

1 STATE OF NEW YORK
2 COMMISSION ON PUBLIC INTEGRITY

3 -----
4 IN THE MATTER OF AN INVESTIGATION
5 INTO THE ALLEGED MISUSE OF RESOURCES
6 OF THE DIVISION OF STATE POLICE

7 -----
8 VOLUME II

9
10 STENOGRAPHIC MINUTES OF SWORN TESTIMONY conducted
11 of TERENCE L. KINDLON, ESQUIRE, held on the 25th day of
12 January, 2008, at the offices of the Commission on Public
13 Integrity, 540 Broadway, Albany, New York, commencing at
14 3:00 p.m., before DIANA FREUND, a Shorthand Reporter and
15 Notary Public in and for the State of New York.

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EXHIBITS

Commission Exhibits	Description	ID	EVD
116	E-mail from Terence Kindlon to David Nocenti dated 7/22/07 1:43 p.m.	185	
117	E-mail from Sean Maloney to Terence Kindlon dated 7/22/07 2:32 PM	195	
118	E-mail from Terence Kindlon to Sean Maloney dated 7/22/07 3:05 PM	197	
119	E-mail from Sean Maloney to Terence Kindlon dated 7/22/2007 5:33 PM	199	
120	E-mail from Terence Kindlon to Sean Maloney dated 7/22/07 5:41 PM	201	

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P R O C E E D I N G S

MR. TEITELBAUM: You understand you're still under oath?

THE WITNESS: Yes.

MR. TEITELBAUM: I just want to preface this second session with some observations and some requests.

Mr. Koenig, you are here as an accommodation, and our understanding was, and you agreed to it, that your sole exclusive function sitting at this table was to interpose the attorney-client privilege on behalf of Mr. Dopp if you felt that there was an attorney-client privilege, and nothing more. We'd ask you to stick to that agreement, please.

Now, at our last session there was a direction to Mr. Kindlon not to answer a question and it was not on grounds of privilege. I just want to emphasize to you, Counsel, that you're not here at a deposition. We're here pursuant to the rules that govern the Commission on Public Integrity, and you are not entitled to direct your client not to

1 answer a question unless a privilege is
2 implicated. You have no right to do that.

3 MS. SHANKS: Well, that may be your
4 opinion.

5 MR. TEITELBAUM: It's not my opinion.

6 MS. SHANKS: It is.

7 MR. TEITELBAUM: Just think of it --
8 because if that is permitted to stand, that's
9 going to be tested.

10 MS. SHANKS: That's fine.

11 MR. TEITELBAUM: That will be tested. I
12 am unaware of any authority that allows
13 somebody, for example, before a Congressional
14 committee to direct the person not to answer a
15 question unless a privilege is implicated, and
16 that situation is no different from this
17 Commission. That's the position we're taking
18 here. I just want to apprise you on it, and I
19 would urge you to withdraw that direction.

20 MS. SHANKS: Well, for the record, I will
21 indicate this is not a Congressional hearing --

22 MR. TEITELBAUM: I didn't say it was. I
23 didn't say it was. I said it was like a
24 Congressional hearing in that the only ground

1 on which you can direct the witness not to
2 answer is if there is a privilege implicated.

3 MS. SHANKS: If I might make a statement
4 without you interrupting me.

5 MR. TEITELBAUM: What I would ask you to
6 do is not misrepresent what I said. I didn't
7 say this was a Congressional hearing. I didn't
8 say that.

9 MS. SHANKS: Are you finished now?

10 MR. TEITELBAUM: I am.

11 MS. SHANKS: Then I'd like to make a
12 statement. This is not a Congressional
13 hearing, and although you may believe that
14 there are rules for this hearing that are the
15 same as a Congressional hearing, I do not
16 accept that characterization. I also do not
17 believe that even in a Congressional hearing
18 that an attorney needs to sit as a potted
19 plant. I believe that my obligation here is to
20 act as an attorney for my client, Mr. Kindlon,
21 and if I believe that you have asked a question
22 that is -- cannot be legally propounded or
23 cannot be answered in an appropriate fashion by
24 my client under oath, I am going to direct him

1 not to answer. If you believe that I have no
2 right to do so, well then I suppose that there
3 is an appropriate forum by which you can ask
4 for a judge to direct him to answer a question,
5 and you and I can both give our opinions as to
6 what the law is.

