the same to Robert and to  
19 Melissa. He would hug -- usually the  
20 physical contact that I remember was  
21 associated with an accomplishment --  
22 completing the budget on time, finishing  
23 the legislative session, advancing a piece  
24 of policy, and it was usually after an  
25 event or after a press conference.

1 A. DAVID

2 Q. Mm-hmm.

3 VIDEOGRAPHER: Counselor?

4 MR. KIM: Yeah.

5 VIDEOGRAPHER: I just need to  
6 switch out the media unit. It will  
7 take me less than 30 seconds. Can I  
8 do that now?

9 MR. KIM: Sure.

10 VIDEOGRAPHER: Stand by, please.  
11 This is the end of Media Unit  
12 Number 2. We are now off the record  
13 at 6:22 p.m.

14 [Discussion held off the  
15 record.]

16 VIDEOGRAPHER: Stand by to go on  
17 the record. Stand by to record. This  
18 is the beginning of Media Unit  
19 Number 3. We are now on the record at  
20 6:25 p.m.

21 BY MR. KIM:

22 Q. So, Mr. David, when we took a  
23 break we were talking about the times that  
24 the Governor would hug you, and you said  
25 usually after the accomplishment of

1                   A. DAVID

2 something.

3                   Did he ever kiss you?

4           A.       He did.

5           Q.       Okay. On what occasions?

6           A.       Again, after we passed the  
7 budget, he would kiss me on my cheek.  
8 After the end of a legislative session, he  
9 would do the same.

10                   These were periods where I was  
11 operating on no sleep, literally go two,  
12 three weeks where I wouldn't sleep. I  
13 would leave the office at 6 a.m., I would  
14 go to the hotel, I would shower, I would  
15 run and then I would go back to the  
16 office.

17                   So after going through that  
18 process for two or three weeks, we would  
19 then conclude with a budget or conclude  
20 with a legislative session, and then there  
21 would be some announcement of what the --  
22 what the components of the budget are.  
23 And then he would -- you know, after  
24 announcing it, he would hug, sometimes  
25 kiss on the cheek, sometimes a handshake.

1                   A.    DAVID

2    So, yeah, under those circumstances.

3            Q.    Did he ever kiss you on the  
4    lips?

5            A.    I don't remember that, no.

6            Q.    Did you ever -- have you ever  
7    seen him kiss anyone on the lips?

8            A.    Maybe Sandra Lee, but I can't  
9    say that definitively.

10          Q.    How about any staff -- how about  
11   anyone -- any State employees?

12          A.    No.

13          Q.    Did the Governor ever slap you  
14   on the behind?

15          A.    Maybe, but I don't -- I don't  
16   think so.  Certainly patting on the back  
17   after an event, something to that effect.

18          Q.    Mm-hmm.  And not -- you don't  
19   remember him tapping you on the butt?

20          A.    I don't remember that.

21          Q.    And then how about in public  
22   settings with people publicly, did you  
23   observe him interacting with people  
24   publicly?

25          A.    Yes.

1 A. DAVID

2 Q. Okay. And would he -- did you  
3 observe him hug or kiss people publicly?

4 A. Yes.

5 Q. Okay. What -- what did -- what  
6 did you see?

7 A. He would -- it depended of  
8 course on the person. So, for example, at  
9 the executive mansion if there's an event  
10 for Black History Month, he may introduce  
11 someone who he knows well, maybe, Hazel  
12 Dukes, who works at the NAACP, and he will  
13 kiss her on the cheek and hug her. I've  
14 seen him do that with his mother. I've  
15 seen him do that with a variety of people  
16 who I believe he knows well, and those  
17 were generally at public events.

18 Q. Did you ever see him at either  
19 public events or within the chamber  
20 hugging or kissing someone who appeared  
21 quite uncomfortable or appeared  
22 uncomfortable with the contact?

23 A. No.

24 Q. You don't remember any -- seeing  
25 anything like that?

1 A. DAVID

2 A. No.

3 MR. KIM: Could we put up, Soo  
4 Jee, just a few pictures. 56.

5 Q. These are some pictures of the  
6 Governor. Is that -- have you ever --  
7 have you seen the Governor doing that type  
8 of touching, where he grabs people in the  
9 face, and -- yeah.

10 Well, why don't we start just  
11 grab people in the face like that?

12 A. I've certainly seen him do --  
13 sort of embrace people in that way or  
14 approach people in that way, yes.

15 Q. And grabbing them in the face  
16 like that before he kisses them?

17 A. I've seen him approach people  
18 with his -- with his hands on their  
19 shoulders or face certainly. I've seen  
20 him do that many times at public events.

21 Q. So you've seen him hold a woman  
22 like that many times at public events?

23 A. No. I can't comment on this  
24 picture because this picture suggests  
25 something else. I can say that.



1                   A. DAVID

2                   If the question is have I seen  
3 him use his hands to interact with people  
4 at public events, the answer yes. If the  
5 question is have I seen him engage with  
6 another person as reflected in this  
7 picture, the answer is no.

8           Q.       You said this picture suggests  
9 something else? What do you see this  
10 picture suggesting?

11          A.       There may be some discomfort  
12 there, but it's a little blurry. But  
13 there appears maybe there's some  
14 discomfort.

15          Q.       You agree that in this picture  
16 the woman looks uncomfortable?

17          A.       Just the last picture, the  
18 facial expression appears to be some  
19 discomfort.

20          Q.       So when you said you did not  
21 observe the Governor grabbing or kissing  
22 someone where the person looked  
23 uncomfortable, you agree that this person  
24 looks uncomfortable and if you remembered  
25 seeing anything like this you would have

1                   A. DAVID

2   answered yes to that?

3           A.       Correct.

4                   MR. KIM:   Okay.   Can we show the  
5   next photo.

6           Q.       Similar, in that picture do you  
7   agree she looks uncomfortable?

8           A.       It's -- it's very difficult to  
9   tell and draw conclusions about a picture.  
10   I don't know this person.   I don't know  
11   what the conversation is.   I -- I don't  
12   know the context, the circumstances.   So  
13   that's -- that's one conclusion someone  
14   could draw from looking at it.

15          Q.       Have you seen him often put his  
16   hands right there around the neck and head  
17   of a woman?

18          A.       I wouldn't say often, no.

19          Q.       How many -- have you seen him do  
20   that?

21          A.       I've seen him interact with  
22   people using his hands.   But --

23          Q.       Around the neck and face?

24          A.       -- I can't compare that to this  
25   incident.   I just -- it's difficult to do

1                   A. DAVID

2       a compare and contrast.

3           Q.       So you -- you think you may have  
4       seen him hold people in this manner around  
5       the neck and head before?

6           A.       No. No. What I'm saying is I  
7       have seen him use his hands to interact  
8       with people. I cannot comment on this  
9       photo, what happened in this photo, what  
10      the level of engagement is in this photo,  
11      I can't comment on.

12          Q.       My question is: Have you seen  
13      him interact with people physically in  
14      this way where the hand is around the neck  
15      and face?

16          A.       I've seen him use his hands in  
17      interactions with people in a variety of  
18      ways. I don't want to compare my  
19      experience with this experience because I  
20      don't know about this experience.

21                   MR. KIM: Okay. We'll put the  
22      photo down then.

23          Q.       And I'll ask you have you seen  
24      him interact with people where he puts his  
25      hand around a woman's neck and face before

1                   A. DAVID

2       he kisses them.

3                   Have you seen that?

4           A.       I've seen him use his hands to  
5       interact with people of both genders, of  
6       all genders. I don't want to suggest that  
7       it's only one versus another. Because  
8       that wouldn't be --

9           Q.       I understand. And you said that  
10       several times.

11                   My question is: Have you seen  
12       him interacting with people using his  
13       hands around the neck and face?

14           A.       With people, yes.

15           Q.       Okay. Before he kisses them?

16           A.       I don't know if at -- in all of  
17       those cases he ultimately kisses them or  
18       not. I -- I'm not monitoring him in that  
19       way, so it's difficult to answer the  
20       question as precisely as you're asking me  
21       to answer it.

22                   MS. CLARK: Can I jump in?

23                   MR. KIM: Yeah. Please.

24                   MS. CLARK: Did you ever see  
25       anyone when the Governor put his hands

1 A. DAVID

2 on -- on or tried to kiss them pull  
3 away from the Governor's physical  
4 contact with them?

5 THE WITNESS: No.

6 Q. Okay. Did you ever observe or  
7 witness the Governor asking someone to  
8 sing for him?

9 A. No. But I do know at some of  
10 the holiday events people performed skits  
11 for their colleagues and he was present.  
12 But I'm not aware of any instance where he  
13 asked someone to perform for him.

14 Q. How about in the chamber asking  
15 someone to sing?

16 A. In the executive chamber?

17 Q. Yeah.

18 A. Not that I can recall. There --  
19 I recall him singing in some instances.  
20 At the end of the day, because I worked  
21 very late so I was often the last person  
22 in the chamber, so he would leave the  
23 office and in some cases he was humming or  
24 singing in the New York City office  
25 because he would walk by my office to

1 A. DAVID

2 leave. In the Albany office, I don't  
3 remember that, no.

4 Q. How about asking people --  
5 anyone to memorize lyrics and to recite  
6 them for him?

7 A. No.

8 Q. You've -- you mentioned that  
9 there's only one instance when the  
10 Governor, you and him -- he had an  
11 argument with you.

12 Did you ever hear him speak  
13 harshly to others?

14 A. Yes.

15 Q. Okay. On what occasions?

16 A. Instances where --

17 MR. AYDINER: Counsel, just be  
18 mindful of the context of these. It  
19 can constitute a privileged  
20 conversation. Just be mindful of  
21 that; otherwise, you can testify to  
22 your observations.

23 A. Instances where something was  
24 done incorrectly or there was a major  
25 snafu as it relates to the implementation

1                   A.    DAVID

2   of something or if there was a major  
3   mistake that someone made, that's -- those  
4   are the instances that I recall.

5           Q.       Mm-hmm.   And in those instances,  
6   what do you recall?   Did he raise his  
7   voice or did he speak harshly or what's --  
8   what did he do?

9           A.       Raise his voice.

10          Q.       Yell?

11          A.       Raise his voice.

12          Q.       Mm-hmm.   He never raised his  
13   voice with you other than in that one  
14   instance?

15          A.       Other than in that one instance,  
16   no.

17          Q.       Okay.   Who did you hear him  
18   raise his voice to?

19          A.       In some cases I wouldn't know, I  
20   would just hear loud voices.   I wasn't in  
21   the room so I couldn't tell you.

22          Q.       So you would hear it from  
23   outside the office -- outside his office.

24          A.       Yeah.   I could hear it if I was  
25   walking by his office in the New York City

1                   A. DAVID

2       office. I would hear it certainly during  
3       budget negotiations. There were very  
4       heated discussions with the legislative  
5       leaders on a variety of things. In some  
6       cases they rose their voices; in other  
7       cases, he did. So I was involved in those  
8       conversations. And in other instances, I  
9       would just overhear raised voices.

10            Q.       Did you ever hear him threaten  
11       anyone?

12            A.       No, I don't -- no. I don't know  
13       what that means. I know that as a legal  
14       meaning, but no.

15            Q.       How about just bullying?

16            A.       Again, I have heard him raise  
17       his voice. But that, of course, has a  
18       legal meaning as well, so I want to be  
19       careful that I'm not drawing a legal  
20       conclusion here.

21            Q.       Have you ever heard him -- hear  
22       him compare someone -- say that he  
23       compares someone to a child rapist?

24            A.       No.

25            Q.       You never heard that?



1 A. DAVID

2 A. No.

3 Q. Okay. Have you heard of that  
4 accusation?

5 A. I did. I heard that recently  
6 listening to a podcast. I believe a New  
7 York Times podcast.

8 Q. Mm-hmm. And did you listen to  
9 it?

10 A. I did.

11 Q. Okay.

12 MR. KIM: Can we play that part?  
13 It's at Tab 60.

14 (Audio played.)

15 "THE GOVERNOR: Did you ever say  
16 'well, he's better than a Republican  
17 again,' I'm going to say you're better  
18 than a child rapist. How about that?"

19 MR. KIM: You can play it a  
20 little bit longer.

21 (Audio played.)

22 "UNIDENTIFIED SPEAKER: I  
23 apologize. But I've got to clarify  
24 one thing. You're free to say  
25 whatever you want, Governor, but I

1                   A. DAVID

2           just -- I just, like, want to be  
3           clear. Our line is going to be that  
4           we have differences with you, but our  
5           differences with Republicans are far  
6           greater, that's what we're going to  
7           continue to say, because that is --  
8           you know, we don't have a hundred  
9           percent greater, and quite frankly,  
10          Governor, we're very comfortable with  
11          you saying the same thing. You know,  
12          you probably think many of our  
13          positions -- you don't have to agree  
14          with us."

15                   "THE GOVERNOR: I think you're  
16          better than a -- I think you're better  
17          than a child rapist. I just want you  
18          to know."

19                   MR. KIM: You can pause it.

20          Q.        You said that you had listened  
21          to this. Did that surprise you, him  
22          talking in this matter?

23          A.        Did it surprise me? Given what  
24          I have read recently in all of the news  
25          reports, maybe not currently surprised,

1 A. DAVID

2 but that's a characterization based in  
3 time for me because my perception has  
4 shifted over time based on information  
5 that's been disclosed.

6 Q. When you say given the news  
7 reports, what are you referring to?

8 A. I'm referring to the podcast  
9 that you just played.

10 Q. Mm-hmm. Other than that,  
11 anything else that --

12 A. I think there have been other  
13 allegations recently by others who have  
14 suggested similar comments that have been  
15 made or other comments that have been  
16 made.

17 Q. Like what?

18 A. I think there was an Assembly  
19 member who claims that he was -- I don't  
20 know what words he used to characterize  
21 it, but he had a conversation and felt  
22 that it was not appropriate.

23 Q. Mm-hmm. And you said given  
24 those news reports your perception has  
25 changed.

1                   A. DAVID

2                   What do you mean by that?

3           A.       Well, you're asking me whether  
4 or not I was surprised. So by definition  
5 surprised would mean that I'm not aware of  
6 any instances that would inform my current  
7 thinking. My current thinking is now  
8 informed by things I'm reading and  
9 listening to, that I may or was not aware  
10 of in the past.

11          Q.       And you mentioned earlier that  
12 you didn't want to categorize  
13 conversations that the Governor had that  
14 you heard as either threatening or  
15 bullying.

16                   In your -- the way you used  
17 those words, I mean, as you understand  
18 them, would saying that you are going to  
19 compare someone to a child rapist be  
20 something you would consider as  
21 threatening?

22          A.       I wouldn't characterize it  
23 either. That's a legal conclusion I  
24 wouldn't characterize.

25          Q.       No, not legally. I'm just using

1                   A.    DAVID

2    your comment, the word of threatened.    Do  
3    you understand that that has a meaning in  
4    English beyond the legal definition?

5           A.    Certainly.

6           Q.    Okay.    Would you consider  
7    someone saying "I'm going to compare you  
8    to a child rapist" to be threatening?

9           A.    Depends on the circumstances.  
10   Depends on the collateral consequences  
11   associated with that statement.

12          Q.    Okay.    In what circumstance  
13   would comparing someone to a child rapist  
14   not be threatening?

15          A.    I can't engage in hypotheticals.  
16   I just -- I won't do it because I don't  
17   want to be in the position when I'm making  
18   a statement on the record where it could  
19   be non-comprehensive or incorrect.

20                   I'm trying to be very careful to  
21   be clear with all of my responses, which  
22   is why I don't want to speculate or draw  
23   legal conclusions.

24          Q.    So you can't -- you can't say  
25   that comparing someone to a child rapist

1                   A. DAVID  
2    is something you would consider  
3    threatening? You're not -- you're  
4    refusing to say that?

5           A.       I'm refusing to characterize it  
6    because I think it depends on the actors.  
7    So I'll give you a hypothetical in  
8    response. If you have two friends that  
9    are making that comment to each other, it  
10   may not be considered threatening because  
11   they're two friends. If you have someone  
12   in a position of power making that comment  
13   to someone where they're in the position  
14   to actually affect their lives, it could  
15   be. So that's why hypotheticals are  
16   difficult to answer because they are  
17   informed by factors.

18           Q.       You consider the Governor to be  
19    someone in a position of power, correct?

20           A.       Depends on certain people, yes.  
21    He may be a person in a position of power  
22    to someone living in New York; he may not  
23    be a person in position of power to  
24    someone living in Florida.

25           Q.       So you -- you said you listened

1                   A. DAVID

2       to this podcast, right?

3           A.       Mm-hmm.

4           Q.       So you understand that it was  
5       made in the context of the Working Family  
6       Party not having endorsed the Governor,  
7       correct?

8           A.       Yes.

9           Q.       And you understand that it was  
10       in response to a comment from that person  
11       saying he's better than a Republican,  
12       correct?

13          A.       Yes.

14          Q.       Okay. And in that context, the  
15       Governor is saying I'm going to compare  
16       you to a child rapist, you're better than  
17       a child rapist.

18                   Are you prepared to say that  
19       that is threatening under the common use  
20       of the English word?

21          A.       What I'm prepared to say is that  
22       I can certainly conclude that it was meant  
23       to insult the person. I'm not sure that  
24       I'm prepared to say that it was meant to  
25       threaten the person.

1                   A. DAVID

2                   I don't know what the Governor  
3 could or would do in response to that  
4 statement, which is why, again, I don't  
5 want draw legal conclusions about what he  
6 said and what the consequences could have  
7 been. I don't know.

8           Q.       Mr. David, I'm not asking you  
9 for a legal conclusion, and you can answer  
10 it the same way if you want. I'll ask you  
11 one more time.

12           A.       Correct.

13           Q.       Listening to that call where the  
14 Governor says I'm going to say that you're  
15 no better than a child rapist --

16           A.       Mm-hmm.

17           Q.       -- you cannot say that that  
18 sounds threatening?

19           A.       I'm -- I'm not going to answer a  
20 yes or no. You're putting me in a  
21 position to answer a question that  
22 implicates -- that has legal implications.

23                   I don't know what the intensions  
24 were. I wasn't a part of the  
25 conversation. I learned about the



1                   A. DAVID

2       conversation on a podcast, and I'm not  
3       going to characterize it because I don't  
4       know all the facts.

5           Q.       Okay. So you can't -- you're  
6       not going to characterize that as  
7       threatening -- not legally, just the  
8       English word.

9                   You understand what it means to  
10      threaten someone, right?

11          A.       I understand what it means to  
12      threaten someone legally and that's --

13          Q.       You never used that word outside  
14      of the legal use of the word?

15          A.       Whether I use that word outside  
16      of the legal definition for me is  
17      irrelevant because I'm testifying under  
18      oath. And you're asking me to respond --

19          Q.       I am -- you are testifying under  
20      oath.

21          A.       Correct. And I'm not going  
22      to --

23          Q.       And I'm asking you under oath  
24      whether you factually consider that  
25      threatening or not. And under oath --

1                   A. DAVID

2           A.       I don't know all the facts.

3           Q.       -- answer that.

4           A.       I don't know all of the facts,  
5 Mr. Kim. I cannot answer that question.

6                   You're asking me to answer a  
7 question when I do not know all of the  
8 facts, and I do not want to draw a  
9 conclusion based on the fact that I don't  
10 know all of the facts. It is a snippet of  
11 a conversation that was in a New York  
12 Times podcast.

13                   And again, I will provide as  
14 much information --

15           Q.       I'd prefer you answer now --

16           A.       -- to the extent I have personal  
17 knowledge.

18           Q.       -- we do understand it's under  
19 oath.

20                   Would you consider that  
21 bullying?

22           A.       I would consider that poor  
23 taste, maybe. Again --

24           Q.       You are prepared to say it's in  
25 poor taste to call someone a child rapist?

1 A. DAVID

2 A. Certainly I think it's --  
3 certainly I think it would be in poor  
4 taste. But again, the words that you're  
5 using I understand the legal or would have  
6 legal implications, which is why I'm not  
7 trying to characterize them.

8 Q. Why don't I ask you openly the  
9 question: How would describe that  
10 conversation? Poor taste? What other  
11 words come to mind?

12 A. Uncomfortable. Unfortunate.

13 Q. Bullying?

14 A. That's certainly a legal  
15 conclusion.

16 Q. Why is bullying a legal  
17 conclusion? I don't -- I mean, you -- I'm  
18 asking you a question under oath.

19 A. Mm-hmm.

20 Q. Ask you: How do you use the  
21 word bullying outside of the legal  
22 context? You understand being a bully?  
23 You understand that concept outside of the  
24 law?

25 A. I certainly -- I certainly do.

1                   A.     DAVID

2     Because I represent the interests --

3           Q.     You understand that there are --  
4     there are people in school yards who bully  
5     each other?

6           A.     Absolutely.   That's what I'm  
7     talking about.

8           Q.     That's what I'm asking you  
9     about.    Would you --

10          A.     I can't characterize -- I can't  
11     characterize that conversation as bullying  
12     because I don't know what the legal  
13     implications are.

14          Q.     I'm asking you not the legal  
15     implications or the legal -- I'm just  
16     asking you a basic question --

17          A.     Mm-hmm.

18          Q.     -- about how -- whether you as a  
19     human being consider telling someone I'm  
20     going to compare you to a child rapist as  
21     something that you would consider bullying  
22     and I understand that your answer under  
23     oath is you can't answer that?

24          A.     My answer under oath is that I'm  
25     not going to characterize the

1                   A. DAVID

2 conversation.

3           Q.       Mm-hmm. If someone at the Human  
4 Rights Campaign compared -- said to  
5 someone else, an employee, that if they  
6 didn't do something they wanted, they  
7 would compare them to a child rapist,  
8 would you let that go? Would you do  
9 anything about it?

10          A.       So you are now giving me a  
11 hypothetical in the working space between  
12 two employees and that would have  
13 different implications as a legal matter.  
14 Of course we would have to take action.

15                   In this case, you are asking me  
16 to opine on --

17          Q.       Actually, I'm not. I know you  
18 keep trying to say that's what I'm asking,  
19 but I'm not. You keep trying to  
20 recharacterize my question as if I'm  
21 asking you for a legal conclusion. I  
22 think I've said about five times and I  
23 think we'll move on unless you have  
24 something more to add, that that's not  
25 what I'm asking you to do. I understand

1                   A. DAVID

2       why you are saying that's what I'm trying  
3       to ask you to do, but I think the record's  
4       pretty clear what my question was and what  
5       your answers were.

6                   I did not ask you and I'm not  
7       asking you to draw a legal conclusion.  
8       I'm not asking you to use the word bully  
9       or threaten in the legal definition. I'm  
10      asking you in the way you use it  
11      colloquially, and I asked you those  
12      questions multiple times.

13                  And I understand that the answer  
14      has been repeatedly that I'm trying to ask  
15      you a legal conclusion. I'm not. I'm  
16      not, okay?

17                  A.       I appreciate -- I appreciate  
18      that.

19                  In response to your most recent  
20      question, as I said, under the facts that  
21      you have -- under the factual hypo or the  
22      hypo that you have advanced involving two  
23      employees, of course action would be taken  
24      in that case.

25                  Q.       Why?

1                   A. DAVID

2           A.       It involves two employees, it  
3 involves the workspace, it may potentially  
4 implicate the terms and conditions of  
5 employment. It may potentially implicate  
6 the terms or the responsibility of the  
7 employer --

8           Q.       And because it's inappropriate.

9           A.       -- and if we need to create a  
10 safe work environment, and depending on  
11 who those people are it may implicate  
12 power imbalances as well.

13          Q.       And you can't say, based on that  
14 call, that there were those same issues at  
15 play, power and balances?

16          A.       Mr. Kim, I'm really trying to  
17 respond to your question so that --

18          Q.       I understand that you are.

19          A.       I also don't want to  
20 characterize it because I don't know these  
21 facts.

22          Q.       Okay.

23          A.       I've learned about it on  
24 podcast.

25          Q.       You were there at the time,

1                   A.    DAVID

2    though, in 2018, right?

3                   A.    I was.

4                   Q.    Okay. Did you play any role in  
5    telling the press that that conversation  
6    never happened?

7                   A.    No. I was not aware of the  
8    conversation.

9                   Q.    You listened to the podcast,  
10   right?

11                  A.    Yes.

12                  Q.    And in the podcast, the reporter  
13   says that the executive chamber originally  
14   denied that conversation ever happening?

15                  A.    Correct.

16                  Q.    Until they said there was tape?

17                  A.    Mm-hmm.

18                  Q.    Correct?

19                  A.    Yes.

20                  Q.    Were you -- did you -- were you  
21   aware at all of the inquiries being made  
22   by reporters about such a conversation?

23                  A.    No, I don't believe so.

24                  Q.    Were you aware of whether the  
25   Governor had any sexual or romantic



1 A. DAVID

2 relations with any State employees?

3 A. No.

4 Q. Did you hear any rumors about  
5 it?

6 A. There were -- people suggested  
7 that he spent a lot of time with Senior Staffer #1  
8 so maybe he had a relationship with  
9 Senior Staffer #1. That was the only rumor that I  
10 heard.

11 Q. Did you personally see anything  
12 that would either corroborate or dispel  
13 that rumor?

14 A. I saw nothing to corroborate or  
15 substantiate that rumor.

16 Q. Did you ever see the Governor  
17 kissing Senior Staffer #1 [REDACTED] ?

18 A. Not on the lips; on the cheek  
19 certainly.

20 Q. Okay. But not on the lips?

21 A. I don't recall seeing him  
22 kissing her on the lips.

23 Q. Did anyone ever tell you they  
24 saw them kissing on the lips?

25 A. No.

1 A. DAVID

2 Q. Did you ever see Senior Staffer #1 [REDACTED]  
3 sitting on the Governor's lap?

4 A. I don't think so. I don't -- I  
5 don't think so. Maybe, but -- no, I  
6 don't -- I don't think so.

7 Q. How many times have you been to  
8 the mansion?

9 A. As Deputy Secretary, three or  
10 four times a year. As Counsel, maybe once  
11 a month, once every other month. If  
12 during the legislative or budget season,  
13 it may increase in frequency.

14 Outside of the legislative  
15 session, he was rarely in Albany. He was  
16 in New York City for -- during my tenure  
17 as Counsel.

18 Q. Did you ever spend the night in  
19 the mansion?

20 A. No.

21 Q. Are you aware of other executive  
22 chamber employees who did?

23 A. I have read about that, but I  
24 have no personal knowledge of it.

25 Q. You read it, like, more

1 A. DAVID

2 recently?

3 A. Correct.

4 Q. At the time when you were  
5 working there you weren't aware of anyone  
6 spending the night?

7 A. No.

8 Q. Other than reading it in the  
9 papers, any information that executive  
10 chamber employees would spend the night at  
11 the mansion?

12 A. No.

13 Q. Have you heard of the term --  
14 people use the term "mean girls" in the  
15 executive chamber?

16 A. I have heard that term, yes.

17 Q. Okay. And in what context?

18 A. Through the context of the  
19 press. I have heard that recently.

20 Q. And in the context of the press,  
21 what did you hear?

22 A. That there were a number of  
23 women in the executive chamber that were  
24 considered mean girls.

25 Q. And you -- is that a term that

1                   A. DAVID

2   you had heard while you were working  
3   there?

4           A.       Yeah. I have heard that.  
5   Certainly heard that.

6           Q.       And who was it -- who did it  
7   refer to?

8           A.       Certainly Melissa DeRosa. I  
9   think there was suggestions, Stephanie  
10   Benton. It's difficult to say because I'm  
11   trying to remember the context. Maybe  
12   Jill DeSrosiers.

13                    People -- it depended on what  
14   people would say. And this is all in  
15   passing where people would say things.

16           Q.       Would the Governor ever use that  
17   term? Did you hear the Governor ever use  
18   that term?

19           A.       He may have. He may have. I  
20   don't recall any specific instance, but I  
21   can't -- I can't deny that it never  
22   happened. I just don't recall a specific  
23   instance.

24           Q.       And -- and what did you observe  
25   about the way in which Melissa DeRosa, for

1                   A. DAVID

2       example, treated or spoke to other  
3       staffers?

4           A.       Well, she is -- she is very  
5       energetic and demanding and operates in a  
6       high pressure sort of environment, so I  
7       have certainly seen her engage with people  
8       in a -- in that environment, where it's  
9       sort of fast and high pressured and where  
10      she may be curt or she may sort of raise  
11      her voice if she needs to get someone on  
12      the phone and I'm walking through and I  
13      oversee her. I've certainly seen those  
14      instances or heard about that.

15          Q.       Have you seen her be mean?

16          A.       I've -- I've seen her be very  
17      direct and demand a certain result from  
18      someone. I've seen that.

19          Q.       I'll ask the question again.  
20      Maybe -- I'm hoping mean doesn't have a  
21      legal definition.

22                   Have you seen her be mean.

23          A.       I don't -- I'm trying to give  
24      you examples that maybe someone could  
25      characterize as mean. I've seen her --

1                   A. DAVID

2           Q.       That could have characterized  
3 this group of people as the mean girls,  
4 correct?

5           A.       Yeah. So and I'm trying to  
6 understand how that could translate into  
7 something concrete. So I have seen her  
8 raise her voice. I've seen her be very  
9 demanding with her assistants. I've seen  
10 her speak very authoritatively to  
11 Commissioners. I have seen her --

12          Q.       Yell?

13          A.       Yes. I've certainly seen her  
14 yell. Sort of, you know, if an agency  
15 failed to do something that then sort of  
16 compromises the health or safety of people  
17 with respect to drinking water, I've seen  
18 her sort of have conversations about those  
19 issues where she's engaged in a very  
20 heated discussion with the Commissioner or  
21 someone else. So, yes.

22          Q.       Have you heard her belittle  
23 people?

24          A.       It would be really helpful if  
25 you gave me examples. So -- because those

1                   A.    DAVID

2    terms can be interpreted by different  
3    people and that's why I'm trying to give  
4    you examples that --

5            Q.        Are those terms that you try to  
6    avoid using in describing people, because  
7    you seem to be very cautious about using  
8    any of those terms with the Governor or  
9    Melissa DeRosa.

10           A.        I -- I --

11           Q.        Is that your practice?

12           A.        I try to be -- I try to be very  
13    careful in how I speak and what I say and  
14    I try to have my representations be based  
15    on fact because I could say those words  
16    can be interpreted differently by so many  
17    different people and I don't want to give  
18    an answer that, if not clear, it can be  
19    misinterpreted.    So that's why I'm trying  
20    to give you answers that could be useful  
21    to provide you with more context.

22           Q.        And is that something you try to  
23    do with everyone?

24           A.        I do.

25           Q.        Not just the Governor or Melissa

1                   A. DAVID

2       DeRosa?

3           A.       No.    I do generally.

4           Q.       Okay.  Are you aware of people  
5       who have left or left the executive  
6       chamber just because of the -- the culture  
7       and the -- the pressures?

8           A.       Yes.   I know many people that  
9       left the executive chamber because of the  
10       pressure.  It is a high-pressured  
11       environment.

12                   I can say at least with respect  
13       to me, as an example, I don't believe I  
14       had a vacation for several years.  My  
15       friends were very concerned that I was  
16       working all the time.  I wasn't sleeping.  
17       I hadn't been in a relationship in years.

18                   And so I think that's an  
19       environment where it's nonstop and the  
20       pressure is extremely high and the  
21       consequences of not doing the work  
22       properly were severe.  I certainly know of  
23       certain people who left after a number of  
24       years, enjoyed the work, but couldn't keep  
25       up the pace.



1                   A. DAVID

2           Q.       How about people who left not  
3 just because of the quantity and the  
4 importance of the work but the culture?

5           A.       The culture. When you say "the  
6 culture," I interpret the culture to mean  
7 an environment where you don't have enough  
8 time to catch a breath, an environment  
9 where it's difficult to sustain  
10 friendships --

11          Q.       That's not what I'm -- and I  
12 understand you keep changing it to the  
13 level of work, the amount of work, which  
14 people understand. And I totally  
15 understand also the instinct to try to  
16 characterize culture in that way.

17                   I'm trying to be fully  
18 transparent. We've seen that -- we've  
19 seen that as the response. We have seen  
20 that in the letter of response that you  
21 all were drafting that, yes, yes, it's a  
22 hard-charging environment.

23                   If you don't understand the  
24 difference between just work that is  
25 demanding and requires a lot of your time

1 A. DAVID

2 and a culture where people are -- can be  
3 abusive and mean -- and I don't want to --  
4 you know, I'm trying to ask the question  
5 and I'm trying to be as blunt possible.

6 Anyone who left that you're  
7 aware of not just because they had to work  
8 hard or they were somehow weak or -- but  
9 because they did not want to put up with a  
10 culture of meanness, that's my question.

11 Now if you can answer that  
12 without -- and, again, it's a lot of work,  
13 it's high pressure --

14 A. No, no, no.

15 Q. -- and there's no point in going  
16 around and around because I get that  
17 answer.

18 A. Yes. Specificity is helpful for  
19 me to give you responses that can be  
20 useful. So when you say culture,  
21 generally it's harder for me.

22 A culture where people left  
23 because they didn't like working with  
24 other people, and I have to go back to the  
25 specific instances, did anyone come to

1                   A. DAVID

2       tell me I'm leaving because I no longer  
3       want to work with X person.

4           Q.       Whether they came to you or not,  
5       whether you had --

6           A.       Okay.

7           Q.       -- an understanding of some  
8       people leaving because they didn't like  
9       the way people treated each other there.

10          A.       So no one told me that's why  
11       they left because of a culture. Did I  
12       hear that some people left because they  
13       may not have liked working in that  
14       environment, yes. Do I know what that  
15       means, did they explain that to me, no.

16          Q.       And who are those people?

17          A.       I couldn't tell you. I --  
18       people left the chamber and went to State  
19       agencies in some cases. And then you  
20       would hear a rumor, "Well, this person  
21       left because they no longer want to work  
22       with, you know, the Director of State Ops  
23       or they no longer want to work with doing  
24       events because there are too many events  
25       and the pressure is too high and they get

1                   A. DAVID

2       blamed all the time when something  
3       happens. Those kinds of general comments.

4                   But no one came to me to say I'm  
5       leaving because of X.

6           Q.       They don't come to you not I'm  
7       leaving, but I'm coming to you because I'm  
8       being -- because of the way someone in the  
9       executive chamber has treated me?

10          A.       No. I don't believe anyone came  
11       to me to say that. I do know that there  
12       were certain people in the executive  
13       chamber who had difficulty working with  
14       certain personalities.

15                   Andrew Ball is an example. He  
16       worked on the operations doing events.  
17       And there were a few conflicts between his  
18       working style and other working styles and  
19       I believe he may have had conflicts with  
20       others in the chamber. So I knew -- I  
21       heard about that.

22                   But other specific examples in  
23       the chamber, it was largely in the  
24       operations side where people were doing  
25       events all the time and something would

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A. DAVID

get scheduled and they would have to take it down or they would create something and it was wrong and they would get blamed for it or something -- those kinds of scenarios where people felt they didn't want to work in that kind of environment anymore.

Q. Let me move on to Lindsey Boylan. I know we've discussed her in the context of the file that you had.

When is the first time you ever met Lindsey Boylan?

A. I don't know the specific year. I believe I met Lindsey Boylan when she joined the Empire State Development Agency.

Q. And what were you doing -- what was your position at the time?

A. I don't know. I think I was Counsel at the time, but I don't know.

Q. And leading up to your involvement in the investigation involving her, how often did you see her?

A. As Counsel, once a month, once a

1 A. DAVID

2 quarter. Not very often. If I interacted  
3 with Lindsey Boylan it was usually in a  
4 meeting with other people, so there was no  
5 regularity with respect to my contact with  
6 her.

7 Q. Mm-hmm. In what context would  
8 you see her once a month or once a  
9 quarter?

10 A. There was an economic  
11 development initiative that had  
12 complicated legal issues, there was a  
13 proposal for the executive budget, there  
14 was a piece of legislation the Economic  
15 Development Agency wanted to propose or  
16 advance. It would be under those  
17 circumstances.

18 Q. And what were your interactions  
19 with her like?

20 A. Courteous, professional,  
21 pleasant.

22 Q. Did you have any arguments or  
23 disagreements with her?

24 A. No, I don't believe so.

25 Q. And what did you observe about

1                   A. DAVID

2       her interactions with others in the  
3       executive chamber?

4           A.       Nothing of significance.   Again,  
5       my interactions with her were in meetings  
6       with other people, and some of those  
7       meetings were external, third parties.  
8       Some of those meetings involved chamber  
9       employees, some of those didn't.   So I  
10      didn't see anything out the ordinary that  
11      was of note.

12       Q.       Did she appear -- at least in  
13      the interactions that you were involved in  
14      appear to be generally professional?

15       A.       Generally, yes.

16       Q.       Did you ever observe her in the  
17      presence of the Governor?

18       A.       Yes.

19       Q.       And on what occasions?

20       A.       Economic Development events.  
21      There's a regional Economic Development  
22      Council event or series of events.   I -- I  
23      have seen her interact with him, press  
24      conferences involving Economic Development  
25      projects, meetings with him and her and

1 A. DAVID

2 others about Economic Development issues.

3 Q. And anything noteworthy about  
4 those interactions between her and the  
5 Governor?

6 A. No.

7 Q. Did you ever see the Governor  
8 touch Lindsey Boylan?

9 A. No. Other than potentially at a  
10 public event where she may have been  
11 introducing him and maybe there was a hug  
12 or -- but I don't even know if that  
13 happened, but I just can't rule it out  
14 because I know there were a number of  
15 public events. Other than public events,  
16 no.

17 Q. How about any kissing on the  
18 cheek or otherwise?

19 A. I don't know. They're  
20 instances -- he kissed a lot of people on  
21 the cheek, so maybe he did, but I don't  
22 remember.

23 Q. Any nicknames that you heard to  
24 describe Lindsey Boylan?

25 A. No. Not that I can remember.



1 A. DAVID

2 Q. Did you ever hear the Governor  
3 or anyone else comment on Lindsey Boylan's  
4 appearance?

5 A. No.

6 Q. How about her clothing?

7 A. I don't think so, no.

8 Q. Did you ever observe whether at  
9 any point her interactions with the  
10 Governor or relationship with the Governor  
11 seemed to change in any perceptible way to  
12 you?

13 A. No.

14 Q. Were you ever on a plane with  
15 the Governor and Lindsey Boylan?

16 A. I don't believe so. But again,  
17 the public records would be the best  
18 source. But I don't remember. I'm just  
19 going through years. I don't believe that  
20 I've been on a plane with her and him, but  
21 I can't say that definitively. That would  
22 have to be in the public records.

23 Q. Okay. So that -- anything  
24 I'm -- anything more about your  
25 interactions with Lindsey Boylan before

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A. DAVID

what leads to your being involved in the investigation?

A. There was one interaction with her regarding an allegation that was unable to -- that was a rumor or an allegation that she was [REDACTED] [REDACTED] [REDACTED] so I interacted with her on that issue.

Q. How did that -- tell us about that. How did that come about?

MR. AYDINER: And, Joon, if I may, no privilege asserted by -- in the chamber on this topic per Mr. Fishman.

MR. KIM: Okay.

MR. AYDINER: Just for the record. Thank you.

A. I was approached by Melissa DeRosa who informed me that she received information that Lindsey Boylan was at -- in a -- either a bar or restaurant bar with other State workers and [REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

And I asked, "Is there an actual



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A. DAVID

And I then reported back to  
Melissa DeRosa that both [REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED] and unless we have  
someone who can come forward with evidence  
to substantiate this claim or allegation,  
I don't see how it can be pursued further.

So other than that interaction  
with Ms. Boylan, the second interaction is  
with respect to the Counselor.

Q. So this interaction of Melissa  
DeRosa coming to you about this, how -- in  
terms of timing, how far -- how long  
before the incident was that?

A. Maybe a year, maybe nine months,  
maybe six months. This is -- I'm  
guessing. It wasn't close in time.

Q. But it was at a time when you  
were the Chief Counsel?

A. Yes, it was.

MS. CLARK: [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED] would it have  
violated any executive chamber State

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A. DAVID

policy?

THE WITNESS: It probably would have, but I would have to look at the policy closer. I've been far removed from it for a while.

[REDACTED]

[REDACTED]

but I don't know the answer to that question. I believe that it probably would, but I just can't tell you definitively.

Q. So that led you to the conclusion that you should ask them whether there's any truth to these rumors?

A. Yeah. It was complicated in part because there was no actual named

1                   A. DAVID  
2 complainant who was raising a concern  
3 where they felt that their employment --  
4 terms and conditions of employment had  
5 been affected or someone who could come  
6 forward with specific facts that could be  
7 investigated and specifically referred to  
8 GOER.

9                   And so to ensure that this was  
10 nothing more than a rumor, [REDACTED]  
11 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] And given  
12 that there was no actual complaint or  
13 facts, there was nothing further that  
14 could have been done.

15           Q.       Did you memorialize this in any  
16 way?

17           A.       No.

18           Q.       No e-mail and no record?

19           A.       If I -- if I sent an e-mail, it  
20 would have -- no, I don't think I did. I  
21 don't believe I did.

22           Q.       Did you tell anyone about it?

23           A.       I told Melissa DeRosa.

24           Q.       Well, she told you. That's all  
25 I -- she -- she came to you --

1 A. DAVID

2 A. Correct.

3 Q. And you told her I asked -- █

4 █ █ █ █ █ █ ?

5 A. Correct.

6 Q. And what did she say?

7 A. I don't remember. So maybe  
8 something to the effect of, "Okay." I  
9 believe she knew and I believe Jill  
10 DeSrosiers knew as well, but I can't be  
11 sure.

12 The reason I say that is because  
13 Jill was often in Melissa's office, so  
14 it's possible during this exchange,  
15 Melissa -- Jill was there.

16 Q. So other than Melissa DeRosa and  
17 possibly Jill, did you talk to anyone else  
18 about this?

19 A. I don't think so.

20 Q. And what was your understanding  
21 of why Melissa came to you, because she  
22 worked for Empire State Development,  
23 right, █ █ █ █ █ █ █ █

24 █

25 A. █ █ █ █ █ █ █

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A. DAVID

[REDACTED]

I think there was a concern that if there was [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] that that could have potential consequences. What those consequences were, I don't think anyone knew fully, but I believe that is what motivated the request to me initially.

Q. Did you inform legal counsel at ESD?

A. I don't know. I may have. I don't believe so. I don't believe so because there was no complaint.

[REDACTED]

There was -- I don't know. I can't remember if I did or I didn't. I simply responded back to Melissa, the person who had inquired.

Q. Did you -- did you ever speak to



1                   A. DAVID

2       the Governor about it?

3           A.       I don't believe so, no.

4           Q.       Do you know if Melissa DeRosa or  
5       Jill did or anyone?

6           A.       I don't know.

7           Q.       By the way, did you ever ask the  
8       Governor whether there was any truth to  
9       the rumors that he had a romantic or  
10       sexual relationship with Senior Staffer #1 [REDACTED] ?

11          A.       No.

12          Q.       Did you ever ask Senior Staffer #1 [REDACTED]  
13       whether there was any truth to the rumors  
14       that she was having a romantic or sexual  
15       relationship with the Governor?