7 You are an attorney in this room. I
8 respect you. I respect this forum. But for
9 you to ask me or to direct me that I can or
10 cannot give legal advice to my client, I would
11 submit is preposterous.

12 MR. TEITELBAUM: I didn't say that you
13 couldn't give legal advice to your client.
14 What I'm saying is --

15 MS. SHANKS: And my advice to my client --

16 MR. TEITELBAUM: You have no right -- you
17 have no right to direct the witness appearing
18 before this Commission pursuant to subpoena to
19 refuse to answer a question unless a privilege
20 is implicated.

21 MS. SHANKS: That is your opinion. But
22 when you ask my client to speculate as to what
23 was in -- what was the mental processes of
24 another individual and to characterize what was

1 in the person's heart or whether he was
2 sincere, that is an improper question. You
3 certainly can go before a court, and if the
4 court agrees with you that it is somehow proper
5 to ask an attorney to characterize or to
6 comment on the sincerity of his client's
7 beliefs, I will then make the argument that I
8 believe is proper, and then a judge will rule.
9 But you can't tell me that I don't have a right
10 to object to your question and that I simply
11 have to agree with you that if you think it's
12 okay to ask it, then my client has to answer
13 it. Otherwise, he wouldn't need an attorney
14 here.

15 MR. TEITELBAUM: Well --

16 MS. SHANKS: And he wouldn't have a right
17 to have an attorney here.

18 MR. TEITELBAUM: Well, he doesn't have a
19 right to have an attorney here, actually.

20 MS. SHANKS: Well, if you would like to
21 litigate that matter, we can litigate the
22 matter. But when you ask a question asking my
23 client to give his views of the sincerity of
24 his client, I am going to direct him not to

1 answer. I don't believe it's a legal question.
2 I don't think that it is within the purview of
3 one human being, other than perhaps a priest,
4 in ascertaining whether or not someone who is
5 making a confession believes in his heart that
6 he's actually remorseful.

7 MR. TEITELBAUM: The question has now been
8 mischaracterized again. I didn't ask your
9 client to tell us what was in somebody's heart.
10 I am entitled to ask questions that are
11 speculative, by the way. I'm entitled to do
12 that. I don't want to prolong this.

13 MS. SHANKS: Good.

14 MR. TEITELBAUM: If we have to have it
15 tested, we'll have it tested.

16 MS. SHANKS: Okay.

17 MR. TEITELBAUM: The question stands. Are
18 you continuing to direct him not to answer?

19 MS. SHANKS: You can re-ask the question
20 and I will make a determination.

21 MR. KOENIG: Before you get into
22 substance, can I just make two brief quick
23 comments on the record?

24 One is I want to make it very clear --

1 this is a brand new stenographer -- I made
2 clear at the first hearing, Darren Dopp does
3 not in any way, shape or form waive the
4 attorney-client privilege.

5 With regard to Mr. Teitelbaum's comments
6 about the accommodation that was made for me to
7 be here, the history is important to lay on the
8 record so there's no mistake when and if we
9 have to go to court on this. On January 11th,
10 I received a call -- it was a Friday afternoon
11 late -- that Mr. Kindlon, Darren Dopp's
12 previous attorney, had been subpoenaed by the
13 Commission on Public Integrity. In my mind and
14 based on my experience, that clearly would
15 implicate attorney-client privileges. I did
16 not learn this from the Commission, by the way,
17 that Mr. Kindlon was going to be testifying or
18 was subpoenaed to testify. On the following
19 Monday, which was January 14th, I sent a letter
20 to Mr. Kindlon directing him that Mr. Dopp was
21 not waiving any attorney-client privileges. I
22 sent a very similar letter to the Commission on
23 Public Integrity to advise them Mr. Dopp is not
24 waiving any privileges, and I thought that I

1 had a right to be present at any testimony
2 Mr. Kindlon gave or to properly interpose the
3 attorney-client privileges. It was not for
4 Mr. Kindlon or anyone else to interpose that on
5 Mr. Dopp's behalf, since as of early November I
6 represented Mr. Dopp. Mr. Teitelbaum called
7 me, it must have been within 30 minutes if not
8 less of receiving my letter, and offered me the
9 opportunity to come into the hearing to assert
10 the attorney-client privilege if and when
11 appropriate. While the Commission will view
12 that as an accommodation, I view it as
13 imperative, and I think any court will see that
14 as true given the sanctity which the
15 attorney-client privilege has been held in this
16 country for at least over 100 years, and
17 probably longer than that. Mr. Teitelbaum
18 indicated that I'm here to object -- to assert
19 the attorney-client privilege is inappropriate.
20 This is what I will do, and to my belief this
21 is what I did on Wednesday. To the extent that
22 there were any further colloquys, they were
23 necessitated by Mr. Teitelbaum and at times
24 other counsels' opinions on what I was

1 objecting to, so there was a necessary
2 colloquy. But I think the record will show
3 that apart from the appearance I made at the
4 very beginning, the only thing I put on the
5 record were attorney-client privileges and any
6 necessary colloquy that resulted from entries
7 by the Public Integrity Commission.

8 I will be here to interpose the
9 attorney-client privilege if and when
10 appropriate. I will also defend Mr. Dopp to
11 the extent I believe necessary and appropriate
12 when the Commission of Public Integrity raises
13 questions about any objection I interpose.

14 MR. TEITELBAUM: Okay.

15 EXAMINATION BY COUNSEL FOR THE COMMISSION

16 BY MR. TEITELBAUM:

17 Q. Mr. Kindlon, when Mr. Dopp signed the statement on
18 July 22nd -- Withdrawn.

19 Was it your understanding that when Mr. Dopp
20 signed the statement on July 22nd that it was not his
21 view that he should have referred the matter to the
22 state police?

23 MR. KOENIG: Objection.

24 Do not answer that.

1 Q. Did Mr. Dopp say in your presence and in the presence
2 of others that it was his view that referring the
3 matter -- not referring the matter to the state
4 police was appropriate?

5 MR. KOENIG: I object to the extent it was
6 a compound question.

7 MR. TEITELBAUM: You have no ground to
8 object unless it's attorney-client privilege.

9 MR. KOENIG: It's attorney-client
10 privilege.

11 MR. TEITELBAUM: Because it's a compound
12 question?

13 MR. KOENIG: You're asking him did Darren
14 Dopp say in your presence and in the presence
15 of others. Does that mean in his presence?

16 MR. TEITELBAUM: Collectively.
17 Collectively.

18 MR. KOENIG: Ask the question and he can
19 give the appropriate answer.

20 A. I don't understand the question.

21 Q. Did Darren Dopp say in your presence and in the
22 presence of others that in his view when he signed
23 the statement on July 22nd there was nothing wrong in
24 not referring the matter to the state police?

1 MR. KOENIG: I object. Attorney-client
2 privilege. He didn't add the word
3 "collectively." He asked the exact same
4 question the second time that he asked the
5 first time.

6 Q. When I say "in your presence and in the presence of
7 others," I mean you and other people -- in the
8 presence of you and other people, together, sitting
9 together, standing together, in a room being
10 together, did Dopp articulate that in his view on
11 July 22nd when he signed the statement that not
12 referring the matter to the state police was
13 appropriate?