16          A.       Yes.

17          Q.       What did she -- when and what  
18       did she say?

19          A.       I don't know when but she said  
20       no.

21          Q.       Okay. Why did you --

22          A.       I think her response was "that's  
23       absurd."

24          Q.       And why did you ask her?

25          A.       I just wanted to make sure that

1                   A. DAVID

2       there wasn't -- these are sort of random  
3       rumors that people throw around, but I  
4       certainly just wanted to make sure that it  
5       wasn't true. And she said, "No, that's  
6       absurd. Absolutely not."

7           Q.       Or reasons why you thought you  
8       needed to ask [REDACTED] [REDACTED] [REDACTED] [REDACTED]

9           A.       Well, that was different. That  
10       was a request that came in directly from  
11       the Secretary to the Governor who oversees  
12       the operational functions of State  
13       agencies through the Deputy Secretaries.

14                   This was slightly different in  
15       that, you know, there were people who had  
16       rumors all the time, but I work very -- I  
17       work closely with the senior team and I  
18       just wanted to make sure. And I just  
19       think I asked, "I understand there's a  
20       rumor. Is this true or not?" And she  
21       said, "No, it's not true. That's absurd.  
22       That would -- that's not the case." I  
23       said, "Okay."

24           Q.       But you never asked the  
25       Governor?

1 A. DAVID

2 A. No.

3 Q. Any other rumors that you  
4 followed up and asked about of any nature?

5 A. Yeah.

6 MR. AYDINER: Counsel --  
7 Alphonso just be leery of anything  
8 that would connect you while engaged  
9 in your employment as Counsel in  
10 chamber. You can answer subject to  
11 that reminder.

12 A. Yeah. There -- there may have  
13 been instances where people were acting  
14 outside of the scope of their employment  
15 or instances where there was a rumor  
16 someone was maybe running for office while  
17 still having a State job or something like  
18 that. But in those instances I would just  
19 ask, you know, the appropriate Associate  
20 Counsel, "This is something that I've  
21 heard" or "This is something that's come  
22 up. Has anyone heard this?" And they  
23 would say, "No. No one's heard anything  
24 of the sort."

25 In other instances, we -- I

1                   A. DAVID

2       think on one occasion learned of someone  
3       who was running for office and did not  
4       notify their State agency, and so they had  
5       to take the appropriate leave of absence  
6       to avoid a conflict of interest.

7                   So those kind of issues. But  
8       nothing as it relates to relationships  
9       other than those two instances.

10           Q.       Any instances involving working  
11       outside the scope of employment that  
12       involved the Governor?

13           A.       No.

14           Q.       Or people working on his  
15       campaign using State funds?

16           A.       No.

17           Q.       Okay. So is there anything else  
18       with respect to Lindsey Boylan before  
19       you -- you have the investigation that you  
20       end up being involved in?

21           A.       No. After that conversation, I  
22       think we continued to work together in a  
23       variety of different ways.

24           Q.       So tell us sort of what you  
25       remember about what lead to the

1                   A. DAVID

2       investigation that sort of is memorialized  
3       in the e-mails and documents produced in  
4       the file.

5           A.       I believe that I was informed by  
6       Camille Varlack, who I believe at the time  
7       was the deputy something -- Deputy  
8       Director of State Operations -- of State  
9       Operations who oversees the State agencies  
10      through the Secretary. And I believe she  
11      had notified me that there was a complaint  
12      raised with her by ESD about Lindsey  
13      Boylan taking personnel action against an  
14      employee who happened to be a black woman,  
15      I think, and without consulting with HR or  
16      Counsel. And separately there were  
17      complaints filed or communicated in some  
18      way by two other employees alleging some  
19      type of harassment.

20                   So she informed me of that. And  
21      I think I said something to the effect of,  
22      "They should go through their process and  
23      do their relevant investigation and  
24      review." And they did. And then it was  
25      memorialized in a series of memos and

1                   A. DAVID

2       Camille Varlack then provided me with  
3       those memos.

4           Q.       Okay. So was -- why was there a  
5       series of memos, do you remember?

6           A.       I don't. I know there were a  
7       number of different issues. There was an  
8       issue of an employee -- a personnel action  
9       being taken without any consultation with  
10      Human Resources or the Counsel's Office at  
11      ESD. And I know that there was an issue  
12      regarding agency policy on travel or  
13      reimbursement or something to that effect.

14          Q.       And other than Camille Varlack,  
15      was anyone else coming to you and telling  
16      you about issues they had with Lindsey  
17      Boylan?

18          A.       No.

19          Q.       So, then, what happened after  
20      those series of memos were done?

21          A.       At some point there were also  
22      concerns raised within the chamber by  
23      staff members who had raised concerns  
24      about Lindsey Boylan. I believe that  
25      happened either at or about the same time

1 A. DAVID

2 Camille Varlack was going through her  
3 review with the agency and that was also  
4 raised with me.

5 Q. And you said they were "at or  
6 around the same time." Did the two have  
7 anything to do with each other, like,  
8 timing of Camille Varlack's issue and the  
9 other issues coming up?

10 A. I don't remember because I  
11 wasn't actually involved in the -- that  
12 level of sequencing. Camille Varlack, at  
13 that time, reported to a State Director so  
14 it could be that the State Director was  
15 informed and aware that there was a review  
16 going on and, as a result, the other  
17 chamber issues were raised. But I'm  
18 speculating. I don't know.

19 Q. So then what happened then? The  
20 series of memos and then what do you  
21 remember next?

22 A. A series of memos were created.  
23 I then informed Camille Varlack after she  
24 provided those memos that Ms. Boylan  
25 needed to have an opportunity to respond

1                   A. DAVID

2           and so we needed to schedule a meeting.  
3           They did. At the meeting were Camille  
4           Varlack, Julia Kupiec, who's the Chief  
5           Ethics Officer, myself and Ms. Boylan.

6           Q.        What happened at this meeting?

7           A.        At that meeting I went through,  
8           along with -- I can't remember who spoke,  
9           but we went through collectively all of  
10          the facts and asked on each issue what her  
11          response was. And I think those responses  
12          are memorialized in the memo where she  
13          acknowledged to a large degree many of the  
14          allegations.

15                    At some point in the meeting she  
16          indicated that she wanted to consult with  
17          her lawyer, which we said great, that's  
18          fine. And then she changed her mind in  
19          the meeting and said, "I'm just" -- "I'm  
20          going to resign." And I think we said,  
21          "Okay. Well, let's be" -- "make sure  
22          we're clear. You're not being asked to  
23          resign. We are just asking you for  
24          responses on these allegations."

25                    She said, "Well, I want to



1                   A. DAVID  
2     resign anyway." And she then left my  
3     office. I don't remember seeing her after  
4     that.

5                   I believe either on that day or  
6     the next day, she'd sent an e-mail to the  
7     entire chamber indicating that she was  
8     going to be leaving, that she had a good  
9     experience, but it was -- it was time for  
10    her to depart, and that was the end of  
11    that -- that meeting.

12                  Q.     Then what was your next  
13    interaction with Lindsey Boylan, that you  
14    remember?

15                  A.     So that meeting took place  
16    during the week, I don't remember which  
17    day, may have been a Wednesday or  
18    Thursday. That following Sunday -- I  
19    remember it was a Sunday because I was at  
20    home in New York City and I received a  
21    call from Lindsey.

22                   I responded to the call and we  
23    had a conversation where she acknowledged,  
24    again, much of what she had acknowledged  
25    in the meeting and she said a few other

1                   A. DAVID

2       things, which I think is memorialized in  
3       an e-mail that you should have.

4                   And then she said she changed  
5       her mind and wanted to come back to the  
6       chamber. And I said, "Well, that's  
7       complicated because given these  
8       allegations, there will need to be some  
9       corrective action, some action that the  
10      chamber would have to take or the agency  
11      would have to take because there are  
12      complainants with active complaints. And  
13      I don't know what the resolution of that  
14      will be, but that's going to have to be  
15      addressed."

16                  And I don't remember how the  
17      conversation ended, but I -- I do remember  
18      articulating that there would be  
19      operational, potentially legal issues that  
20      would have to be addressed with her  
21      return.

22                Q.       And what did she say?

23                A.       Don't remember. It may have  
24      been okay or it may have been I'll think  
25      about it more. I don't remember what she

1 A. DAVID

2 said.

3 Q. Okay. And then -- and then what  
4 happened next with Lindsey Boylan?

5 A. That was my last interaction  
6 with Lindsey Boylan I believe as an  
7 employee of the chamber.

8 Q. Did she ever -- did she try to  
9 reach out to the Governor after that?

10 A. I heard that she did but I have  
11 no personal knowledge of that.

12 Q. Not through you? You had -- how  
13 did you hear that she did?

14 A. I believe Stephanie Benton  
15 indicated that she had called him. But I  
16 wasn't there for the call and I don't know  
17 what was said when she called.

18 Q. You learned that while you were  
19 still there?

20 A. Yes.

21 Q. I see. And then did you  
22 instruct -- give any instructions to  
23 anyone about what to do if she calls or  
24 what the Governor should do?

25 A. I don't believe I did. If I did

1                   A. DAVID

2           anything, I think I advised that -- well,  
3           everyone should be aware that she has  
4           resigned, and, of course, whatever action  
5           the State wants to take they can, but  
6           there are operational and legal issues  
7           that you would have to manage.

8                   I don't believe I had that  
9           conversation with the Governor. I  
10          certainly did with Melissa and I may have  
11          with Stephanie.

12                   MS. CLARK: You said that the --  
13          one of the complaints about Ms. Boylan  
14          was an Assistant who was  
15          African-American.

16                   Were there any allegations that  
17          Ms. Boylan had discriminated against  
18          anyone on the basis of race?

19                   THE WITNESS: I didn't do the  
20          investigation, so it's hard for me to  
21          say that definitively. What I can say  
22          is that all three employees who filed  
23          complaints were black. I don't know,  
24          though, if there are any allegations  
25          of race discrimination associated with

1                   A. DAVID

2                   their complaints.

3                   MS. CLARK: Are you aware of any  
4                   discussion as to whether this should  
5                   be reported to GOER as a possible  
6                   issue of race discrimination?

7                   THE WITNESS: I don't think  
8                   we -- I don't think that discussion  
9                   was had because she ended up  
10                  resigning.

11                  MS. CLARK: Do you know if  
12                  anyone reported anything to GOER?

13                  THE WITNESS: I don't know.  
14                  It's possible the agency worked with  
15                  GOER. I don't know, though.

16                  Q.        The purpose of the executive  
17                  order was to refer allegations to GOER so  
18                  that it gets investigated by them as  
19                  opposed to investigated internally by each  
20                  of the agencies, right?

21                  A.        Yes. The executive order --  
22                  just so we're clear, the Affirmative  
23                  Action Officers were still in the  
24                  agencies, but they reported to GOER. But  
25                  they didn't leave the agencies -- they

1                   A. DAVID

2       were not physically at GOER, they were  
3       still physically in the agencies.

4                   So the agencies were still  
5       conducting the investigations but under  
6       the authority and supervision of GOER.  
7       And after the executive order was issued,  
8       there was a time frame from the executive  
9       order being issued before it was actually  
10      implemented.

11                  So I don't know where the  
12      investigation fell. It may have fell in  
13      between the executive order being issued  
14      before it was being fully implemented.

15                 Q.       But Ms. Varlack is -- was not --  
16      was not reporting to GOER, right? She  
17      reported to you?

18                 A.       No, she did not report to me.  
19      She reported to the Director of State  
20      Operations.

21                 Q.       Was she the Affirmative Action  
22      Officer or --

23                 A.       I -- I don't think so. It's  
24      possible, but I don't think she was.  
25      And -- and this complaint was complicated

1                   A. DAVID

2       because Ms. Boylan was an employee of ESD  
3       and then became, I believe, an employee of  
4       the chamber but still physically in ESD's  
5       offices and she may have filled in on an  
6       ESD line. So I think that's why it  
7       implicated the agency and the chamber at  
8       the same time.

9           Q.       Can you open up your binder and  
10       look at Tab 9?

11          A.       Sure.

12          Q.       Tab 9, so you know how -- I  
13       believe is the full set of the production  
14       that your lawyer made to us in the order  
15       that it was made.

16          A.       Okay.

17          Q.       So if you look at first page --

18          A.       Mm-hmm.

19          Q.       -- it's an e-mail from you to  
20       Ricard Azzopardi, subject: "Documents."  
21       "Purpose: Confidential to any client  
22       communication. Per request. These are  
23       the only relevant documents I have, which  
24       should be appear in the official counsel  
25       file."

1 A. DAVID

2 Do you see that?

3 A. Yes.

4 Q. So that's an e-mail from you to  
5 Richard Azzopardi. Is this -- could you  
6 tell what e-mail this is from?

7 Sorry. This is your Hot mail  
8 account?

9 A. Yes.

10 Q. And it's Richard Azzopardi's --  
11 do you know what account it is?

12 A. I believe it is his executive  
13 e-mail.

14 Q. Okay.

15 A. Yes, it is his executive,  
16 e-mail.

17 Q. You sent that to the executive  
18 chamber, you mean?

19 A. Correct.

20 Q. And so there is attachments --  
21 clearly attachments to this document.  
22 Just so we understand, the attachments to  
23 this documents, so they go to page 37 -- 2  
24 through 37. Because 38 is from  
25 December 16 and there's an e-mail that



1                   A. DAVID

2   you're on --

3           A.     Yeah.

4           Q.     -- you sent. I just want to  
5   make sure we understand. What's the  
6   attachment to the --

7           A.     To the e-mail, yes. The e-mail  
8   is everything up to AD sub 000377.

9           Q.     What -- what is this? What's --  
10   what's, you know, AD, sub, 2 through 37?  
11   What's the attachment?

12          A.     So the attachment, starting with  
13   sub 2 going to sub 4 is an e-mail it  
14   appears --

15          Q.     Before we go into the specific  
16   documents --

17          A.     So --

18          Q.     -- like, this whole set, like,  
19   what -- you -- let's back up.

20                    What led you to send this e-mail  
21   with the attachment? What happened?

22          A.     Oh. Rich Azzopardi had  
23   contacted me asking for -- he remembered  
24   or recalled that there was some meeting or  
25   counseling of Lindsey Boylan and wanted to

1

A. DAVID

2

know where the materials were. They were

3

either having difficulty finding them,

4

and I said, "They are" -- "should be in

5

the Counsel's Office file. You should be

6

able to find them. This is where I left

7

them."

8

And I said -- and he said, "Do

9

you have any" -- "any copies of it or do

10

you remember what's in it?" And I said,

11

"I can tell you this is the only relevant

12

documents I have, which would be in the

13

possession of the State, and here they are

14

and you should be able to find them."

15

And I believe they subsequently

16

found them either right after I sent them

17

or soon thereafter.

18

Q. This is the file that you had

19

made copies of and -- and taken with you

20

when you left?

21

A. Correct.

22

Q. And where had you kept them?

23

Just in hard copy or --

24

A. Yes.

25

Q. -- at your -- in your -- in your

1 A. DAVID

2 home or --

3 A. Oh, on -- on my hard drive,  
4 sorry.

5 Q. I see.

6 A. It's a drive -- it's a PDF.

7 Q. I see. So you had -- you had  
8 made one PDF of all of these --

9 A. Yes.

10 Q. -- before you left?

11 Is that -- and then you put it  
12 on a thumb drive or you just had it on  
13 your --

14 A. Well, on my hard drive. There  
15 may be -- I don't know that it's one PDF.  
16 It may be two or three PDFs.

17 Q. But you made PD -- either one  
18 PDF or multiple PDFs when you were still  
19 at the executive chamber and you copied it  
20 and took it with you.

21 How did you do that? Like, with  
22 a thumb drive or did you e-mail it to  
23 yourself or --

24 A. I may have e-mailed it to  
25 myself. I can't recall how I actually

1                   A. DAVID

2 transferred it, but it was electronic. It  
3 wasn't in paper form.

4           Q.       And then you had it in your  
5 personal lap -- is it a laptop or desktop?

6           A.       A laptop.

7           Q.       Okay. By the way, have you  
8 searched your laptop for anything else  
9 that might be responsive?

10          A.       Yes.

11          Q.       Data?

12          A.       Yes.

13          Q.       Okay. So you -- Richard  
14 Azzopardi called you and said -- asked you  
15 about this file. You said, "I have a  
16 copy. I'll send it to you, but there  
17 should be also a set there"?

18          A.       Yes. The original files should  
19 be in the possession of the chamber.

20          Q.       Did he tell you why -- why he  
21 was asking?

22          A.       I think -- I think this is at or  
23 about the time Lindsey Boylan publicly  
24 said that she was the victim of  
25 harassment, and I believe they wanted to

1 A. DAVID

2 see the full file of her tenure with  
3 the -- the chamber.

4 Q. And did you -- how did you learn  
5 about Lindsey Boylan's allegations about  
6 the chamber with the Governor?

7 A. I believe I was either contacted  
8 by Melissa DeRosa or Rich Azzopardi or  
9 both.

10 Q. And how long before this  
11 December 11th did you send it or were you  
12 contacted?

13 A. I may have been contacted that  
14 day.

15 Q. Mm-hmm. And you don't remember  
16 whether it was Melissa DeRosa or Azzopardi  
17 or both?

18 A. It may have been both. I don't  
19 remember. It may have been -- the call  
20 from her but he was on the line; the call  
21 from him but she was on the line.

22 Q. Okay. And what did they say?  
23 So they were together to your  
24 recollection?

25 A. I can't remember. I want to

1                   A. DAVID  
2     make sure I'm being as accurate as  
3     possible. I don't remember. It was,  
4     "Have you seen the allegations?"

5                   And I -- I think at the time I  
6     said, "I don't know what you're talking  
7     about." "Well, she's alleged harassment."  
8     Which is a surprise or a shock or shock --  
9     was a shock to a lot of people, and they  
10    had asked for the file, to see if they  
11    could locate the file.

12                  Q.     So then you looked. And then  
13    what? Did you tell them right then and  
14    there that I have the file or you  
15    should --

16                  A.     I told them where to look. I  
17    said, "It should be in Counsel's Office.  
18    It was left there." They were making  
19    phone calls to people to find out where it  
20    could be or where it was.

21                  Q.     Okay. So then you -- but then  
22    at some point you -- did they follow-up  
23    with you to ask for your copy?

24                  A.     They followed up with me to ask  
25    me -- because I think they were still

1                   A. DAVID  
2     searching for it -- asked me "do you have  
3     any copies of it" or "do you remember  
4     where it could be?" And I said, "Well, I  
5     have a copy of it and I can send it to you  
6     because they're official documents, should  
7     be in the possession of the State."

8           Q.     Did you explain to them why you  
9     still had a copy?

10          A.     No.

11          Q.     Did they ask?

12          A.     I don't think so.

13          Q.     Okay. So you sent this to them?

14          A.     Mm-hmm.

15          Q.     Okay. So why don't -- let's go  
16     through this. It's actually not in  
17     chronological order as far as we could  
18     tell. So I think the first e-mail -- is  
19     this the way in which it was kept this  
20     order that you kept your file or could it  
21     have gotten mixed up in the sending or --

22          A.     It's possible it could have  
23     gotten mixed up. I think we can go by the  
24     chronological date.

25          Q.     Okay. So if you go

1                   A. DAVID  
2       chronologically, I believe the first  
3       document is a set of documents, starts  
4       September 3rd, and it starts on page 14,  
5       the Bates Number 14.

6           A.       Okay.

7                   VIDEOGRAPHER:   Excuse me,  
8       Counselor.   Sorry to interrupt, sir,  
9       but I need to switch out the media  
10      unit.

11                  MR. KIM:    Okay.

12                  VIDEOGRAPHER:   Can I do that?  
13      It will just take 30 seconds.

14                  MR. KIM:    Yeah.   Should we --  
15      should we take a quick break?

16                  THE WITNESS:    Could we take just  
17      two minutes for comfort?

18                  MR. KIM:    Yeah.   That's fine.  
19      Why don't we say 8:00?

20                  VIDEOGRAPHER:   This is the end  
21      of Media Unit Number 3.   We are now  
22      off the record at 7:55 p.m.

23                               [Discussion held off the  
24      record.]

25                  VIDEOGRAPHER:   This is the



1                   A. DAVID

2                   beginning of Media Unit Number 4. We  
3                   are now on the record at 8:04 p.m.

4 BY MR. KIM:

5                   Q.        So, Mr. David, if you can turn  
6                   to page 14 through 20 of Tab 9, so the  
7                   Bates Number 14 through 20, those all  
8                   appear to be e-mails from September 3rd,  
9                   which is the first -- chronologically the  
10                  first documents that are in this group.

11                  A.        Yes.

12                  Q.        And if you look through them,  
13                  they appear to be some e-mail exchanges  
14                  involving Lindsey Boylan, Senior Staffer #2  
15                  ██████████, ██████████ ██████████ and others about  
16                  sort of delay or who -- who was at fault  
17                  for not getting back in time and/or  
18                  whether someone is keeping track of  
19                  people's whereabouts.

20                                What -- what do you remember  
21                                about these exchanges and how -- how you  
22                                got them and how they ended up -- because  
23                                it predates the -- the interviews that you  
24                                were -- that you do, and that Ms. Varlack  
25                                does.

1                   A. DAVID

2                   So how did you get these?

3                   And some of them you're not on.  
4 You'll see that -- like, Tab 20, you're  
5 not on the e-mail. Some we can see how  
6 you get forwarded -- actually none of  
7 them -- some of these copy you. So  
8 somehow you got them.

9                   A. Yeah. All of these documents  
10 from 14 to 20 were provided to me by  
11 Camille Varlack during the course of her  
12 review -- let me restate -- during the  
13 course of ESD's review, which were then  
14 subsequently provided to her. She  
15 provided me a copy and a package of all  
16 matters that are referenced in the  
17 Counseling e-mail. So I received one  
18 package at the same time. These e-mails  
19 were not forwarded to me. I did not  
20 review them outside of the package  
21 provided to me with respect to Ms. Boylan.