14 A. I just don't understand the question. I really
15 don't.

16 Q. What part of the question don't you understand?

17 A. Everything from the first word to the last word, the
18 entire question.

19 Q. You were in a room with Darren Dopp on July 22nd in
20 the Executive Chamber?

21 A. That I was, yes.

22 Q. Were there other people in the room?

23 A. Yes.

24 Q. Who was in the room?

1 A. From time to time, David Nocenti, Peter Pope. I
2 think Sean Patrick Maloney was there, I think. I'm
3 not completely sure because the days, the 21st and
4 the 22nd go together. There was a black woman who
5 was in the vicinity and I think she may have passed
6 through the room at some point, and I believe that
7 there was a young man who may have been a young
8 lawyer, although I couldn't pick him out of a lineup.
9 I just remember a young man with a tight haircut. I
10 wasn't paying that much attention to who else was in
11 the room.

12 Q. Now, on the 21st of July, were you in a room with
13 Darren Dopp and other people in the Executive
14 Chamber?

15 A. You know, I've really scoured my mind. I remember
16 being in a room on the 21st, Saturday, with Peter
17 Pope. I remember being in a room on the 21st on the
18 second floor -- that part of the second floor that
19 they collectively describe the rooms as the Chambers
20 with Sean Patrick Maloney. That's the first time I
21 ever met those two fellows. To the best of my
22 recollection, I can't recall whether Darren Dopp was
23 in the room on Saturday, or whether I went down there
24 by myself. I just can't remember and I don't have

1 any way that I'm able to determine whether Darren was
2 there or not. I think he was, sir, but I'm not
3 completely sure.

4 Q. Over that weekend --

5 A. Yes.

6 Q. -- when you were in the Executive Chamber, were there
7 other people in the room in addition to yourself and
8 Mr. Dopp?

9 A. Uh-huh.

10 Q. Did Mr. Dopp express the view that there was nothing
11 wrong -- that he did nothing wrong in not referring
12 the matter to the state police?

13 A. Well, did he express it -- no, he never made a
14 declarative statement like that.

15 Q. Did he make any kind of statement?

16 A. Well, he made lots of statements.

17 Q. Did he make any kind of statement which expressed
18 that, in words or substance?

19 A. Not that I specifically recall.

20 Q. Do you have any general recollection of it?

21 A. When we were in -- well, see, this is where it gets
22 really hard for me because I had private
23 conversations with Darren. I know that when we were
24 in the Chamber, and I can't recall whether it was on

1 the 21st or the 22nd, I know that at some point he
2 and I stepped out of the room that had a big library
3 table in it, into a hallway. We had a conversation
4 with each other in the hallway, but I really don't
5 have, you know, a distinct memory of the events that
6 occurred in the Executive Chamber as far as
7 conversations, and who was coming and going.

8 Again, you have to understand something. We
9 were talking about an enormous number of things rapid
10 fire, and, you know, there was conversation in the
11 presence of other people. There was conversation --
12 hushed conversation at the side of the table. There
13 was conversation had, you know, walking up to and
14 back from the Chamber, and I think we took the
15 Million Dollar Staircase to get there. There were
16 telephone conversations. There were e-mail
17 exchanges. It was a very active day. As I said to
18 you the last time we were here, I was spending a lot
19 of energy and time and effort just to catch up with
20 the events that occurred during the last months of
21 the legislative session and trying to understand the
22 aviation policy of the State of New York, talking
23 about Cuomo, talking about Pataki, talking about
24 newspaper reporters and wire services, and who was

1 who in the Chamber. I mean, there was a tremendous
2 amount of information and I was trying to soak it up.

3 BY MS. TOOHER:

4 Q. Mr. Kindlon, in your prior testimony just a few days
5 ago --

6 A. Yes.

7 Q. -- you indicated that Mr. Dopp had made statements to
8 members of the Chamber. It was your understanding
9 that he had advised members of the Chamber that he
10 did not think he did anything wrong.

11 A. Right.

12 Q. You were aware of that on the 21st, which is
13 Saturday?

14 A. Well, I know that he had advised members of the
15 Chamber that he hadn't done anything wrong. If you
16 could let me specifically look at what you're
17 referring to in the testimony, I can comment on that.

18 Q. I'm just asking for your recollection at this point
19 in time. Is it your recollection that you were aware
20 on July 21st that Darren Dopp had relayed to the
21 Executive Chamber, Mr. Maloney, Mr. Pope, that he did
22 not think he had done anything wrong in the matters
23 involving the information obtained from the state
24 police?

1 A. Well, I know that Darren thought then that he hadn't
2 done anything wrong -- said out loud, excuse me.

3 MR. KOENIG: To others?

4 A. That he hadn't done anything wrong.

5 Q. In fact, Mr. Dopp testified before the Commission in
6 your presence as his counsel, that he did not think
7 he had done anything wrong in gathering the
8 information from the state police?

9 A. Absolutely. He testified across the table from you
10 up in the A.E. Smith Office Building that he didn't
11 think he had done anything wrong, and that's because
12 he didn't think he had done anything wrong, and
13 that's why he said he didn't think he had done
14 anything wrong.

15 Q. And I believe you testified that on the 21st when you
16 first came onboard and you were -- I think to quote
17 you "coming up to speed" --

18 A. Correct.

19 Q. -- that one of your queries was "I don't really
20 understand what's going on here. I don't really see
21 the criminal act," if you will, is that correct?

22 MR. KOENIG: Are you asking about
23 things --

24 MS. TOOHER: I'm asking about his

1 testimony just the other day.

2 MR. TEITELBAUM: Prior testimony.

3 MR. KOENIG: Are you asking or talking
4 about the conversations he had with Dopp?

5 MS. TOOHER: No. I'm asking about his
6 testimony here the other day.

7 MR. KOENIG: Fine.

8 A. If you show me the testimony, I could comment on it
9 directly and tell you exactly, you know, what I meant
10 when I said that.

11 Q. I'll ask you the question again.

12 A. Okay.

13 Q. On the 21st, were you aware of anything that Darren
14 Dopp had done wrongly legally?

15 A. Oh, no, I certainly wasn't, no. And since he was my
16 brand new client, and since the -- since my focus was
17 on Darren, that was the most important thing for me
18 to understand, what it was people thought or said or
19 felt or believed he had done wrong.

20 I said then and I say now, I don't think he did
21 anything wrong. I couldn't discern what he had done
22 that was allegedly wrong then, since then, or now.

23 Q. And on Saturday, I think you testified earlier, that
24 you were coming up to speed, is that correct?

1 A. Right. That is correct, yeah.

2 Q. And that you relayed that to Maloney and Pope --

3 A. Correct.

4 Q. -- that you were involved in the process of coming up
5 to speed?

6 A. Absolutely, yeah.

7 Q. In fact, you did do that, you relayed to Maloney and
8 Pope that this was a new client, that you were coming
9 up to speed?

10 A. Correct.

11 Q. At some point in time, did you get up to speed?

12 A. Yeah. I think I got up to about 75 percent of, you
13 know, where I really needed to be. Again, because I
14 was trying to get a master's degree in life in the
15 Chamber at the speed of light and I wasn't capable of
16 that. I was going -- I was killing myself trying to
17 understand what everybody was talking about, but I
18 couldn't do it.

19 MR. KOENIG: I want to see you outside.

20 (Mr. Kindlon and Ms. Shanks exited the
21 proceeding.)

22 (Pause.)

23 BY MS. TOOHER:

24 A. I have to make an important distinction here.

1 Understand that I am, I was and I shall always be a
2 criminal defense lawyer, and when I say what has he
3 done, I perceived he had done nothing wrong. My
4 initial focus was whether or not he had done
5 something that would violate the Penal Law, the
6 United States Code, or perhaps some other, you know,
7 criminal law implication. When I said that I didn't
8 understand what it was he had done that was wrong, I
9 was speaking in terms of the criminal law, and I
10 could perceive of no criminal conduct on his part.