22                  Q. So Camille Varlack had gathered  
23 documents as she did her investigation and  
24 at some point handed you everything she  
25 had gathered --

1 A. DAVID

2 A. Correct.

3 Q. -- and this was part of it?

4 A. Correct.

5 Q. What do you remember about this  
6 part, these allegations about the --  
7 whether they were, you know, responsive,  
8 whether she was -- she was the one at  
9 fault for not getting back quickly or soon  
10 enough on issues and there being --  
11 turning something around over the weekend.

12 Is this -- what do you remember  
13 about this subject?

14 A. I -- I don't have any personal  
15 knowledge about the issues outlined in 14  
16 going to 20 nor did I interview these  
17 individuals with respect to what's  
18 memorialized in these e-mails. Rather,  
19 Camille Varlack, I believe, she either had  
20 conversations with them or compiled these  
21 documents either in consultation with  
22 other people or directly.

23 And these documents, 14 to 20,  
24 along with some other documents that are  
25 in here, 21 being one of them, 21 to 23,

1                   A. DAVID  
2 relate to concerns that had been raised by  
3 three people in the chamber. I believe  
4 Senior Staffer #3 ██████ was one of them, Senior Staffer #2  
5 ██████ may have been second, and certainly  
6 ██████ ██████ was the third, raising  
7 concerns about Boylan's behavior in the  
8 chamber.

9           Q.       Did you talk to any of those  
10 individuals yourself about Lindsey Boylan?

11          A.       I'm certain I did at some point.  
12 Whether it was before the actual  
13 counseling, I can't say. I do recall  
14 having a conversation with ██████ ██████  
15 at some point.

16          Q.       What did ██████ ██████ say?

17          A.       She was really concerned about  
18 the way that Lindsey was treating people  
19 and specifically members of her team.

20          Q.       And what was her team? What was  
21 she -- what was her role at that time?

22          A.       She was, I believe, Director of  
23 State Operations at the time. So Lindsey  
24 Boylan reported to her directly as Deputy  
25 Secretary.

1 A. DAVID

2 Q. Mm-hmm. So if you go to -- the  
3 next e-mail chain is Document 3 -- oh,  
4 actually, no. There are e-mail chains  
5 that ultimately get forwarded to you  
6 that -- from [REDACTED] [REDACTED] on September  
7 24th. These are documents that were sent  
8 to you, not -- not Camille Varlack.

9 Do you remember people sending  
10 you documents?

11 A. This is the only one that I --  
12 are you talking about document 21 to 23?

13 Q. Yeah, I'm talking -- no,  
14 actually 1 through 3 -- 1 through 4.

15 A. You mean 2 through 4?

16 Q. Yeah. 2 through 4.

17 A. With respect to 2 through 4 --

18 Q. I believe the exchange is about  
19 Lindsey Boylan [REDACTED] [REDACTED] [REDACTED] [REDACTED]

20 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

21 A. Yeah. So I believe in reference  
22 to 21 to 23 was forwarded to me on  
23 September 20th, where [REDACTED] [REDACTED] had  
24 raised concerns about how Boylan --  
25 Lindsey Boylan was treating people. And a

1 A. DAVID

2 few days later, she sends this e-mail, it  
3 says, [REDACTED] [REDACTED] [REDACTED] I believe  
4 that is in reference to 20 to --  
5 through 23.

6 Q. Okay. So, now, let's go 21 --  
7 page 21.

8 A. Okay.

9 Q. It's where you referenced the --  
10 the e-mail chain that Melissa DeRosa  
11 receives. [REDACTED] [REDACTED] sends to Linda  
12 Lacewell, Melissa DeRosa and Jill, and  
13 then you -- she forwards it on to you and  
14 others.

15 A. Mm-hmm.

16 Q. And she says, "Alphonso, please  
17 create a file for Lindsey. Please put  
18 this in it."

19 What did you understand her to  
20 mean to "create a file for Lindsey"?

21 A. Well, this was in reference to  
22 investigations or issues that arise in the  
23 chamber or problems, I suspect.

24 But if you see my response?

25 Q. Right.

1 A. DAVID

2 A. I indicated to her that this  
3 would have to be appropriately processed.

4 Q. "We manage all allegation claims  
5 using the same process and applying the  
6 same standard" is your response, correct?

7 A. Yeah.

8 Q. Did you have some concerns that  
9 this was creating -- it was not following  
10 the normal process or applying the same  
11 standard?

12 A. I did. I did because I didn't  
13 want people to feel that they could either  
14 circumvent the process or direct that the  
15 process be changed for a certain person,  
16 which is why I wanted to make sure that I  
17 was clear to everyone on that e-mail, that  
18 this was independently forwarded to  
19 Counsel's Office. It should have gone  
20 through the appropriate HR process.

21 But given that it was  
22 independently forwarded to the Counsel's  
23 Office, we would have to then coordinate  
24 with the HR office or whoever was doing  
25 the review.

1 A. DAVID

2 Q. At this point, when Melissa  
3 DeRosa had forwarded this to you had you  
4 had any conversations with anyone about  
5 Lindsey Boylan other than Camille Varlack?  
6 Because you see early in September, you  
7 saw those e-mails, the Senior Staffer #3 [REDACTED] and  
8 others complaining about her.

9 You were not on those e-mails?

10 A. No.

11 Q. And then September 20, you get  
12 this e-mail from Melissa DeRosa about  
13 creating a file. Were you aware that  
14 there were already some complaints about  
15 her among others in the chamber?

16 A. No. Not complaints. I wasn't  
17 aware of any complaints that have been  
18 filed or raised about Lindsey.

19 Q. So you just -- when you had seen  
20 this e-mail, you had a process concern,  
21 that it was -- you wanted the same  
22 process, the same standard to be applied,  
23 or you wanted to create a record of that?

24 A. Yes. And -- and I wasn't sure  
25 whether the information that Camille



1 A. DAVID

2 Varlack was compiling and the process she  
3 was going through had been communicated to  
4 [REDACTED] [REDACTED] or not because [REDACTED] [REDACTED]  
5 was Camille Varlack's supervisor. So I  
6 didn't know what people knew at that point  
7 in time, and I wanted to make sure that  
8 the process was adhered to.

9 Q. And because it seemed like, as  
10 we read the document, there's a set of  
11 issues coming up about the treatment of  
12 her Executive Assistant and her -- and  
13 then there's stuff coming up on Senior Staffer #3  
14 [REDACTED] I mean, the timing seems -- that's  
15 partly what I was going to -- I'm asking  
16 you what you recall about -- are they all  
17 evolving up at the same time out of  
18 coincidence or does one come up and then  
19 everyone else says, "Oh, by the way, this  
20 stuff happened too" or, you know, are  
21 people --

22 A. It could be. It's hard for me  
23 to speculate on who knew what at that  
24 time. My interactions were really with  
25 Camille Varlack, so what other people

1                   A.     DAVID

2     knew, it's hard for me to speculate on.  
3     But I was concerned about people going to  
4     multiple people with different issues  
5     without going through a process.

6           Q.     And so the first memo that gets  
7     created is page 8 and 9 dated September  
8     20?

9           A.     Okay.

10          Q.     Same date that -- that you got  
11     the e-mail from Melissa saying create a --  
12     can you create a file --

13          A.     Mm-hmm.

14          Q.     -- you already have -- you're  
15     getting a memo from Varlack on that same  
16     day?

17          A.     Yes.

18          Q.     And then there's another memo  
19     that get's written on the 21st, which is  
20     page 10 from Camille Varlack again to you?

21          A.     Mm-hmm.

22          Q.     Do you remember what the  
23     reasoning was in how it is -- and then  
24     there's another memo that gets back on  
25     December 24th, which starts on page 5.

1                   A. DAVID

2                   Like, what's the reasons are in  
3 the sequencing as to why it keeps -- these  
4 multiple memos keep getting generated?

5           A.       I think there were multiple  
6 issues they were revealing. And I think I  
7 had said to Camille Varlack as she  
8 reported back what ESD was finding that  
9 they had to memorialize their findings so  
10 that we were very clear about whatever the  
11 findings were and could take appropriate  
12 action.

13                   So it could be that they -- as  
14 they completed their reviews on each  
15 matter, they memorialized it.

16           Q.       Was there -- was there some  
17 effort or discussion about going out and  
18 finding other things or making sure  
19 there's -- you're looking for other  
20 things? Because what you see in the memo,  
21 it starts off with the Executive  
22 Assistant, then you see things related to  
23 Senior Staffer #3 ██████████, then you see things related  
24 to time sheets, travel expenses, mandatory  
25 training. There seems to be a growing

1                   A. DAVID

2 list of issues that I can identify.

3                   What's your recollection of how  
4 and why it played out that way?

5           A.       I don't know what informed --  
6 which issue informed the other. My  
7 recollection is that it came to my  
8 attention regarding the personnel action  
9 that was taken based on ESD's  
10 representation by Lindsey Boylan on --  
11 without any HR or Legal Counsel  
12 engagement. That I believe is what came  
13 to my attention.

14                   And then these other issues were  
15 generated or raised -- I don't know the  
16 connection between them. I didn't do the  
17 investigation on --

18           Q.       You don't know who raised it or  
19 if the people were --

20           A.       No.

21           Q.       -- Melissa DeRosa or others  
22 were --

23           A.       I don't know.

24           Q.       -- acting or influencing the  
25 scope of the investigation or anything

1                   A.     DAVID

2     like that?

3             A.     No.

4             Q.     Okay.    So Camille Varlack is the  
5     one that does the first two memos, but  
6     then Julie Kupiec gets involved at some  
7     point.    If you look at page 24, there's  
8     yet another memo and this one relates to  
9     the employment counseling memo.

10            A.     Yeah.

11            Q.     How did she get involved and  
12     when did she get involved and why?

13            A.     So this employee memo you  
14     should -- you should consider as the  
15     actual overarching document and everything  
16     else is considered an attachment to it.

17                    Julia Kupiec became involved  
18     because this was, I believe, the first  
19     instance that I recall, certainly as me,  
20     as Counsel, where someone was being  
21     counseled in the chamber, or I believe  
22     Lindsey was a Deputy Secretary so  
23     technically she was in the chamber even  
24     though she was on an agency line.    And so  
25     the Chief Ethics Officer needed to be in

1                   A. DAVID

2       that conversation because there were  
3       arguments that there were violations of  
4       agency policy. And Camille Varlack  
5       obviously had to be in that conversation  
6       because she was the one overseeing the  
7       review.

8           Q.       Was it your decision to group in  
9       Julia Kupiec?

10          A.       Yes. I'm pretty sure.

11          Q.       And then Tab 27, although  
12       it's -- the font is weird --

13          A.       Mm-hmm.

14          Q.       Do you know why 28 through 30  
15       look the way they do? I think we have --  
16       we have copies of this in another form,  
17       but as an e-mail, how did this get  
18       generated and why does it look the way it  
19       does?

20          A.       I believe that when you open up  
21       the PDF, that's how it opens up. It could  
22       just be a programming issue. I don't --

23          Q.       This looks to be a summary of a  
24       call that you had with Lindsey Boylan on  
25       September 30th?

1 A. DAVID

2 A. Yes.

3 Q. Were you taking notes at the  
4 time when she called or did you write this  
5 right after she called or --

6 A. It was likely at the same time  
7 that the call was in -- that I was having  
8 the call.

9 Q. And then 31 is -- page 31 is a  
10 summary of a conversation with the  
11 Executive Assistant?

12 A. Yes.

13 Q. Can you explain that?

14 A. No. This is -- this is a  
15 meeting between an ESD employee [REDACTED]  
16 [REDACTED] and [REDACTED] [REDACTED] Those are the  
17 only two people in that meeting.

18 Q. So you said this is sort of the  
19 first incident like this where you counsel  
20 an executive chamber employee and --

21 A. As it relates to complaints  
22 filed against them, yes.

23 Q. How about the other individual's  
24 name I don't recall now, where you said  
25 you kept the file?

1 A. DAVID

2 A. Oh, [REDACTED] [REDACTED]. No there  
3 wasn't any counseling of that employee.  
4 There was just a claim made for higher  
5 salary.

6 Q. Other than that, are there  
7 similar documents that you kept, like,  
8 e-mails and memos of this type or no?

9 A. No. There is a letter and then  
10 a response. There's two documents.

11 Q. So any other incidents -- any  
12 other incidents like this where, you know,  
13 you conducted, you or Camille Varlack  
14 conducted an investigation, inquiry,  
15 created a memo like this, created a file  
16 that you remember?

17 A. No. Again, this is why this is  
18 so incredibly unique where you actually  
19 had complaints filed and there was a  
20 review by an agency but it implicated the  
21 chamber because the person worked in the  
22 chamber. In most cases, I would never be  
23 involved because it would be an agency  
24 matter, GOER would review it, they would  
25 make a determination. It became an issue



1                   A. DAVID

2       I had to deal with because of the unique  
3       nature of her position at time.

4           Q.       Okay. So after you send this  
5       file over to Richard Azzopardi on  
6       December 11th, what do you -- what do you  
7       remember happening next on the Lindsey  
8       Boylan issue?

9           A.       I believe I read in the paper  
10      that the chamber had issued a response, I  
11      believe. And they had referenced some of  
12      the information that's contained in these  
13      memos, that is the next thing I remember.  
14      And then after that, I was contacted and  
15      asked whether or not I would be willing to  
16      make a public statement. I think I and  
17      others were asked the same thing.

18          Q.       Who asked you that?

19          A.       Melissa DeRosa I believe.

20          Q.       And what did you say?

21          A.       I initially said no because I  
22      was involved in a counseling of an  
23      employee and I felt that it was not  
24      necessarily appropriate for me to start  
25      opining on the details of that counseling.

1                   A. DAVID

2       They then said, "Well, would you be  
3       comfortable just indicating or speaking  
4       publicly about your personal experience  
5       and what was and was not reported to you?"

6                   I said, "Well, if that's the  
7       case, then sure." But I wasn't really  
8       comfortable talking about the counseling  
9       and the complaints and anything else.

10           Q.       And then what happened?

11           A.       I believe I, per request,  
12       drafted a short note that indicated what I  
13       was willing to say, and in that note it  
14       also included what [REDACTED] [REDACTED] would be  
15       willing to say. But she needed  
16       confirmation and approval from her  
17       employer.

18           Q.       Mm-hmm. And then what happened  
19       after that?

20           A.       It was either at or about the  
21       same time, there was an e-mail that was  
22       sent by Melissa DeRosa asking for senior  
23       staffers, former and current senior  
24       staffers to sign -- or whether or not  
25       they'd be willing to sign a letter, that's

1                   A. DAVID

2       somewhere in this production -- sign a  
3       letter regarding Lindsey Boylan, generally  
4       speaking.

5           Q.       And what did you -- what did you  
6       think of that?

7           A.       I thought that the letter was a  
8       bad idea. I -- I thought it was very  
9       detailed, and provided information and  
10      facts that were difficult for people to  
11      attest to because they had no personal  
12      knowledge. And I thought that it focused  
13      too much on Ms. Boylan and not enough on  
14      the experiences of other people.

15          Q.       Did you tell Melissa DeRosa  
16      that?

17          A.       Yes.

18          Q.       And what did she say?

19          A.       I think she acknowledged it and  
20      asked whether I thought there was anyone  
21      in the chamber or anyone I worked with who  
22      I thought would be willing to sign the  
23      letter. And I said, "I know people I  
24      worked with who had great experiences. I  
25      don't know whether or not they'd be

1                   A. DAVID  
2 willing to sign the letter."

3                   She asked me whether or not I  
4 could ask them. I said, "Sure. I'm happy  
5 to call a few people I know and see if  
6 they're willing, but I'm not signing the  
7 letter."

8                   Q.       Were you afraid -- were you  
9 concerned at all that a letter like that  
10 would be -- would constitute retaliation?

11                  A.       I don't think I thought about it  
12 through that lens because Lindsey was no  
13 longer with the chamber or the State, so I  
14 wasn't thinking about it through a  
15 retaliatory lens or from a legal  
16 perspective really. I was thinking  
17 that -- I was concerned that there were  
18 comments or references in the letter that  
19 I had no personal knowledge about and I  
20 don't think anybody else did either, and I  
21 thought it would make it difficult for  
22 them to attest to those claims.

23                  Q.       When we were going through the  
24 sexual harassment policy earlier, do you  
25 recall we -- the policy provided that

1 A. DAVID

2 actual retaliation by an employee can  
3 occur after an individual is no longer  
4 employed --

5 A. Yes.

6 Q. -- by that employer?

7 I mean, is that -- you said you  
8 weren't worried about -- you don't think  
9 you were worried about retaliation because  
10 she was no longer a State employee?

11 A. Mm-hmm.

12 Q. But you understood that  
13 retaliation can occur even after they --

14 A. Sure. Yeah.

15 Q. -- leave?

16 How come there wasn't that  
17 concern?

18 A. I wasn't thinking, again, about  
19 the letter from a legal perspective. I  
20 hadn't gotten there. I was really  
21 thinking about whether or not it made  
22 sense to do the letter in the first place.

23 I wasn't reviewing the letter as  
24 a lawyer. I wasn't employed by the  
25 chamber anymore and I wasn't being asked

1                   A. DAVID

2       to review it as the Counsel. I just  
3       looked at it and I was being asked to sign  
4       it as a former employee and I didn't think  
5       it made sense.

6           Q.       By the way, since leaving the  
7       executive chamber have you been -- done  
8       any work as a lawyer for the executive  
9       chamber?

10          A.       I have been asked to provide --  
11       I've been consulted on transition-related  
12       activities, if you will, on, you know,  
13       NYCHA and Housing because I worked on  
14       legislation or on clemency because I was  
15       responsible for clemencies or on pick a  
16       subject matter. After I left, there were  
17       questions about, "four years ago, we  
18       worked on X, Y, Z legislation. Do you  
19       remember whether" -- "what the legislation  
20       was supposed to do or do you remember how  
21       it was implemented or do you remember who  
22       was responsible for it." So there was  
23       some outreach after I left for purposes  
24       of, you know, ensuring that there was  
25       appropriate transition.

1                   A. DAVID

2           Q.       But for purposes of this Lindsey  
3 Boylan response, that was not your  
4 providing legal advice on these issues?

5           A.       I don't believe so. The Lindsey  
6 Boylan issue, that's somewhat complicated  
7 because I was a lawyer with the chamber  
8 when she resigned and was a part of the  
9 counseling associated with that  
10 resignation. So I assume there could be  
11 an argument made that I was still being  
12 consulted as it relates to her because of  
13 my involvement with her.

14                   But as it relates to this  
15 letter, I -- I don't believe I was being  
16 asked to sign this letter as a lawyer. I  
17 was being asked to sign this letter as a  
18 former employee.

19           Q.       How about as to any other -- any  
20 of the other allegations of sexual  
21 harassment that have been raised against  
22 the Governor. Have you been providing  
23 legal advice on those issues to the  
24 executive chamber?

25                   MR. AYDINER: Well, just by

1                   A. DAVID

2           counsel, at the directive of the  
3           executive chamber through Mr. Fishman,  
4           the executive chamber wishes to invoke  
5           privilege with respect to  
6           post-employment communications between  
7           Mr. David and members of the  
8           privilege -- members of the chamber  
9           concerning other complainants as  
10          discussed briefly between you and I  
11          yesterday, Mr. Kim.

12                   MR. KIM: But I want to know if  
13           it precludes Mr. David from answering  
14           the question whether he --

15                   MR. AYDINER: No, no, no.

16                   MR. KIM: I'm not asking the  
17           substance.

18                   MR. AYDINER: Fair enough.

19           Q.       So I'm asking have you been --  
20           have you provided, in your mind, legal  
21           advice to the executive chamber about  
22           sexual harassment allegations brought  
23           against the government?

24           A.       I was consulted, I believe,  
25           once, maybe twice on a confidential basis,



1                   A. DAVID

2       which the chamber has concluded is  
3       privileged so I have been directed not to  
4       respond given that they own the privilege.

5           Q.       I understand that.

6                   The question is: Do you believe  
7       you provided legal advice on questions of  
8       sexual harassment allegations against the  
9       Governor since you've left the executive  
10      chamber?

11           A.       That question is very broad. I  
12      can say that I was consulted on a  
13      confidential basis with respect to  
14      process. And I'm not sure I can say much  
15      further, much more than that.

16           Q.       Okay. So let me just ask one  
17      more time because that's not really an  
18      answer, which is do you believe you  
19      provided legal advice to the executive  
20      chamber or anyone in the executive chamber  
21      since your departure on allegations of  
22      sexual harassment against the Governor?

23                   MR. AYDINER: Well, it's already  
24      been asked and answered. It's not  
25      exactly what you want.

1                   A. DAVID

2                   But do the best you can,  
3                   Alphonso.

4                   A.        Again, I'm trying very carefully  
5                   not to compromise my law license, which I  
6                   won't compromise for anyone.

7                   So I will answer the question  
8                   again. I was consulted on a confidential  
9                   basis by the executive chamber where I  
10                  responded to issues of process. I -- I  
11                  don't believe that I can answer further.

12                  Q.        Have you ever been retained by  
13                  anyone in the executive chamber as a  
14                  lawyer since your departure?

15                  A.        No.

16                  Q.        Have you entered into any  
17                  engagement letters with anyone in the  
18                  executive chamber?

19                  A.        No.

20                  MR. AYDINER: Just note my  
21                  objection to the question.

22                  MS. CLARK: And, Joon, if I can  
23                  just jump in. The confidential  
24                  conversations that you had, when did  
25                  they take place?

1 A. DAVID

2 THE WITNESS: In two -- in 2020  
3 and 2021.

4 MS. CLARK: Can you be more  
5 specific? When in 2020 and when 2021?

6 THE WITNESS: I can't. I don't  
7 have a specific month or day.

8 MS. CLARK: Well, 2020, was it  
9 close in time to when everything was  
10 going on with Lindsey Boylan in the  
11 press or was it an earlier point in  
12 the year?