11 Q. The criminal law implication is an important one on
12 another aspect of Mr. Dopp and the July 22nd
13 statement. Mr. Dopp testified before the Commission
14 in your presence that he had been told that the
15 Attorney General wanted to prosecute him for criminal
16 violations. Do you recall him saying that before the
17 Commission?

18 A. Actually, I don't recall him saying that, but I'm
19 sure if you're saying that he said that, that he did.

20 Q. I can certainly point it out to you in the
21 transcript.

22 A. No, that's okay. I accept your representation.

23 Q. He did make a representation that at the time he
24 executed the July 22nd statement, it was indicated to

1 him that he could sign the statement or potentially
2 face criminal prosecution.

3 A. Indicated by whom?

4 Q. He indicated that Mr. Nocenti relayed to him that if
5 he signed it, they wanted to prosecute him.

6 A. Well, let's put this in context.

7 MR. TEITELBAUM: Is there a question?

8 Q. Did you --

9 A. Context. Contextual, and this is important.

10 MR. TEITELBAUM: Let's get the question
11 down.

12 Q. Did you hear Mr. Nocenti say to Mr. Dopp at the time
13 of his July 22nd statement that he faced criminal
14 prosecution if he did not sign that statement?

15 A. No, I did not hear David Nocenti say that at any time
16 on the 22nd.

17 Q. Did you hear Peter Pope say that --

18 A. No.

19 Q. -- to Mr. Dopp on July 22nd, or any other time?

20 A. I did not hear Peter Pope say that to Darren Dopp on
21 the 22nd, nor do I recall him saying that at any
22 time.

23 Q. Did you hear Sean Maloney tell Mr. Dopp on July 22nd
24 that he faced criminal prosecution if he did not sign

1 the statement?

2 A. I don't recall Sean Maloney having any direct
3 conversation with Darren Dopp in my presence on the
4 22nd.

5 Q. Were you ever aware -- and this is a "yes" or "no"
6 question -- that Darren Dopp had been advised by the
7 Executive Chamber that he faced potential criminal
8 prosecution?

9 MR. KOENIG: Can you repeat that question?

10 MS. TOOHER: Can you read that back,
11 Diane?

12 (Thereupon, the following excerpt was read
13 back by the reporter:

14 QUESTION: "Were you ever aware -- and
15 this is a 'yes' or 'no' question -- that Darren
16 Dopp had been advised by the Executive Chamber
17 that he faced potential criminal prosecution?")

18 MR. KOENIG: I'm not going to let him
19 answer that. If you want to make your question
20 more specific, it may not be objectionable, but
21 as asked, I object.

22 MS. TOOHER: On attorney-client privilege?

23 MR. KOENIG: Yup.

24 Q. Was it ever relayed to you by anyone that Darren Dopp

1 faced potential criminal prosecution?

2 MR. KOENIG: I'm not going to let him --
3 you can ask a question that gets what you're
4 getting at without violating attorney-client
5 privilege.

6 MS. TOOHER: A "yes" or "no" answer to
7 that is a violation of the attorney-client
8 privilege?

9 MR. KOENIG: Absolutely.

10 BY MR. TEITELBAUM:

11 Q. Did the subject of Mr. Dopp and the subject of
12 potential prosecution by the Attorney General come up
13 during your conversations on the 21st and 22nd?

14 A. I didn't hear any -- I didn't hear any of the other
15 people who were in and out of the office on that day,
16 on the 22nd, say to Darren that you would be subject
17 to criminal prosecution if you don't sign this
18 statement.

19 Q. Did the subject of Mr. Dopp being told that by one of
20 the Executive Chamber people come up on the 21st or
21 the 22nd?

22 A. I don't understand the question.

23 Q. Did the subject of Darren Dopp being told by a member
24 of the Executive Chamber that there was a threat of

1 prosecution from the Attorney General and to come up
2 on the 21st or the 22nd?