13 THE WITNESS: Maybe a little  
14 earlier in the year, but I don't know  
15 the month.

16 And 2021 was likely in the  
17 beginning of the year.

18 MS. CLARK: And with whom in the  
19 executive chamber did you have the  
20 communication?

21 THE WITNESS: Judy Mogul.

22 MS. CLARK: Joon, I will stop  
23 interrupting.

24 MR. KIM: That was great.

25 Q. Anyone else?

1                   A.     DAVID

2           A.     Maybe Linda Lacewell.    But those  
3 would be the only two.

4           Q.     On the same subject?

5           A.     On the same subject?

6                   MR. AYDINER:   Alphonso, you can  
7 give the subject without the  
8 substantive communication.   I want to  
9 give Mr. Kim an opportunity to create  
10 a proper record to the extent that  
11 there is going to be a motion  
12 subsequent to this.

13                   THE WITNESS:   Yes.

14                   MR. AYDINER:   So what's good for  
15 the goose is good for the gander since  
16 we're in the middle here.

17                   THE WITNESS:   Got you.

18                   MR. AYDINER:   Just in a -- just  
19 in a conclusory way to subject matter.

20                   THE WITNESS:   On -- on the same  
21 subject.

22           Q.     And what was the subject?

23           A.     I think the subject was process  
24 or taking steps on responding to a  
25 complaint or an allegation -- a complaint

1                   A. DAVID

2       or an allegation. I don't know which it  
3       was.

4           Q.       Any other subjects on which --

5                   MR. KIM:   Maybe this is a  
6       question for Si.

7                   Any other subjects on which you  
8       will be directing Mr. David not to  
9       answer questions on the basis of  
10      privilege?

11                  MR. AYDINER:   Just to finish  
12      that loop, but, you know, the  
13      instruction's contingent on  
14      conversations with members of the  
15      executive chamber. Just what I went  
16      through with you yesterday, obviously.  
17      And it's not my intention to overly  
18      assert that. Just -- I'm just trying  
19      to follow my instructions from the  
20      privilege holder.

21                  MR. KIM:   Understood. But we  
22      can -- I guess I was trying to  
23      expedite it so as not just going  
24      through different topics if there are  
25      topics you know you will --

1 A. DAVID

2 MR. AYDINER: No. Just, like --  
3 just like we discussed yesterday,  
4 conversations with the -- individual  
5 conversations with Mogul, Lacewell  
6 concerning complainants. And other  
7 than that, I'm looking at my list  
8 here. I don't see much and there's  
9 certainly no privilege asserted in  
10 connection with any communication  
11 involving our document production,  
12 that's for sure.

13 MR. KIM: Okay.

14 MR. AYDINER: I don't think so,  
15 Mr. Kim.

16 MR. KIM: All right. There may  
17 be more that come up as we go through  
18 some other topics.

19 Q. On -- so on the letter for  
20 Lindsey Boylan, you -- in response to  
21 Lindsey Boylan, you did not think it was a  
22 good idea. You said you thought that it  
23 stated things that would be hard to -- you  
24 didn't have personal knowledge about and  
25 so you said you would not sign?

1 A. DAVID

2 A. Mm-hmm.

3 Q. Is that correct?

4 A. Yes.

5 Q. You said you were not thinking  
6 at the time of it as a legal matter or  
7 whether it might or might not constitute a  
8 retaliation for bringing a harassment  
9 allegation; is that fair?

10 A. Fair.

11 Q. But you offered to call other  
12 people to see if they would sign it?

13 A. Correct.

14 Q. And who did you call? Who did  
15 you offer to call first?

16 A. [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

17 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

18 those are the ones that come to mind.

19 There may be others, but those are the  
20 ones that I remember.

21 Q. [REDACTED] [REDACTED]

22 A. No. [REDACTED] [REDACTED] I was  
23 asked to call by Stephanie Benton. I  
24 don't really know [REDACTED] that well.

25 Q. Did you call her?

1 A. DAVID

2 A. I spoke to [REDACTED] after  
3 Stephanie Benton spoke to her.

4 Q. I see. So the first group  
5 was -- who asked you to call?

6 A. Melissa.

7 Q. Okay. Did anyone ask you to  
8 call [REDACTED] [REDACTED]?

9 A. Yes. I believe so, yes.

10 Q. Who asked you to call her?

11 A. It may have been Linda Lacewell.

12 Q. And did you call her?

13 A. I did.

14 Q. And what did she say?

15 A. She wasn't willing to sign the  
16 letter either.

17 Q. Why not?

18 A. She didn't have any personal  
19 knowledge.

20 Q. Did you call anyone by the name  
21 of [REDACTED] [REDACTED]?

22 A. I did, but I didn't have a  
23 chance to talk to her. She's my -- my  
24 Deputy -- she was my Deputy First  
25 Assistant.



1 A. DAVID

2 Q. Did you call Camille Varlack?

3 A. No.

4 Q. Do you know how they generated  
5 this list of people to call?

6 A. I don't.

7 Q. And at the time that you made  
8 these calls, did you have an understanding  
9 of what the allegations were that Lindsey  
10 Boylan had made?

11 A. Only what I had read in the --  
12 either in the paper or on social media. I  
13 can't remember if it was a blog post or if  
14 it was a social media posting or something  
15 else.

16 Q. And sitting here today, do you  
17 know what her allegations were and are?

18 A. I have a general sense of what  
19 they are. I read the media post at the  
20 time. I have not studied it, so I  
21 couldn't articulate with any level of  
22 detail what the claims are.

23 Q. And so when you say you did not  
24 want to sign because you don't know the  
25 facts or you had no personal knowledge of

1                   A. DAVID

2       the facts, is that what you are referring  
3       to?

4           A.       No. I'm referring to the facts  
5       that are outlined in the letter. The  
6       letter includes references to comments or  
7       e-mails or statements that Lindsey Boylan  
8       apparently made to others that I was not  
9       aware of and I had no personal knowledge  
10      of. I was only speaking with respect to  
11      the facts or the references in the letter.  
12      But I also have no personal knowledge of  
13      the allegations that Lindsey Boylan has  
14      made.

15          Q.       And you have no basis to know  
16      whether they're true or false?

17          A.       I don't.

18          Q.       Did you ever ask the Governor  
19      whether any of those allegations are true  
20      or false?

21          A.       No.

22          Q.       And have you spoken to Lindsey  
23      Boylan about whether they're true or  
24      false?

25          A.       No.

1 A. DAVID

2 Q. So you've mentioned you've --  
3 you've mentioned that you've spoken to  
4 Melissa DeRosa, Linda Lacewell and  
5 Stephanie Benton about getting people to  
6 sign the letter?

7 A. Yes.

8 Q. Okay. Anyone else you spoke to?

9 A. I spoke to Dani Lever because  
10 she was also asked to sign the letter and  
11 she had concerns with signing the letter.  
12 And she also, I believe, reached out to  
13 other people as well. I don't know who  
14 those people are.

15 Q. When did you speak with Dani  
16 Lever.

17 A. At or about this time.

18 Q. After -- obviously after the  
19 call with Melissa DeRosa?

20 A. Yes.

21 Q. And what was her -- what were  
22 her concerns about the letter?

23 A. She also -- I don't know how she  
24 articulated her concerns. She also didn't  
25 think it was a good idea that the letter,

1                   A. DAVID

2       rather than talking about the positive  
3       experiences people had was more focused on  
4       Lindsey herself and didn't have any  
5       personal knowledge about the facts in the  
6       letter either.

7           Q.       Did anyone express concern that  
8       it might constitute retaliation for  
9       bringing harassment allegations?

10          A.       No.    Not to me.

11          Q.       Did you ever develop concerns  
12       that it might constitute retaliation?

13          A.       I -- I didn't.  I've certainly  
14       seen instances where either employers or  
15       respondents or defendants respond to  
16       allegations with what they believe are the  
17       facts and I don't believe in those cases  
18       it constitutes -- or I shouldn't say that  
19       they all, but they may not constitute  
20       retaliation.

21                    So I didn't see -- I didn't draw  
22       that distinction here.  Again, I wasn't  
23       looking at the letter from that  
24       perspective.

25                   MS. CLARK:  And do you know who

1                   A. DAVID

2                   was advocating that the focus of the  
3                   letter be on attacking Lindsey Boylan  
4                   as opposed to talking about people's  
5                   positive experiences with the  
6                   Governor?

7                   THE WITNESS: I don't know.

8                   MS. CLARK: And did anyone say  
9                   whether the Governor was involved with  
10                  reviewing the drafts or suggesting  
11                  what should be in the drafts to the  
12                  letter?

13                  THE WITNESS: No.

14                  Q.       Why don't we turn to -- if you  
15                  go back to Tab 9 and if you look at  
16                  page 38. We'll just go through the  
17                  documents.

18                  COURT REPORTER: Is this a good  
19                  time to take a break, Mr. Kim?

20                  MR. KIM: Sure. We can take a  
21                  quick break.

22                  VIDEOGRAPHER: Just stand by to  
23                  go off the record. We are now off the  
24                  record at 8:49 for break.

25                  [Whereupon, a short break was

1 A. DAVID

2 taken.]

3 VIDEOGRAPHER: We are now on the  
4 record. The time is the 8:59 p.m.  
5 Back from break.

6 BY MR. KIM:

7 Q. So, Mr. David, can you go to  
8 page 38 of Tab 9. This is an e-mail from  
9 you to Melissa DeRosa, Linda Lacewell and  
10 Rich Azzopardi. And the top one is the  
11 draft for Cathy and then you -- well, you  
12 can say -- "I can say the following from  
13 you," correct?

14 A. Correct.

15 Q. Did you draft -- did you draft  
16 these two statements?

17 A. I drafted the second. I believe  
18 I consulted with Cathy on the first.

19 Q. Mm-hmm. And these are the  
20 statements that you sent to them. You  
21 testified earlier before you got a draft  
22 of the letter that they were considering?

23 A. Yeah. It may have been at or  
24 around the same time, but certainly yes,  
25 when they had asked me for a draft

1                   A. DAVID

2       statement.

3           Q.       Did you talk to them after  
4       sending this to them?

5           A.       I did. I don't believe this was  
6       ever issued because I asked them to advise  
7       me if they were going to issue it, and I  
8       also advised them that Cathy needed to get  
9       approval from her employer and so it was  
10      considered draft until she signed off on  
11      it.

12          Q.       And do you know -- well, who was  
13      Cathy's employer?

14          A.       I don't know. She works for a  
15      private employer.

16          Q.       Did you discuss the statements  
17      with Melissa DeRosa, Linda Lacewell or  
18      Richard Azzopardi after sending this to  
19      them?

20          A.       I don't know if -- I may have --  
21      I don't know if I discussed it. I just  
22      basically told them this is what I can say  
23      with respect to my experience, but I was  
24      not comfortable getting into the  
25      counseling issues.

1 A. DAVID

2 Q. And so then the -- the next  
3 document is December 17, Melissa DeRosa to  
4 you and a number of other people  
5 attaching, it appears to be, screenshots  
6 of Lindsey Boylan's tweets?

7 A. Yes.

8 Q. Or I don't know if they're  
9 tweets. They're some -- there's a few  
10 tweets and then some text messages.

11 Do you see that?

12 A. I do.

13 Q. And beyond just receiving these  
14 texts, any conversations or discussions  
15 with anyone about these?

16 A. I believe this was sent in  
17 response to concerns that I or others had  
18 raised regarding the nature of the letter  
19 and issues that refer to what Ms. Boylan  
20 had said, allegedly said, but we didn't  
21 have any personal knowledge. I believe  
22 this e-mail was sent to further support  
23 the letter.

24 Q. So this -- you had already  
25 received a copy of the letter by the time



1 A. DAVID

2 you got this?

3 A. Yeah. The -- it shows that the  
4 letter was received at 11:56 a.m. and this  
5 e-mail was sent 1:27 p.m.

6 Q. 10:56 a.m.

7 A. No, it says -- yes. I'm sorry.  
8 10:56 a.m. and 1:27 p.m.

9 Q. So you -- do you think after  
10 receiving the letter you had conversations  
11 with Melissa DeRosa about the letter?

12 A. I believe so. I believe I had  
13 expressed concerns about the letter.  
14 Again, I -- I didn't -- I didn't want it  
15 to be an anti-Boylan letter. I thought it  
16 was important to -- if people were going  
17 to speak positively, they would speak  
18 positively about their experience.

19 Q. Mm-hmm. And who drafted this  
20 letter that -- why don't you go to Tab --  
21 Tab 52 -- or page 52.

22 A. I don't know who drafted the  
23 letter. I just received it from Melissa  
24 DeRosa.

25 MR. KIM: Okay. Got it. Can

1                   A. DAVID

2           you hold for one second. I just have  
3           to respond to an e-mail on an  
4           unrelated matter.

5                   [Discussion held off the  
6           record.]

7 BY MR. KIM:

8           Q.       So on page 52, there's a --  
9           Melissa DeRosa sends you this draft  
10          letter.

11                   You don't know who drafted it?

12          A.       No.

13          Q.       Did you -- is this the first  
14          draft of the letter you got or did you  
15          ever receive an earlier draft?

16          A.       This is the only draft I have.  
17          There may be other drafts, but I don't  
18          have them. I only have this.

19          Q.       Mm-hmm. Do you generally --  
20          this is to your personal e-mail account,  
21          right?

22          A.       Yes.

23          Q.       Do you have a practice of  
24          deleting e-mails in your personal account?

25          A.       Yes. Because I get too many

1 A. DAVID

2 e-mails.

3 Q. And what is the -- what is your  
4 practice?

5 A. I delete e-mails unless I need  
6 to refer to them.

7 Q. But this one you kept.

8 A. I kept it because I believe I  
9 needed to reference it in -- in relation  
10 to the phone calls that I was making, and  
11 I never went back to it after those calls.

12 Q. The phone calls you were making  
13 to see if they -- other people would sign  
14 on?

15 A. Correct.

16 Q. How did you get comfortable that  
17 you didn't want to sign but you were  
18 reaching out to others for them to sign?

19 A. Well, I'm fairly conservative, I  
20 guess. I thought, well, maybe I'm  
21 conservative and others may be comfortable  
22 signing the letter. There have been many  
23 instances in the past where I would refuse  
24 to do something and others were  
25 comfortable doing it, and so I didn't

1                   A. DAVID

2 necessarily know that others would have  
3 that same view.

4                   Separately, I thought, well, if  
5 my view is a common view, that may help  
6 influence folks not to advance this  
7 letter.

8           Q.       Who was pushing for this letter?

9           A.       I spoke with Melissa about this  
10 letter. I -- I don't know how to respond  
11 to who was pushing for it.

12          Q.       Who was willing to sign on, to  
13 your knowledge?

14          A.       Who was willing to sign on? The  
15 people I spoke to, [REDACTED] [REDACTED] was  
16 willing to sign, [REDACTED] [REDACTED] was not  
17 willing to sign because she had concerns  
18 about the tone of the letter and she had  
19 concerns about certain references in the  
20 letter where she didn't have any personal  
21 knowledge. [REDACTED] [REDACTED] was willing to  
22 sign the letter, but then subsequently her  
23 employer said that she couldn't. [REDACTED]  
24 [REDACTED] was not willing to sign the letter.  
25 [REDACTED] [REDACTED] was willing to sign the

1 A. DAVID

2 letter. [REDACTED] [REDACTED] was not willing to  
3 sign the letter. Um... the -- [REDACTED] --  
4 the person you had mentioned --

5 Q. [REDACTED].

6 A. [REDACTED] [REDACTED] was willing  
7 to sign the letter. She had indicated  
8 that to both Stephanie and me. And [REDACTED]  
9 [REDACTED], if I didn't say that, was  
10 willing to sign the letter. Those are the  
11 folks that come to mind.

12 Q. And when you reached out to  
13 these people, did you actually forward the  
14 letter to them?

15 A. No, I did not.

16 Q. You read it to them?

17 A. I read for -- I certainly read  
18 the entire letter to certain people who  
19 asked to be read the letter. There were  
20 others who only wanted the letter  
21 characterized.

22 Q. How about the people on this  
23 e-mail list, you, this Steve Cohen, Josh  
24 Vlasto, Judy Mogul, Linda Lacewell and  
25 Dani Lever -- you told us Dani Lever did

1                   A. DAVID

2       not want to sign the letter?

3           A.       Correct.

4           Q.       Okay. How about Steve Cohen,  
5       Josh Vlasto, Judy Mogul and Linda  
6       Lacewell?

7           A.       I did not speak to Steve Cohen  
8       about whether or not he would sign the  
9       letter. I did not have a conversation  
10      with Josh Vlasto either, and I don't  
11      believe I spoke to Judy Mogul about her  
12      signing the letter. I believe Linda  
13      Lacewell did not want to sign the letter.

14          Q.       Did not?

15          A.       Did not.

16          Q.       But were they all people who  
17      were going to reach out to other people to  
18      see if they would?

19          A.       I don't know. I don't know  
20      those conversations. I know that Linda  
21      Lacewell did reach out to people. I know  
22      Stephanie Benton did, and I know that I  
23      did, and that's in part because there was  
24      another e-mail that was sent to me from  
25      Stephanie Benton indicating some names and

1                   A. DAVID

2           that they were calling certain people.

3           But it could be that others were calling

4           as well. I just don't know that.

5           Q.       Okay. If you look at this

6           letter, the second line of the second

7           paragraph says, "Each of us is a longtime

8           and active supporter of civil rights and

9           women's engagement."

10                   Do you see?

11           A.       Yes, I do.

12           Q.       Do you consider yourself to be a

13           longtime and active supporter of civil

14           rights and women's engagement?

15           A.       Me personally, yes.

16           Q.       "And we believe women must be

17           heard and allegations of workforce

18           misconduct must be taken seriously."

19                   Is that something you believe

20           in?

21           A.       Yes.

22           Q.       And then you say -- or the

23           letter says, "However when activation is

24           unfounded and seemingly launched to gain

25           political advantage, standing by silently

1                   A. DAVID

2       is not an option."

3                   Do you see that?

4           A.       I do.

5           Q.       Did you have any basis to know  
6 whether the accusations were unfounded?

7           A.       No.

8           Q.       So is this one of the sentences  
9 you did not feel comfortable with?

10          A.       Yes. I was not comfortable with  
11 that sentence, but I think the larger  
12 point for me is I was more comfortable  
13 with a letter that focused on positive  
14 experiences as opposed to sort of getting  
15 into the details of the allegations, in  
16 large part because I didn't know the facts  
17 and I couldn't attest to the truth or  
18 veracity of them.

19          Q.       And the people you were reaching  
20 out to to see if they would sign the  
21 letter, were they all people who -- who  
22 would have a basis to know whether Lindsey  
23 Boylan's accusations were founded or  
24 unfounded?

25          A.       I don't know the answer to that



1                   A. DAVID

2       question. I don't know their  
3       relationships with her personally.

4           Q.       You didn't ask?

5           A.       I don't believe I did.

6           Q.       Did you ask anyone whether they  
7       believed Lindsey Boylan's allegations were  
8       unfounded?

9           A.       I don't believe I asked them.  
10       It was offered. There were several people  
11       who did not believe those allegations.  
12       There were several people who were shocked  
13       that the allegations could be true. And  
14       almost -- no, every single person said  
15       that was not their experience. That was  
16       the common theme with everyone I spoke  
17       with who said that I've never seen that,  
18       that's never happened.

19          Q.       By "that," what do you mean?

20          A.       Sexual harassment based on  
21       allegations that she had alleged.

22          Q.       Do you know what the allegations  
23       are -- were?

24          A.       It had shifted over time. So at  
25       that point, I don't know what was

1                   A. DAVID

2 disclosed because I know there have been  
3 different moments where there's been  
4 additional facts that have been disclosed.

5                   So I know the -- I know the  
6 current set of allegations. I just can't  
7 remember what was disclosed at the time.

8           Q.       Were you aware that -- or are  
9 you aware that one of her allegations is  
10 that she was told that she looks like the  
11 better looking twin of an ex-girlfriend of  
12 the Governor's?

13           A.       I know that now.

14           Q.       Do you know if that's true or  
15 not?

16           A.       I don't. I have no personal  
17 knowledge of it.

18           Q.       Did you take any steps to  
19 inquire with anyone whether her  
20 allegations were true or not?

21           A.       I was told they were not true by  
22 Melissa and others who said -- I think  
23 they advised us that this is not true, but  
24 I don't think I inquired of anyone.

25           Q.       Did anyone tell you that the

1 A. DAVID

2 allegation that she was told she looks  
3 like a better looking twin of an  
4 ex-girlfriend of the Governor is not true?  
5 Melissa DeRosa told you that?

6 A. No. No. No one spoke to me  
7 specifically about that fact --

8 Q. Right.

9 A. -- or that allegation.

10 Q. Are you aware that there's  
11 actually a text message that says that?

12 A. I am aware of that now.

13 Q. Okay. Did it matter to you at  
14 all in -- in reaching out to people to see  
15 if they would sign on to a letter like  
16 this whether the allegations -- any of the  
17 allegations were true or not?

18 A. It did. At the time for all of  
19 us who worked in the chamber, I think this  
20 was a shock. None of us had seen anything  
21 that would suggest any type of harassment,  
22 sexual harassment that is. I had no  
23 personal knowledge of it and the people I  
24 knew also said they had no personal  
25 knowledge of it. So, that's what we had

1 A. DAVID

2 to go with at the time.

3 Q. But do you have a personal  
4 belief about whether women who come  
5 forward alleging sexual harassment should  
6 be believed?

7 A. Yes.

8 Q. What's your personal belief?

9 A. My personal belief is that  
10 people who experience any type of  
11 harassment or discrimination should have  
12 the ability to have their claims reviewed,  
13 investigated and properly adjudicated. I  
14 think that for years people have been  
15 unable to have their claims properly  
16 reviewed and adjudicated. So I believe  
17 that claims should be reviewed and  
18 adjudicated. That's my personal view.

19 Q. But with respect to Lindsey  
20 Boylan, you didn't inquire with anyone as  
21 to whether her allegations were true or  
22 not?

23 A. As I said before, I was actually  
24 told that those allegations were not true  
25 by everyone in the chamber who works

1                   A. DAVID

2       there. I think we were all told that at  
3       some point.

4           Q.       And -- but now you know at least  
5       one of the allegations about being told  
6       that she looks like the better looking  
7       twin of an ex-girlfriend of the Governor  
8       is true?

9           A.       Based on what I've read, yes.

10          Q.       Does that affect your view at  
11       all in terms of what Melissa DeRosa told  
12       you or the steps you took to reach out to  
13       others to sign on to a letter that says  
14       that her accusations are unfounded?

15          A.       No. Because at the time I don't  
16       think we knew any of those allegations.

17          Q.       I'm asking you now. Does it  
18       affect you now?

19          A.       Oh, now. I don't know all of  
20       the facts and --

21          Q.       I'm just asking you this one  
22       fact that --

23          A.       Oh, this one fact. I don't --  
24       we didn't talk about this -- yeah. We  
25       didn't talk about this fact, so to be

1                   A. DAVID

2       clear for purposes of the record, the  
3       allegation at the time was that -- if I  
4       remember correctly, that she was sexually  
5       harassed by the Governor. I don't believe  
6       that there were more details that were  
7       outlined at the time. So as a general  
8       matter, we were told that that was not  
9       true.

10                   Subsequent -- subsequent to  
11       that, there were additional facts or  
12       allegations, specific details that were  
13       outlined, that we were not aware of at the  
14       time. Now that we are aware of those  
15       details, I think, yes, that some people,  
16       including me, would -- would -- would  
17       pause before engaging in a letter like  
18       this.

19                   But the overarching principle  
20       for me is the letter itself I thought was  
21       misguided because it should not have  
22       focused on her but instead on the  
23       experiences of others in the chamber  
24       because she should have an opportunity to  
25       adjudicate her claims.

1 A. DAVID

2 MS. KENNEDY PARK: In -- Joon,  
3 do you mind if I have a question?

4 MR. KIM: Go ahead.

5 MS. KENNEDY PARK: So in  
6 December of 2020, when the allegation  
7 that you were aware of, which is that  
8 Lindsey had been sexually harassed by  
9 the Governor, did you ask anyone if  
10 they had investigated her allegation?

11 THE WITNESS: I think everyone  
12 at the time were learning about this  
13 for the first time. I believe we were  
14 told -- I certainly was not aware of  
15 any complaint made by Ms. Boylan when  
16 she was in the chamber to anyone. So  
17 there was no investigation that I'm  
18 aware of.

19 MS. KENNEDY PARK: Did you --  
20 did you ask anyone after she had made  
21 her tweet saying she had been sexually  
22 harassed by the Governor if they were  
23 going to investigate her allegations?

24 THE WITNESS: I don't know if I  
25 had that conversation with anyone. I

1                   A. DAVID

2           believe they were having those  
3           conversations, and I believe at the  
4           time, if I'm not mistaken, at some  
5           period of time there was the  
6           allegation and then she said, "I'm not  
7           going to provide more details. I'm  
8           not going to discuss" or "I'm not  
9           going to engage," something to that  
10          effect.

11                   But I don't know what they were  
12          doing. I don't know if they were  
13          investigating it or not. I suspected  
14          that they were. I suspect that they  
15          would have to because the complaints  
16          had been made publicly.

17                   MS. KENNEDY PARK: Other than  
18          suspecting that they were going to  
19          investigate or understanding that they  
20          had to, did you have any basis to  
21          believe that they were investigating  
22          her complaint?

23                   THE WITNESS: I believe that  
24          they would have had to. There was no  
25          reason for me to believe that they



1                   A. DAVID

2                   wouldn't conduct an investigation of a  
3                   complaint that's been made publicly.

4                   MS. KENNEDY PARK: But did  
5                   anyone tell you that they were or did  
6                   you discuss with anyone whether that  
7                   was happening?

8                   THE WITNESS: No. No one talked  
9                   to me about an investigation and who  
10                  they were hiring or who they were  
11                  working with, that wouldn't have been  
12                  appropriate for them to tell me that,  
13                  I don't believe.

14                  MS. KENNEDY PARK: Why wouldn't  
15                  it have been appropriate for -- for  
16                  them to tell you that?

17                  THE WITNESS: Because I was no  
18                  longer working at the chamber and I  
19                  wasn't involved in those process --  
20                  those processes.

21                  MS. KENNEDY PARK: Sorry, Joon.  
22                  Thanks.

23                  Q.           How would those two things be  
24                  consistent, that they are -- they had to  
25                  investigate the truth of the allegation

1                   A. DAVID

2           and the same people sending you a letter  
3           that says the allegations are unfounded  
4           and asking you to sign on to that?

5                   How -- how is it possible in  
6           your mind that you believe they had to  
7           investigate to see if it's true or not,  
8           but as of December 17, ask you to sign a  
9           letter that said the allegations are  
10          unfounded?

11           A.       Yeah. They're --

12           Q.       How are those things consistent?

13           A.       They're entirely consistent  
14          because someone can be accused of a legal  
15          violation and deny those violations and  
16          yet still have an obligation to  
17          investigate those obligate -- those  
18          allegations. Those are not inconsistent.

19                   There are many cases where  
20          someone is accused of committing some act  
21          and that person says, "I didn't commit  
22          that act," and yet, they would conduct an  
23          investigation. I've seen that in the  
24          private sector. I've seen that in  
25          government.

1                   A. DAVID

2           Q.       You are telling me that as a  
3 matter of policy in the executive chamber,  
4 conducting an investigation into  
5 allegations of sexual harassment can be  
6 done at the same time you are issuing  
7 public statements that the allegations are  
8 unfounded and that you can at the same --  
9 same time conduct an independent and  
10 genuine investigation into allegations  
11 that you have publicly stated are  
12 unfounded, that's something that happens?

13                   MR. AYDINER: I'm sorry, can I  
14 get that -- can I get that point read  
15 back because it struck me as important  
16 but I want to get it accurate. I  
17 apologize.

18                   MR. KIM: Yeah. Can you read  
19 that back?

20                   [Whereupon, a portion of the  
21 testimony was read back.]

22                   MR. AYDINER: Just note my  
23 objection to the extent that  
24 Mr. Alphonso was not serving, he was  
25 administrating as it relates to that

1                   A. DAVID

2                   question which seeks policy in the  
3                   chamber. But subject to that --

4                   A.        Yeah. That -- that was exactly  
5                   what I was going to say. I don't -- I  
6                   can't comment on that in part because it  
7                   never happened when I was there. There  
8                   hadn't been any complaints against the  
9                   Governor when I was there.

10                                What they should or should not  
11                   have done, how they should have done it,  
12                   that's up to them to make that  
13                   determination, and whether or not it  
14                   complies with a specific policy would be  
15                   up to them as well. So I don't want to  
16                   suggest that they could have or couldn't  
17                   have because it wasn't within my purview.

18                   Q.        So your testimony under oath is  
19                   that you actually thought that the  
20                   executive chamber was going to conduct an  
21                   investigation into whether Lindsey  
22                   Boylan's allegations were true, correct?

23                   A.        No, not correct. My testimony  
24                   is that I believe there would be an  
25                   investigation. Who would conduct the

1

A. DAVID

2

investigation, how it would be conducted,

3

when it would be conducted, who would

4

conduct the investigation I was not aware

5

of. I did not set that policy. I did not

6

set that process. It had never happened

7

when I was there.

8

Q. So in December -- on December

9

17th of 2020, your testimony under oath is

10

that you believed someone would be

11

investigating Lindsey Boylan's allegation

12

of sexual harassment against the

13

government?

14

A. I believed that someone would be

15

conducting that investigation because

16

there are so many different agencies that

17

have the authority to do so. You could

18

have the Division the Human Rights, you

19

could have EEOC, you could have the

20

Attorney General's Office, you could have

21

the Joint Division of Public Ethics.

22

So I suspected that there would

23

be some type of review. Again, I didn't

24

know who would do it, how they would do

25

it, when they would do it, but I suspected

1                   A. DAVID

2       there would be some review.

3           Q.       You generally believe that?

4           A.       I do.    Because I remember when I  
5       was in the executive chamber very early on  
6       there were allegations of harassment  
7       against some elected officials and the  
8       Joint Division or Department on Public  
9       Ethics conducted a review.   And I'm not  
10      sure what the circumstances were, but that  
11      happened a few times.

12                   I also know that there are  
13      instances where people can file complaints  
14      with independent agencies to have them  
15      conduct a review.   I also know that the  
16      Attorney General can, under certain  
17      circumstances, conduct a review.

18                   So I believed that there would  
19      be some type of review by some party at  
20      some point.   I -- that was just my belief.  
21      Whether it would happen and who would do  
22      it, I -- I have no -- no information.

23                   And I don't want to suggest that  
24      I thought they would do the investigation  
25      because I didn't have any information to

1                   A. DAVID

2 draw that conclusion either.

3           Q.       Did you ask them?

4           A.       No, I did not.

5           Q.       Did you consider that if you  
6 thought someone was going to do an  
7 investigation, that it might not be a good  
8 idea for the executive chamber to be  
9 stating that the allegations were  
10 unfounded before this investigation that  
11 you thought was going to happen was  
12 actually done?

13          A.       No. Again, I think I have seen  
14 this in many cases, where there is denial  
15 of -- the Sands Point case is the perfect  
16 example, where there was an allegation  
17 made in the Sands Point case. The  
18 executive chamber denied a part of the  
19 allegations as it relates to being  
20 notified, and that information was  
21 actually confirmed in a court of law. It  
22 didn't prevent an investigation or  
23 litigation.

24                   But again, I don't want to  
25 speculate on what they could have done

1                   A. DAVID

2       here or how they could have done it. I  
3       just certainly knew that there may be a  
4       potential review at some point.

5           Q.       But this was not a denial by the  
6       Governor. This was a denial by people  
7       around the Governor, including you, that  
8       was being proposed, correct?

9           A.       Yes. But I didn't sign this  
10      letter and I opposed -- I opposed it  
11      for those --

12          Q.       But you've never -- but you  
13      haven't said you suggested in response  
14      that this is not good idea because there  
15      will be an investigation. That's just  
16      something you said today in response to a  
17      question.

18          A.       No, no, no. That was not the  
19      reason that I raised. Again, the  
20      principal reason that I thought this  
21      letter was a bad idea was because it  
22      focused on Ms. Boylan as opposed to  
23      focusing on the experiences of employees.  
24      That's the reason.

25          Q.       How about the fact that the



1                   A. DAVID

2       letter on the second page discloses facts  
3       of the investigation that you oversaw?

4           A.       I had some strong concerns about  
5       that as well.

6           Q.       What were your concerns?

7           A.       I had concerns about disclosing  
8       the underlying nature of a review that was  
9       conducted by the State agency. The  
10       overarching principle, once again, is a  
11       letter that is focused on Ms. Boylan as  
12       opposed to the positive experiences to the  
13       extent people wanted talk about them in  
14       the chamber.

15          Q.       We discussed earlier and we  
16       showed you policies that state that  
17       investigations should be kept  
18       confidential, right?

19          A.       Mm-hmm. Yes.

20          Q.       Did you have any concerns that  
21       disclosing the details about the  
22       investigation that you oversaw of  
23       Ms. Boylan would violate those policies?

24          A.       I had concerns that -- I don't  
25       know that it was focused so much on the

1                   A. DAVID

2     actual policy. I just had concerns  
3     about -- yes. I guess the answer to your  
4     question would be yes.

5           Q.     You also looked at earlier the  
6     policy that said -- that defined  
7     retaliation and said retaliation --  
8     retaliation can be any action more than  
9     trivial that would have the effect of  
10    dissuading a reasonable person from making  
11    or supporting an allegation of  
12    discrimination. Remember that?

13          A.     Yes.

14          Q.     Did you have any concerns that  
15    disclosing details about an investigation  
16    that you had overseen in response to  
17    allegations of harassment might fit under  
18    that definition of retaliation?

19          A.     I -- I wasn't thinking about the  
20    legal implications of disclosing the  
21    nature of the counseling through that  
22    lens. I was more concerned about, again,  
23    sort of getting into the details of the  
24    counseling as it relates to Ms. Boylan as  
25    opposed to positive experiences that

1                   A. DAVID

2       people had.

3                   As you know, the -- as you know,  
4       the memo is privileged and confidential,  
5       and it was labelled privileged  
6       confidential and I believe that  
7       individuals who have -- the memo was  
8       privileged and confidential, and so I had  
9       concerns about -- about any -- any  
10      references to it in a letter.

11           Q.       Did you tell Melissa DeRosa  
12      that?

13           A.       I did. I -- I did express  
14      concerns about any references to the  
15      letter in this letter.

16           Q.       But you're the one who sent them  
17      a copy of the investigative file, right?

18           A.       I did. They already had it, so  
19      it wasn't --

20           Q.       You said you sent it, and then  
21      they found it.

22           A.       Yes. Well, they -- they either  
23      found it or had it before. There were  
24      several people looking for it. I know  
25      that they had it, but I sent it to

1 A. DAVID

2 Richard -- Rich Azzopardi per his request.

3 Q. So you were concerned about  
4 confidentiality of your investigation but  
5 you e-mailed the file of that  
6 investigation to the press officer at the  
7 executive chamber?

8 A. No. I was not concerned  
9 about -- well --

10 Q. No to that you didn't send it to  
11 Richard Azzopardi?

12 A. Well, let me answer your  
13 questions.

14 I did sent the file to Rich  
15 Azzopardi, the file, well, an electronic  
16 file, which they already had in their  
17 possession, which belonged to them not to  
18 me. So they already have it in their  
19 possession.

20 I was concerned about this  
21 letter specifically referencing the  
22 counseling memo.

23 MS. CLARK: Did you tell Rich  
24 Azzopardi that you had any concerns  
25 about making public anything about the

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A. DAVID

investigation into Lindsey Boylan that was in the privileged and confidential memos that you sent to him?

THE WITNESS: I believe I told them that they have to consult with GOER.

MS. CLARK: Did Rich Azzopardi ever tell you that he sent slightly redacted versions of those privileged and confidential memos to a variety of newspapers?

THE WITNESS: I learned that subsequent to him doing that, yes.

MS. CLARK: Did you express any concern to him when you learned about it?

THE WITNESS: Yes.

MS. CLARK: What did you say to him?

THE WITNESS: I believe I said I disagree with that or I have concerns about that, but that was the decision for them to make, not me.

MS. CLARK: Did he explain to

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A. DAVID

you why they decided to send  
privileged and confidential memos  
about an internal investigation to  
various members of the media?

THE WITNESS: I believe they  
received -- I -- I don't -- I believe  
they received some direction, but I --  
I don't know that I can get into the  
details of that. But I believe they  
received some type of direction.

MS. CLARK: Can you say who they  
received the direction from?

THE WITNESS: I -- I advised  
them to engage with GOER.

MS. CLARK: And do you know if  
they did engage with GOER?

THE WITNESS: I believe so.

MS. CLARK: And do you know who  
at GOER they spoke to?

THE WITNESS: No.

MS. CLARK: And do you have any  
basis for believing that their  
communications with GOER are  
privileged on some basis?

1 A. DAVID

2 THE WITNESS: Yes. The  
3 communications between them and GOER,  
4 if it's -- if it relates to legal  
5 advice would be.

6 MS. CLARK: Do you know if they  
7 spoke to a lawyer at GOER?

8 THE WITNESS: I don't know who  
9 they spoke to.

10 MS. CLARK: Did they tell you  
11 why they wanted to disclose this  
12 information to a variety of media  
13 outlets? Putting aside whether it's  
14 legal -- legally okay or justifiable  
15 to do it, why they wanted to do this.

16 THE WITNESS: I don't know that  
17 anyone explained that to me.

18 MS. CLARK: Did they at any  
19 point say that they wanted to tarnish  
20 Ms. Boylan's reputation?

21 THE WITNESS: No.

22 MS. CLARK: Did they say they  
23 wanted to attack her credibility?

24 THE WITNESS: No.

25 MS. CLARK: Did they explain in

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A. DAVID

any fashion how the allegations that were looked into about how she treated certain staff related in any fashion to whether or not the Governor actually harassed her?

THE WITNESS: No. Not -- not in those -- no, not in that way.

MS. CLARK: Well, in the -- in the letter it says -- where is it? They talk about no less than six official complaints were raised about her conduct. And then they say, "This is relevant to assessing Ms. Boylan's claim."

Did anyone explain to you how that was relevant to assessing Ms. Boylan's claim?

THE WITNESS: No.

MS. CLARK: And while I happen to be in this paragraph, at the end of that paragraph it says, "Afterwards, Ms. Boylan attempted to contact the Governor, but Mr. David advised the Governor to not discuss the situation



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A. DAVID

with Ms. Boylan as the complaints were outstanding," is that accurate?

THE WITNESS: I don't know if that is accurate. I'm not saying it's not accurate, I just don't recall that.

MS. CLARK: Did you tell Ms. DeRosa or Mr. Azzopardi that you didn't recall whether that was true or not?

THE WITNESS: I know that Ms. Boylan attempted to contact the Governor. Whether I advised him not to discuss the situation, I don't -- I just don't remember.

MS. CLARK: Well, if you didn't remember, do you know if the Governor told them that that's what happened?

THE WITNESS: I don't know. I don't know who spoke to who. I have no idea.

MS. CLARK: Did you ask them the basis for them saying that you advised the Governor to not discuss the

1 A. DAVID

2 situation with Ms. Boylan as the  
3 complaints were outstanding?

4 THE WITNESS: No.

5 MS. CLARK: Even if you weren't  
6 willing to sign this letter, did you  
7 have concerns about representations  
8 being made about what you advised the  
9 Governor in a letter that they were  
10 going to try to get you to sign on to  
11 and publish?

12 THE WITNESS: Again, I don't  
13 think I was focused on the specific  
14 paragraphs or specific references. I  
15 was concerned about the entire letter  
16 and the focus of the letter. And I  
17 know that the letter may have taken  
18 different forms, but I don't believe I  
19 had specific conversations on  
20 paragraphs or sentences.

21 MS. CLARK: And -- and the part  
22 about the -- the no less than six  
23 official complains and that -- that is  
24 quoting "treat subordinates like  
25 children," "feel like a punching bag,"

1                   A. DAVID

2                   you said you read the letter to  
3                   certain people.

4                   Do you know if they had any  
5                   prior knowledge of the allegations  
6                   against Ms. Boylan before you read  
7                   them the letter?

8                   THE WITNESS: I don't know if --  
9                   if they had prior knowledge of it. I  
10                  don't believe many of them -- well, I  
11                  don't know. I don't know.

12                  MS. CLARK: Did you have any  
13                  concerns about informing people about  
14                  the details of the allegations against  
15                  Mr. Boylan who had no prior knowledge  
16                  of it?

17                  THE WITNESS: I don't know  
18                  whether or not they had any prior  
19                  knowledge of it.

20                  MS. CLARK: And my question is:  
21                  Do you have any concerns about  
22                  disclosing the details without knowing  
23                  that they already knew all about that?

24                  THE WITNESS: I had concerns  
25                  about the entire letter, and I don't

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A. DAVID

know that I focused on that specific reference.

MS. CLARK: And the people that you read the letter to were -- were they still employed at this point by the Governor or were they working elsewhere at this point?

THE WITNESS: No, none of them worked for the Governor. Well, I'm sorry, two did, but I don't believe I read the letter to them, [REDACTED] [REDACTED] and [REDACTED] [REDACTED]. The others were no longer State workers.

MS. CLARK: And do you think, as you sit here today, that it might discourage someone from coming forward with allegations of harassment if they thought detailed allegations that had been made about them in confidential memos would be shared with people that didn't work for the executive chamber any longer?

THE WITNESS: Difficult question to answer.

1 A. DAVID

2 Can you ask the question again?

3 MS. CLARK: Sure. As you sit  
4 here today, do you have any concerns  
5 that a reasonable person who is  
6 considering coming forward with an  
7 allegation of harassment might think  
8 twice about it if they were told that  
9 confidential aspects of their  
10 employment history were going to be  
11 shared with people who don't work for  
12 their former employer any longer?

13 THE WITNESS: That's a  
14 hypothetical. But I -- I can imagine  
15 an instance where it would raise a  
16 concern.

17 MS. CLARK: And do you  
18 understand that -- strike that.

19 Did -- did you have any  
20 discussion with anyone, Ms. DeRosa,  
21 Mr. Azzopardi, anyone else about  
22 whether sharing this information, even  
23 just in the process of trying to get  
24 people to sign on to the letter could  
25 be retaliatory?

1 A. DAVID

2 THE WITNESS: I think I answered  
3 that question already. I was not  
4 thinking about this letter through  
5 that lens, and as a result, did not  
6 have conversations about the letter  
7 through that lens.

8 MS. CLARK: Do you know whether  
9 others, Ms. DeRosa, Mr. Azzopardi,  
10 Ms. Benton, anyone else was either  
11 forwarding the letter to other people  
12 or reading it to them with the  
13 allegations against Ms. Boylan  
14 contained in them?

15 THE WITNESS: I don't know what  
16 they did or didn't do. As I said  
17 again, I did not read this letter to  
18 all of the people that I spoke to.

19 It was a very small group that I  
20 read the letter to. For example, I  
21 did not read the letter to [REDACTED]  
22 [REDACTED]. I did not read the letter  
23 to [REDACTED] [REDACTED]. I did not read the  
24 letter to [REDACTED]. So I don't know  
25 what they did or didn't do.

1                   A. DAVID

2           Q.       Okay. Can you take a look at  
3 the next series of pages starting 55. And  
4 it looks like an exchange between you,  
5 Linda Lacewell and Stephanie Benton with  
6 names.

7                   If you look on page 56,  
8 Stephanie Benton says, "So this is  
9 progress. How do we get him 50-plus  
10 names?"

11                   Do you see that?

12           A.       Yes.

13           Q.       Who was -- what was your  
14 understanding of who she was referring to  
15 when she said "him"?

16           A.       I don't know. I was not on this  
17 e-mail. It was forwarded to me or I was  
18 added to it subsequent, and I did not have  
19 conversations with anyone about it.

20           Q.       So you don't know who asked for  
21 50-plus names?

22           A.       No one told me about the  
23 reference in this letter. I could  
24 speculate, but I don't have any personal  
25 knowledge.

1                   A. DAVID

2           Q.        You didn't talk to anyone about  
3 who asked for 50-plus names?

4           A.        No.

5           Q.        You see the end of the page that  
6 says 57 -- page 57. Stephanie Benton  
7 says, "And I want to the put eyes on  
8 stupid list again to grab more with kids.  
9 I can't right now. I just can't."

10                   Do you see that?

11          A.        Yes.

12          Q.        Were a lot of the names here  
13 younger people?

14          A.        No. At least not the first 20,  
15 25, no. Most of the people in here are  
16 not younger people. They're much older.

17                   VIDEOGRAPHER: Excuse me,  
18 Counselor.

19                   MR. KIM: Yeah.

20                   VIDEOGRAPHER: I'm sorry, sir.  
21 I'm past the time on the media unit.  
22 Can I switch it out? It will take me  
23 less than 30 seconds.

24                   MR. KIM: Yes. Should we just  
25 do that and we'll just stay on?



1                   A. DAVID

2                   VIDEOGRAPHER: Yeah. Stay on.  
3 Stand by.

4                   This is the end of Media Unit  
5 Number 4. We are now off the record  
6 at 9:48 p.m.

7                   [Discussion held off the  
8 record.]

9                   [Whereupon a short break was  
10 taken.]

11                  VIDEOGRAPHER: This is the  
12 beginning of Media Unit Number 5. We  
13 are now n the record at 9:54 p.m.  
14 Back from break.

15                  Q. So when we took a break, we were  
16 on this list of individuals on page 56 and  
17 57.

18                  A. Yes.

19                  Q. Did anyone raise Charlotte  
20 Bennett as someone to reach out to?

21                  A. I don't -- no. I don't believe  
22 so. I also at the time didn't know who  
23 Charlotte Bennett was.

24                  Q. You didn't -- you didn't overlap  
25 with her?

1 A. DAVID

2 A. If I did, it was -- it was a  
3 significant -- I left in July of 2019.

4 Q. How about Kaitlin [REDACTED]?

5 A. Kaitlin [REDACTED] was, I  
6 believe someone -- I don't see her name on  
7 this list, but I think it may have been  
8 someone that they reached out to.

9 Q. That they did reach out to --

10 A. Let me not speculate or guess.  
11 I don't know.

12 Q. Okay. Did you have any  
13 discussions about Kaitlin [REDACTED] with  
14 anyone in the executive chamber?

15 MR. AYDINER: Just note my  
16 objection to the extent that it --

17 Well, Alphonso, just answer the  
18 question yes or no and then I'll put  
19 the privilege objection in properly.

20 A. Yes.

21 Q. Who did you speak with about  
22 Kaitlin [REDACTED]?

23 A. Judy Mogul.

24 Q. Okay. What did you talk to her  
25 about?

1 A. DAVID

2 MR. AYDINER: I'm going to  
3 instruct the witness not to answer as  
4 privileged based on the directive of  
5 the executive chamber and specifically  
6 Paul Fishman.

7 Q. And when was this conversation?

8 A. I don't know. 2021 maybe.

9 Q. This year?

10 A. Maybe 2020. I'm -- I don't  
11 know. I'm guessing.

12 Q. Well, while you were at the  
13 Human Rights Campaign?

14 A. Yes. Yes. I don't believe I --  
15 I think I know who Kaitlin [REDACTED] is. I  
16 think she may have worked in the chamber  
17 at the same time I did. So I remember  
18 conversations about her when I was in the  
19 chamber or -- I remember either  
20 interacting with her in the chamber and  
21 having conversations when I left.

22 Q. How many conversations with Judy  
23 Mogul did you have about Kaitlin [REDACTED] ?

24 A. Maybe two.

25 Q. And do you believe you were

1                   A. DAVID  
2 providing legal advice to Judy Mogul in  
3 those conversations?

4           A.       I was being consulted on a  
5 confidential basis again.

6           Q.       Do you believe you were  
7 providing legal advice?

8           A.       I need to first try to recall  
9 those conversations, which I don't at the  
10 time -- at this time. So I don't even  
11 remember what those conversations were  
12 about so it's difficult for me to answer  
13 the question as it relates to what I was  
14 providing.

15          Q.       So you're refusing to answer  
16 questions but also saying you don't  
17 remember what -- what the answer would be?

18          A.       I know there were conversations  
19 with Judy Mogul where I was consulted on a  
20 confidential basis. I do not at this  
21 point sitting here remember the true  
22 contents of those conversations.

23          Q.       What the subject matter?

24                   MR. AYDINER: Just let the  
25 record reflect the refusal is based on

1 A. DAVID

2 privilege and no other reason.

3 Continue.

4 A. I don't remember.

5 Q. Okay. Can you turn to page --

6 Tab 12.

7 A. Sure.

8 Q. Do you see that? Do you have  
9 that document?

10 A. Tab 12, yes.

11 Q. And do you see this is -- the  
12 top part has been redacted but the middle  
13 part is an e-mail from Melissa DeRosa to  
14 various people including you?

15 A. Can you tell me what page I'm  
16 looking at?

17 Q. Tab 12. It's NYATB000022.

18 A. Yes.

19 Q. Do you see this is an e-mail  
20 from Melissa DeRosa to Steve Cohen, Linda  
21 Lacewell, Judy Mogul, you, Dani Lever,  
22 Josh Vlasto and Richard Bamberger?

23 A. Yes.

24 Q. And this is another -- a draft  
25 of the letter.

1 A. DAVID

2 A. Mm-hmm.

3 Q. Do you see that?

4 A. Yes.

5 Q. And this was not in your  
6 production.

7 Do you -- do you believe this is  
8 something that you deleted from your  
9 e-mail file? It's a different version of  
10 the letter.

11 A. Yeah. I may have deleted it so  
12 I was clear on which version I was going  
13 to be referencing.

14 Q. Well, before you called people?

15 A. Correct.

16 Q. But that is your e-mail, the Hot  
17 mail?

18 A. That is the correct e-mail  
19 address, correct.

20 Q. By the way, you see Melissa  
21 DeRosa is sending this from her personal  
22 e-mail?

23 A. Yes.

24 Q. And that this is on everyone's  
25 personal e-mails?

1 A. DAVID

2 A. Yes.

3 Q. Do you know if there's a reason  
4 she was sending it from her personal  
5 e-mail?

6 A. No.

7 Q. You don't know a reason?

8 A. No.

9 Q. Going to the second page of this  
10 letter, you see in the middle there's a  
11 paragraph. "Ms. Boylan is supported by  
12 lawyers and financial backers of Donald  
13 Trump, an active opponent of the Governor,  
14 we understand from credible sources that  
15 female members of Boylan's campaign team  
16 were offended and actually quit when they  
17 heard she had a campaign plan to make such  
18 claims for purely political advantage."

19 Do you remember reading that in  
20 this draft?

21 A. I do.

22 Q. Okay. And do you remember if  
23 that paragraph came out of a subsequent  
24 draft?

25 A. I don't believe it's in the

1                   A. DAVID

2       draft that I have.

3           Q.       Did you know why -- why it was  
4       taken down?

5           A.       I don't. I don't other than --  
6       I don't.

7           Q.       Did you comment on it?

8           A.       I think I -- I think I commented  
9       on this consistent with the others about  
10      lack of personal knowledge. And once  
11      again, a focus on Ms. Boylan as opposed to  
12      something that was more focused on a  
13      positive perspective from former  
14      employees.

15          Q.       And the third page, the  
16      following page in the middle it says,  
17      "Ms. Boylan suggests the Governor made  
18      comments about her looks. This is out of  
19      line because we know Ms. Boylan referred  
20      to the Governor as handsome and said she  
21      loved him to staff, which we" do not --  
22      "which we do believe were inappropriate  
23      comments."

24                   Do you remember reading that?

25          A.       Vaguely, yes.



1                   A. DAVID

2           Q.       And do you remember reading, "As  
3 professional women, we also know her  
4 behavior to be inappropriately intimate  
5 with her co-workers in public in the  
6 presence of other co-workers."

7                   Do you see that?

8           A.       I do.

9           Q.       Do you remember having any  
10 thoughts about this paragraph?

11          A.       Same -- same response. I have  
12 no personal knowledge of this -- of any of  
13 those comments. And I, again, thought it  
14 was more appropriate to focus on positive  
15 experiences than on Ms. Boylan.

16          Q.       Do you agree the comments  
17 referring to the Governor as handsome, if  
18 she said that, would have been  
19 inappropriate?

20          A.       Without understanding the facts  
21 and context, I wouldn't reach that legal  
22 conclusion. I just don't know what the  
23 facts are.

24          Q.       The second part of that  
25 paragraph talking about knowing her

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A. DAVID

behavior to be inappropriately intimate  
with co-workers in public in the presence  
of other co-workers, [REDACTED]  
[REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED] [REDACTED] [REDACTED]

A. I didn't have any direct  
information or knowledge as to what that  
was referencing but that was what I  
deduced it may be referencing, but I  
didn't have any personal knowledge of  
that.

Q. Did you have any concerns about  
that the letter was --

A. Yeah.

Q. What were your concerns?

A. Again, no personal knowledge and  
I'm not sure how it could be  
substantiated.

Q. Actually you had personal  
knowledge, that you inquired into this  
and --

A. Yeah. Yes. But it says,

[REDACTED] [REDACTED] [REDACTED] [REDACTED]

1 A. DAVID

2 [REDACTED] plural. [REDACTED] [REDACTED] [REDACTED] [REDACTED]

3 [REDACTED] [REDACTED] [REDACTED] [REDACTED]

4 Q. Did you ask Melissa DeRosa what  
5 is meant by this?

6 A. I don't believe that I went  
7 through this letter line by line with her.  
8 I think I just responded that this was not  
9 a good idea and I didn't think they should  
10 be sending this letter out.

11 Q. Did you raise any concerns about  
12 that with anyone, that paragraph?

13 A. I might have. Again, along the  
14 lines of personal knowledge and not an  
15 appropriate approach to take here.

16 Q. Could we go back to Tab 9 and  
17 I'm going to try to move it along because  
18 I know it's getting late for everyone.

19 If you go to the page starting  
20 at 74 and the numbers are getting very  
21 small.

22 These are just what appear to be  
23 printouts of phone texts; is that correct?

24 A. Yes.

25 Q. And how did it -- it goes from

1 A. DAVID

2 74 to the end.

3 Are these from your phone?

4 A. This is from my phone and from  
5 my iPad so there may be some duplication.

6 Q. You took screenshots of  
7 things -- you reviewed and took  
8 screenshots of things that were responsive  
9 and --

10 A. Correct. Correct.

11 Q. So if you go to the third page  
12 of this, it's very small but it looks like  
13 76. "Alphonso, I need to see her full  
14 file."

15 Do you see that?

16 A. Yes.

17 Q. And this is -- MD is who?

18 A. It's Melissa DeRosa.

19 Q. And there's three people on  
20 this. MD and then the other the

21 [REDACTED].

22 Do you know who that is?

23 A. I don't. It looks -- it looks  
24 like it's Linda Lacewell.

25 Q. Okay. And the blue is your

1                   A. DAVID

2       responses, right?

3           A.       Yes.

4           Q.       You say, "All of that is in  
5       possession of the State. Judy should be  
6       able to get you the file for the time  
7       while she was in chamber. There will be  
8       an ESD component as well. You can start  
9       with the chamber."

10          A.       Yes.

11          Q.       Is that a reference to the  
12       investigation file?

13          A.       Correct.

14          Q.       Okay. If you go to the next  
15       page, turn the page in the binder, and  
16       there's an e-mail or a text chain between  
17       you, it looks like Linda Lacewell,  
18       Stephanie Benton and Judy Mogul where they  
19       say, "██████ and ██████ both raise why no men  
20       sign on."

21                   Do you remember that?

22          A.       Yes. I remember receiving this  
23       text message.

24          Q.       Yeah. Who is ██████ ?

25          A.       ██████ ██████████ .

1 A. DAVID

2 Q. And who is [REDACTED]?

3 A. [REDACTED].

4 Q. Did you talk to [REDACTED] [REDACTED]  
5 about Lindsey Boylan's allegations?

6 A. No.

7 Q. How about [REDACTED]?

8 A. No.

9 Q. And do you -- do you remember  
10 any other discussions about why no men  
11 were signing on?

12 A. Vaguely. I think it was with  
13 respect to the experiences of female  
14 employees in the chamber, that was more  
15 relevant I believe than the experiences of  
16 male employees. But that's very vague.

17 Q. On the next page you see there's  
18 a text chain between Melissa DeRosa, RA,  
19 LL, and then another person, and then you.

20 Do you know who the [REDACTED]  
21 number is?

22 A. I don't know.

23 Q. And you say, "Feels to me like  
24 she's trying to bail us into saying  
25 something, as anything we do and say will

1                   A.    DAVID

2    give it more oxygen, yeah."   And you say,  
3    "We should be prepared to briefly respond,  
4    though, if you receive questions at one of  
5    his press conferences."

6                   A.    Yes.

7                   Q.    What did you mean by that?

8                   A.    That there were these claims  
9    that I wasn't aware of his level of  
10   knowledge or regarding any of this.

11                  Q.    Who's "his."   What do you mean  
12   by "his"?

13                  A.    The Governor.

14                  Q.    So you were -- you were  
15   concerned of what he would have to say or  
16   be presented with at a press conference?

17                  A.    I wanted to make sure that they  
18   were prepared through him to adequately  
19   respond, whatever their responses were.

20                  Q.    If you go to the next page with  
21   the text chain with Stephanie Benton in  
22   December 14.   You say, "Hey, doll.   Hope  
23   to see you and him before I leave."

24                  A.    Yes.

25                  Q.    Who did you mean by "him"?

1 A. DAVID

2 A. The Governor.

3 Q. And this was December 14. This  
4 was before you go to DC?

5 A. No. I was in Albany for the  
6 Electoral College and that was the first  
7 time I saw anyone in the chamber since I  
8 had left a year and a half before.

9 Q. And did you see -- did you get  
10 to see Stephanie Benton and the Governor  
11 before you left?

12 A. Yes. I got to say hi to him and  
13 got to say hi to her.

14 Q. Okay. Where?

15 A. I saw him in the Assembly  
16 chamber and I saw him again in his office.

17 Q. On which day? This was the --  
18 the text was December 14. How long after  
19 that?

20 A. It was on December 14th.

21 Q. And what did you talk to him  
22 about?

23 A. He asked me about the job. He  
24 asked me about how the job was going, what  
25 I was enjoying about it and he talked



1 A. DAVID

2 about his work. And then I left. It was  
3 a three-minute conversation.

4 Q. Did you talk about Lindsey  
5 Boylan's allegations?

6 A. No.

7 Q. Did you talk about the letter  
8 that you were -- you had been asked to  
9 sign?

10 A. No.

11 Q. Did you ask anything about any  
12 sexual harassment allegations or did you  
13 discuss anything about --

14 A. No.

15 Q. -- any sexual harassment  
16 allegations?

17 A. No.

18 Q. Can you go to the next page.

19 A. Sure.

20 Q. You see it's a text with Jimmy?

21 A. Yes.

22 Q. And it looks like it's Jimmy  
23 Vielkind?

24 A. Yes.

25 Q. He's a reporter?

1                   A.     DAVID

2           A.     He is.

3           Q.     Did you end up -- did you talk  
4 to him, Jimmy Vielkind?

5           A.     I did. He had reached out to me  
6 initially about the letter to ask about  
7 who originated the letter, why the letter  
8 was drafted. And I just told him off the  
9 record that I was not aware of who wrote  
10 the letter and I couldn't talk about the  
11 origins of the letter or the purposes of  
12 the letter. And that he would have to get  
13 that through the chamber.

14          Q.     Did you tell him -- did you give  
15 him any substance about what was in the  
16 draft letters?

17          A.     I believe he had it. He had a  
18 copy of the letter.

19          Q.     Do you know how he got it? Did  
20 he tell you how he got it?

21          A.     No.

22          Q.     Did you say anything to him  
23 about the -- the allegations in the  
24 investigation that you conducted of  
25 Lindsey Boylan?

1 A. DAVID

2 A. No.

3 Q. And the next text is with Maggie  
4 H. Is that Haberman?

5 A. Yes.

6 Q. And did you talk to her?

7 A. I did. She had reached out to  
8 my office in Washington DC. I engaged  
9 with her quite often -- well, occasionally  
10 on policy issues. And I responded to her  
11 inquiry because I thought it was related  
12 to my current work.

13 And she had the same inquiry.  
14 She either had a copy of the letter or  
15 knew about the letter and wanted to know  
16 the genesis of the letter. And I  
17 basically provided her a similar response.

18 Q. And you did that off the record?

19 A. I did. For some reason she had  
20 initially concluded or thought that I  
21 wrote the letter and I told her "No, I  
22 didn't write the letter. I'm not sure who  
23 did write the letter.

24 I suspected that was because the  
25 letter references me in some -- in some

1                   A. DAVID

2 way. And she said, "I appreciate it."

3 And that was it.

4           Q.       Did you tell her that you didn't  
5 think it was a good idea, the letter?

6           A.       I did.

7           Q.       Did you tell her why?

8           A.       I don't remember if I told her  
9 why, but I certainly told her I didn't  
10 think the letter was a good idea.

11          Q.       Did you talk to anyone in the  
12 executive chamber about talking to the  
13 reporters about the letter?

14          A.       I don't -- I know with respect  
15 to Maggie Haberman I did not. I don't  
16 believe I did with Jimmy Vielkind either.

17          Q.       Okay. So they reached out to  
18 you. This was not something where the  
19 executive chamber asked you to engage with  
20 them?

21          A.       Correct. In either instance.

22          Q.       Just looking through this to  
23 see.

24                   Can you go to further along in  
25 this page. If you look at the bottom,

1 A. DAVID

2 very small but 113.

3 A. Okay.

4 Q. And this one -- it has the text  
5 earlier -- that we saw earlier. "All of  
6 that is in possession of the State. Judy  
7 should be able to get to the file. For  
8 the time while she was in chamber there  
9 will be an ESD component."

10 Do you see that?

11 A. Yes.

12 Q. And then Melissa DeRosa's,  
13 "Linda, do you see this?"

14 Do you know what she's referring  
15 to, "this"?

16 A. I don't know. I suspect, but I  
17 don't know, it may be the text that comes  
18 before it.

19 Q. Then someone says --

20 [REDACTED] says, "Judy has the file."  
21 And then you say, "Everything should be in  
22 the file, in that file, e-mails regarding  
23 harassment at ESD, counseling memo, et  
24 cetera.

25 A. Yes. I believe the [REDACTED] may be

1 A. DAVID

2 Linda Lacewell.

3 But, I'm sorry, the question  
4 was?

5 Q. Question is: When you refer to  
6 harassment at ESD, you're referring to  
7 alleged harassment by Lindsey Boylan at  
8 ESD, right?

9 A. Correct.

10 Q. And when you -- again, talking  
11 about this and sending it, telling them  
12 where to find the file, you don't recall  
13 having any concern about the  
14 confidentiality of the harassment  
15 investigation and --

16 A. No, not at that point. Again,  
17 they had reached out to me in the past for  
18 information. I often did not engage with  
19 them with what they needed the information  
20 for or how they were going to use it.

21 Q. Okay. If you go to a couple  
22 pages later, 117 is the number.

23 A. Okay.

24 Q. You see there's a tweet from  
25 Jeremy Rosenberg?

1 A. DAVID

2 A. Yes.

3 Q. Did you know Jeremy Rosenberg?

4 A. No.

5 Q. And they say, "Anyone know this  
6 person? None, probably here for five  
7 minutes." Then it looks like you looked  
8 him up. It looks like he was a  
9 legislative fellow at DHCR.

10 A. Yeah. I simply Googled him and  
11 saw that on a LinkedIn page I believe.

12 Q. And then Azzopardi says, "So a  
13 snowflake."

14 What did he mean by that? What  
15 did you understand him to mean by that?

16 A. I don't know.

17 Q. You have no idea?

18 A. No. I don't know if he's  
19 referencing the agency or if he's  
20 referencing his title. I don't know.

21 Q. Then if you go another page  
22 later, there's a text chain with [REDACTED].

23 A. Mm-hmm.

24 Q. [REDACTED] [REDACTED] ?

25 A. Yes.

1 A. DAVID

2 Q. "And she's the one connected  
3 with Counsel and company spokesman. They  
4 don't want her to sign," right?

5 A. Correct.

6 Q. And then she says, "Would love  
7 to talk offline, advance on work. Won't  
8 mention I talked to you if game."

9 Did you end up talking to her  
10 offline?

11 A. This is -- I did speak with  
12 [REDACTED], but I don't believe that -- yes, I  
13 did speak with [REDACTED].

14 Q. What did you talk to her about?

15 A. I spoke to her about the letter.

16 Q. Mm-hmm.

17 A. And that was really -- and her  
18 communications with Lindsey. I believe  
19 this -- this text is a text from Lindsey  
20 to her because Lindsey had reached out to  
21 her to ask her whether she would serve as  
22 a consultant for her on her political  
23 campaign or if she knew anyone who would  
24 serve as a consultant for her.

25 Q. All right. So this text, "Would



1 A. DAVID

2 love to talk offline, advance on work.

3 Won't mention I talked to you if game,"

4 that's a text from Lindsey Boylan to --

5 A. I believe the text from Lindsey

6 Boylan to [REDACTED].

7 Q. That she's forwarding to you?

8 A. Correct.

9 Q. How do you know that because it  
10 just -- it just --

11 A. Because it looks like it's a  
12 message embedded in the text chain.

13 Q. I see. And so -- and then did  
14 you talk -- why was she sending that to  
15 you, that text message?

16 A. We had just spoken about the  
17 letter and it was either on the same day  
18 or right after that Lindsey Boylan had  
19 reached out to her.

20 Q. Have you spoken to Lindsey  
21 Boylan?

22 A. No.

23 Q. When is the last time you ever  
24 spoke to her or communicated with her in  
25 any way?

1 A. DAVID

2 A. The last time I communicated  
3 with Lindsey Boylan was the conversation  
4 on that Sunday a few days after she  
5 resigned.

6 Q. Okay. You can put that aside  
7 unless Jen or Anne have questions.

8 Okay. So let me ask you about  
9 Charlotte Bennett. You said -- did you  
10 overlap with her at all in the executive  
11 chamber?

12 A. I don't remember Charlotte  
13 Bennett, but I believe she worked in the  
14 chamber at or about the time I was leaving  
15 the chamber.

16 Q. Any interactions with her?

17 A. Not that I can remember, no.

18 Q. Did you ever see her interacting  
19 with the Governor?

20 A. No.

21 Q. Did you ever see her interacting  
22 with anyone else from the executive  
23 chamber?

24 A. No. I don't remember Charlotte  
25 Bennett at all.

1 A. DAVID

2 Q. Any conversations with anyone  
3 about Charlotte Bennett?

4 MR. AYDINER: Just note my  
5 objection to the extent that it calls  
6 for conversations between Mr. David  
7 and employees of the executive chamber  
8 to be answered as privileged at the  
9 directive of the executive chamber and  
10 more specifically Paul Fishman.

11 Outside of that, you can answer  
12 if there's anyone else.

13 Q. Well, let's talk about anyone  
14 else. Outside of the executive chamber  
15 have you spoken to anyone about Charlotte  
16 Bennett?

17 A. No.

18 Q. How about inside executive  
19 chamber, who did you speak to about  
20 Charlotte Bennett?

21 A. Judy Mogul.

22 Q. Anyone else?

23 A. I believe Jill DeSrosiers.

24 Q. Anyone else?

25 A. Those are the two that I recall.

1 A. DAVID

2 Q. And when did you speak -- did  
3 you speak to them together or --

4 A. Yes.

5 Q. And when did you speak to them?

6 A. 2021 after the allegations were  
7 made public in the New York Times, and  
8 there was likely a conversation in 2020 as  
9 well.

10 Q. Okay. So you recall two  
11 conversations with them. Both of them  
12 together? Both calls, were they together?

13 A. No. I believe one call was only  
14 with Judy Mogul and another was with Judy  
15 Mogul and Jill DeSrosiers.

16 Q. And which one was which, meaning  
17 2021 or 2020?

18 A. 2020 was with Judy Mogul only  
19 and --

20 Q. And 2021 is --

21 A. 2021 was with both.

22 Q. Okay. And the substance of the  
23 conversations is what your counsel is  
24 objecting to; is that right?

25 A. Yes.

1 A. DAVID

2 MR. AYDINER: Just for the  
3 record, at the express direction of  
4 the Counsel for the executive chamber  
5 as privilege holder -- putative  
6 privilege holder as the case may be.

7 Q. How about Brittany Commisso, do  
8 you know her?

9 A. No.

10 Q. You don't know who she is?

11 A. Name doesn't sound familiar. I  
12 may know who she is or I've met her, but  
13 doesn't sound that familiar to me.

14 Q. How about Alyssa McGrath?

15 A. Alyssa McGrath sounds familiar  
16 but I don't know her personally.

17 Q. Okay. How about the Ana Liss?

18 A. I don't know Ana Liss.

19 Q. How about Kaitlin [REDACTED]?

20 A. Kaitlin [REDACTED] I have met.

21 Q. Okay. When did you meet her?

22 A. I don't know. During my time in  
23 the chamber. I don't know what specific  
24 year.

25 Q. Did you ever observe her

1 A. DAVID

2 interacting with the Governor?

3 A. I'm sure I did. If this is the  
4 person I'm thinking of, Kaitlin [REDACTED]  
5 is -- was a Press Secretary?

6 Q. I think she at some point served  
7 in that --

8 A. -- capacity? Then -- then I --  
9 I believe I would have seen her interact  
10 with him.

11 Q. And what -- do you recall  
12 anything about those interactions?

13 A. No.

14 Q. Did you ever see him touch her?

15 A. No.

16 Q. Hug her?

17 A. No.

18 Q. Okay. Kiss her?

19 A. No.

20 Q. Do you know how Kaitlin [REDACTED]  
21 was hired?

22 A. No.

23 Q. Do you know when -- do you know  
24 why she left the executive chamber?

25 A. No, I don't believe so.

1 A. DAVID

2 Q. Have you spoken to anyone in the  
3 executive chamber about Kaitlin [REDACTED] ?

4 A. Yes.

5 Q. Who did you speak with?

6 A. Melissa DeRosa.

7 MR. AYDINER: I'm sorry. Just  
8 note my objection as to privilege with  
9 respect to the content of those  
10 communications at the express  
11 direction of the executive chamber  
12 through Paul Fishman.

13 Q. And when was that conversation  
14 with Melissa DeRosa about Kaitlin [REDACTED] ?

15 A. I believe in 2020, maybe 2021.

16 Q. How many conversations did you  
17 have?

18 A. I believe one. Maybe -- maybe  
19 two but certainly one.

20 Q. What was the subject matter?

21 A. I believe the subject matter was  
22 her experience in the chamber.

23 Q. Anyone else you spoke to in the  
24 executive chamber about Kaitlin [REDACTED]  
25 other than Melissa DeRosa?

1 A. DAVID

2 A. No, not that I can recall.

3 Q. How about [REDACTED] Staffer #6 ?

4 A. [REDACTED] Staffer #6 , yes. I spoke to  
5 her but she was not in the executive  
6 chamber.

7 Q. Okay. Who is [REDACTED] Staffer #6 ?

8 A. [REDACTED] Staffer #6 is -- I believe  
9 she worked in communications. I believe  
10 she works at the MTA, but I may have that  
11 wrong.

12 Q. Mm-hmm. And did you overlap --  
13 when you worked at the executive chamber,  
14 did you see her?

15 A. [REDACTED] Staffer #6 , yes.

16 Q. In what context did you see her?

17 A. She was -- she worked in  
18 communications. I worked with her on a  
19 variety of policy issues that had to be  
20 addressed through the press.

21 Q. Did you ever observe any  
22 interactions between her and the Governor?

23 A. Yes.

24 Q. And what kind of interactions  
25 did you observe?



1 A. DAVID

2 A. She, I believe, traveled with  
3 him, worked with him closely at a certain  
4 point in time as press secretaries do and  
5 their interaction was nothing out of --  
6 nothing out of the ordinary.

7 Q. Did you ever see the Governor  
8 touch her?

9 A. I suspect that I must have seen  
10 him hug her at public events, but I don't  
11 have any specific recollection, no.

12 Q. And did you ever hear the  
13 Governor say anything suggestive to her?

14 A. No.

15 Q. Have you spoken to anyone in the  
16 executive chamber about [REDACTED] Staffer #6 ?

17 A. No.

18 Q. Melissa DeRosa, speak to her  
19 about [REDACTED] Staffer #6 ?

20 A. No.

21 Q. How about Judy Mogul?

22 A. No.

23 MR. KIM: Si, this was a -- I  
24 think you had told us there were --

25 MR. AYDINER: Yes. It's -- by

1 A. DAVID

2 Counsel. That is on my list. The  
3 only mea culpa I'll have -- I mean,  
4 you can try to refresh him, Joon --  
5 the only thing I'll say is I do have  
6 that on my list following my  
7 conversation with Mr. Fishman.

8 Like I said, the only mea culpa  
9 I'll give Mr. David, to the extent  
10 that he's having some issue on his --  
11 he's seven and a half hours in. But  
12 you know, I don't think there's any --  
13 hopefully no suggestion he's  
14 intentionally not remembering. I  
15 mean, he's been giving you as much  
16 detail as we're allowed to on these  
17 issues.

18 But I did have it as a potential  
19 conversation that may have occurred.

20 A. There was a conversation  
21 between -- between Melissa DeRosa and  
22 [REDACTED] Staffer #6 but I did not have  
23 conversations with Melissa DeRosa about  
24 [REDACTED] Staffer #6, which was the question.

25 Q. I see. So you had a

1 A. DAVID

2 conversation, a call with [REDACTED] Staffer #6  
3 and Melissa DeRosa?

4 A. Correct.

5 Q. Okay. When was that?

6 A. That is the one conversation  
7 that -- probably 2021, 2020, at about that  
8 time. I don't know when.

9 Q. And what did you talk about?

10 A. We talked about Kaitlin [REDACTED].

11 Q. Okay. And if I ask you  
12 specifics about that conversation, is  
13 that --

14 MR. KIM: Tell me, Si, you'll  
15 object to it?

16 MR. AYDINER: I don't have a  
17 choice, Mr. Kim. As you know, not to  
18 sound like a broken drum, but it's on  
19 my list and it's consistent with a  
20 privilege that the executive chamber  
21 through Paul Fishman is the putative  
22 privilege holder, wants us to hold at  
23 this time.

24 Q. Is it the same conversation when  
25 I asked you earlier about conversations

1 A. DAVID

2 about Kaitlin [REDACTED] and Melissa DeRosa?

3 A. Yes.

4 Q. With [REDACTED] Staffer #6, it's not two  
5 separate?

6 A. No. It's the same conversation.

7 Q. Alessandra Biaggi, do you know  
8 her?

9 A. Yes.

10 Q. How do you know her?

11 A. Alessandra Biaggi worked in  
12 Counsel's Office for a short period of  
13 time. I don't remember how long. Maybe a  
14 year.

15 Q. Mm-hmm. Any interactions that  
16 you saw with her and the Governor?

17 A. At public events.

18 Q. Yeah. Did you ever see him  
19 touch her?

20 A. I don't have any specific  
21 recollection, but I would assume that he  
22 may have hugged her at some point,  
23 congratulated her in some way. But I  
24 don't have any specific recollection.

25 Q. Did she have any discussions

1 A. DAVID

2 with you about the -- the atmosphere or  
3 the culture within the executive chamber?

4 A. No.

5 Q. When is the last time you spoke  
6 to her?

7 A. When she left the chamber,  
8 whatever year that was.

9 Q. You haven't spoken to her since  
10 or -- or communicated with her?

11 A. No. I may have seen her at a  
12 public event after she became an elected  
13 official, but that may have just been in  
14 passing and just sort of pleasantries  
15 and -- but nothing substantive.

16 Q. How about [REDACTED] [REDACTED] ?

17 A. I don't think I know who that  
18 is.

19 Q. Don't know who that is.  
20 Do you know who Karen Hinton is?

21 A. Yes.

22 Q. How do you know her?

23 A. Karen Hinton, I met through her  
24 husband Howard Glaser, who was Deputy  
25 Secretary -- no State Director of

1 A. DAVID

2 Operations in 2011.

3 Q. Any interactions between  
4 Karen Hinton and the Governor that you  
5 observed?

6 A. Nothing out the ordinary, no.

7 Q. Do you know [REDACTED] [REDACTED] ?

8 A. The same sounds very familiar.

9 Q. Someone who worked in the  
10 executive chamber?

11 A. He certainly worked in the  
12 administration. I'm not sure if he worked  
13 in the chamber.

14 Q. Nothing you remember in  
15 particular about him having relationships  
16 with people in the -- of the chamber?

17 A. No, I don't.

18 Q. Other than the -- recently after  
19 the text when you saw the Governor  
20 briefly, have you had any communication  
21 with the Governor in this year, 2021?

22 A. No.

23 Q. No communications whatsoever?

24 A. No communications at all.

25 Q. How about last year, 2020?

1                   A.     DAVID

2                   A.     I don't remember. I know he  
3 provided a video for a public event that  
4 we had, but I don't remember speaking with  
5 him directly. I don't remember speaking  
6 with him in 2020.

7                   Q.     Okay. While you were in the  
8 executive chamber, did you became -- did  
9 you ever become aware of issues that the  
10 Governor or others in the executive  
11 chamber had with State Troopers in the  
12 Protective Services Unit?

13                  A.     I was aware of issues with the  
14 Protective Services Unit vis-à-vis public  
15 statements that have been made, but I  
16 don't believe I was involved in any  
17 personal way. I don't have any direct  
18 personal knowledge.

19                  Q.     How about of members of the  
20 troopers who were reassigned or moved as a  
21 result of complaints from the Governor or  
22 others in the executive chamber?

23                  A.     I read about those issues and  
24 I'm not sure when I did, but I don't have  
25 any direct or personal knowledge about

1 A. DAVID

2 that.

3 Q. Read about them where?

4 A. In the paper.

5 MR. AYDINER: Just note my  
6 objection to the extent that the State  
7 Trooper topic has not been  
8 specifically delineated in either  
9 subpoena.

10 But you can provide and answer  
11 questions.

12 Q. How about State Troopers who ran  
13 the Aviation Unit, any awareness of  
14 interactions with the Governor or the  
15 executive chamber relating to the Aviation  
16 Unit?

17 A. Yes.

18 Q. What did you remember?

19 A. I think they were -- and I have  
20 to be careful that I'm protecting whatever  
21 privileges may apply here. So I think  
22 there were -- there were issues about  
23 organization and structure and consistency  
24 that were -- that the operations unit,  
25 meaning the Director of State Operations



1                   A. DAVID

2       and others were looking into.

3           Q.       Any instances that you were  
4       aware of where members of the Aviation  
5       Unit were, again, reassigned, terminated  
6       or otherwise employment affected because  
7       of complaints or issues the Governor had  
8       or people in the executive chamber had?

9           MR. AYDINER:   Mr. David, since  
10       we're now outside the -- Mr. Kim,  
11       since we're now outside the state of  
12       scope of the subpoena, I'm going to  
13       have to instruct Alphonso David to  
14       invoke privilege to the extent you're  
15       asking questions now that directly  
16       involve his employment at the chamber  
17       as an attorney and were not  
18       specifically stated in the subpoena.  
19       So on this -- on this material I have  
20       to err on the side of caution.   I  
21       understand -- I mean, you've been a  
22       gentlemen.   We're eight hours in.

23                   But this -- on this one, I have  
24       to err on the side of being overly  
25       prophylactic because you're

1                   A. DAVID

2           implicating chamber privilege on a  
3           completely new topic.

4           Q.       Other than privileged --  
5           potentially privileged communications, did  
6           you ever become aware of any members of  
7           the Aviation Staff getting moved or  
8           reassigned at the direction of the  
9           Governor or the executive chamber?

10          A.       No. I don't have any specific  
11          recollection of that.

12          Q.       Do you recall -- were you in the  
13          executive chamber when there was a dispute  
14          between the Governor's Office, the  
15          executive chamber and the Manhattan  
16          District Attorney in connection with the  
17          Eric Schneiderman investigation?

18          A.       Yes.

19          Q.       And what role did you play?

20          A.       I believe I was involved in  
21          helping to facilitate the coordination  
22          between two different district attorneys  
23          offices that were going to be doing the  
24          review.

25                   MR. AYDINER:   And just note my

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A. DAVID

objection as to the extent that we are now into another topic not delineated in the subpoena.

Mr. David, just err on the side of caution with respect to privilege to the extent that the subject matter occurred during a time period in which you were engaged as counsel for the executive chamber.

Q. Were you a party to any conversations between the Governor and anyone in the DA's Office in Manhattan?

A. Yes.

Q. Okay. What conversations?

A. I think as it relates to the ongoing probe of Mr. Schneiderman and the Attorney General's Offices.

Q. Were you on any call that the Governor had with the Chief Assistant, the District Attorney in Manhattan, [REDACTED] [REDACTED] ?

A. I don't remember.

Q. Are you aware of any incident where there was an accusation where the

1                   A.    DAVID

2   Governor or Governor's Office had sought  
3   to obtain a Chevy Tahoe from General  
4   Motors without a proper conversation for  
5   it?

6           A.    Am I aware of an accusation?

7           Q.    Yeah, or any -- any issue  
8   arising about an allegation that the  
9   executive chamber had sought to obtain a  
10  Chevy Tahoe from GM?

11          A.    Sounds vaguely familiar that  
12  there was some claim or issue, but I don't  
13  remember the specific details.

14          Q.    Let me ask you:  In your job as  
15  President of the Human Rights Campaign who  
16  do you report to, the board?

17          A.    On fiscal management issues,  
18  yes, ultimately I report to the board of  
19  directors.

20          Q.    Mm-hmm.  How about on other  
21  issues?

22          A.    I'm responsible for managing and  
23  overseeing all operations associated with  
24  the organization and I work with the board  
25  of directors on a variety of issues

1                   A. DAVID

2       including fiscal management.

3           Q.       And does the organization have  
4       rules around the ability to provide legal  
5       services to other organizational groups  
6       while you're serving as the President of  
7       Human Rights Campaign?

8           A.       The organization does not  
9       prohibit me from providing consultation  
10      services or support for -- without  
11      remuneration, so's there's no prohibition  
12      to that.

13          Q.       So you've -- you've not received  
14      remuneration from anyone for providing  
15      legal services since you've joined the  
16      Human Rights Campaign?

17          A.       No. I do not have a second job  
18      or income from other sources.

19          Q.       Or from any of your confidential  
20      communications you've been instructed not  
21      to talk about?

22          A.       Correct. The -- as I've said  
23      before, I was being consulted on a  
24      confidential basis in many cases with  
25      respect to matters that I worked on or

1 A. DAVID

2 matters that were relevant to issues that  
3 I worked on, but I was not being  
4 compensated in any way for providing that  
5 feedback.

6 Q. When you said relevant to the  
7 issues you had worked on, that's -- you  
8 were referring to the Lindsey Boylan  
9 investigation?

10 A. Yes. And anything else that I  
11 worked on, whether they be housing at  
12 NYCHA or clemency or anything else?

13 MR. KIM: I think unless Anne or  
14 Jen, you have any anything --

15 MS. CLARK: I'm good.

16 MS. KENNEDY PARK: I just have  
17 one follow-up question on the --  
18 Kaitlin [REDACTED], which is: Did you ever  
19 become aware of the substance of any  
20 communication between [REDACTED] Staffer #6  
21 and Kaitlin [REDACTED]?

22 THE WITNESS: I'm aware that  
23 they had a conversation and I think I  
24 understand the general nature of that  
25 conversation, yes.

1 A. DAVID

2 MS. KENNEDY PARK: What was the  
3 nature of that conversation?

4 MR. AYDINER: By Counsel,  
5 Mr. David just establish how you came  
6 to learn that conversation, so we can  
7 see if it's from a source that  
8 putative privilege holder wants  
9 protected at this time.

10 THE WITNESS: Yes. It is  
11 pursuant to the conversation that I  
12 had with Melissa DeRosa and [REDACTED]  
13 Staffer #6 , which was referenced as  
14 privileged earlier.

15 MS. KENNEDY PARK: So, Si, are  
16 you asserting privilege as to a  
17 conversation that was had between  
18 Kaitlin [REDACTED] and [REDACTED] Staffer #6 ?

19 MR. AYDINER: What I -- correct  
20 me if I'm wrong, and it is late. I  
21 understood it that he came to learn of  
22 the substance of the conversation  
23 between those two women from somebody  
24 who was with the executive chamber,  
25 unless I'm completely misunderstanding

1 A. DAVID

2 him. That may be true, because it is  
3 late.

4 THE WITNESS: That is correct.

5 MR. AYDINER: Okay.

6 MS. KENNEDY PARK: And so you're  
7 instructing him not to answer?

8 MR. AYDINER: Based on the  
9 directive we have of the executive  
10 chamber, yes, ma'am.

11 MS. KENNEDY PARK: That is it,  
12 Joon.

13 MR. KIM: Okay. Well,  
14 Mr. David, thank you for the time. I  
15 know we've gone very late. We started  
16 late. Thank you for bearing with us  
17 through this.

18 I -- unfortunately, it sounds  
19 like we may have one more session to  
20 resolve after we are able to resolve  
21 these conflict issues. So with that  
22 caveat, I think we are done for  
23 tonight.

24 MR. AYDINER: If I may just,  
25 Counsel, thank you so much. And at



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the request of Paul Fishman, please notice the executive chamber on any motions involving privilege in this case so that the privilege holder can be heard. You can take that under advisement. Mr. Kim, thank you so much.

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VIDEOGRAPHER: I have to officially take us off the record. Can I?

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13

MR. KIM: Yes, take us off the record.

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VIDEOGRAPHER: Stand by, please. We are off the record at 10:49 p.m. This is the end of todays interview of Alphonso David. The total number of Media Units was 5 and will be retained by Veritext New York.

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[TIME NOTED: 10:49 p.m.]

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ALPHONSO DAVID

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Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

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Notary Public

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CERTIFICATION

I, Samuel Hittin, a Notary Public for  
and within the State of New York, do  
hereby certify:

That the witness whose testimony as  
herein set forth, was duly sworn by me;  
and that the within transcript is a true  
record of the testimony given by said  
witness.

I further certify that I am not  
related to any of the parties to this  
action by blood or marriage, and that I am  
in no way interested in the outcome of  
this matter.

IN WITNESS WHEREOF, I have hereunto  
set my hand this 5th day of May, 2021.



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SAMUEL HITTIN

\* \* \*