3 A. Not in my hearing, no.

4 Q. And I don't mean just in the presence of everybody.
5 I mean between yourself and Mr. Dopp, did the subject
6 of his being threatened with prosecution come up?

7 MR. KOENIG: I'm not going to let him
8 answer that.

9 A. I'm not going to answer that.

10 MR. TEITELBAUM: I'm not asking what was
11 said.

12 MR. KOENIG: I understand. I'm not going
13 to let him -- I object on the way the question
14 was asked.

15 Do not answer that question based on
16 attorney-client privilege.

17 Q. Did the subject of Mr. Dopp being threatened with
18 criminal prosecution come up on the 21st and 22nd?

19 MR. KOENIG: It's the same question. It's
20 the same.

21 MR. TEITELBAUM: It's not the same
22 question.

23 MR. KOENIG: Well, it's the same
24 objection.

1 BY MS. TOOHER:

2 Q. Was it your understanding from the Executive Chamber
3 that they had an expectation -- strike that.

4 Was it your understanding from the Executive
5 Chamber that if Darren signed the statement, he would
6 receive a benefit?

7 A. Actually, no.

8 Q. It was your understanding at the time the statement
9 was executed that the Attorney General's report was
10 already complete?

11 A. You know, I think so. My recollection is that the
12 Attorney General's report was done. That's my
13 recollection. The statement was signed early in the
14 evening or late on the afternoon of the 22nd. The
15 awareness of the completion of the Cuomo report was
16 made known to me late on the afternoon of the 22nd.
17 There's no place else I could have learned it except
18 in Chamber. I mean, it wasn't -- there wasn't any
19 other source that could provide me with that
20 information. So my best recollection, and I am not
21 completely sure about this, but my best recollection
22 is that I knew that the Cuomo report was completed,
23 although I hadn't seen it before or at about the
24 exact same time as Darren gave his statement, or

1 signed his name to the statement in the Executive
2 Chamber that day.

3 Q. And at the time that Darren was executing the
4 statement in the Chamber, did he indicate a desire to
5 testify to the Attorney General's Office?

6 A. Darren --

7 MR. KOENIG: Hold on a second.

8 I'm going to object. I think I know what
9 you're asking.

10 Q. In the presence of others.

11 MR. KOENIG: So what's the entire
12 question?

13 Q. Did he indicate a desire to testify before the
14 Attorney General?

15 A. Not that I heard.

16 Now, this is like a family that I've walked
17 into the middle of. Darren Dopp, David Nocenti,
18 Peter Pope, Sean Patrick Maloney. They're very
19 clearly a family-like group. They socialize
20 together. They work together. They're all friends
21 with each other. I mean, I was the new guy here.
22 There were conversations going on all over the place.
23 My focus was on the statement that Darren and I had
24 worked on throughout the day. There may very well

1 have been other conversations going on in the room.

2 MR. KOENIG: I would note an objection.

3 MR. TEITELBAUM: Attorney-client?

4 MR. KOENIG: Yes, it is.

5 I think it was an inadvertent slip to what
6 you and Darren worked on during the day.

7 THE WITNESS: Yeah.

8 MR. KOENIG: I direct you not to reveal
9 anything that you did with Darren or
10 conversations you had with Darren.

11 A. I stand corrected.

12 Now, what you may or may not know is that I am
13 deaf in one ear -- not exactly deaf, but, I mean, I
14 can't hear in this ear (indicating). I have
15 tinnitus, so it rings all the time. I'm beginning to
16 lose my hearing in the other ear. I mean, as a
17 criminal defense lawyer it's okay if I'm in court
18 because only one person is allowed to talk at a time
19 and the room is quiet, but if I'm in a room and
20 there's commotion, then it becomes a real challenge
21 for me to hear other things that are being -- to
22 understand conversations.

23 Therefore, I mean, I am not the best source of
24 information as to what was being said and who was

1 saying what in the room, in any room where there's a
2 bunch of people or more than a couple of people. So
3 when you asked me if I heard things, things may have
4 been said and I may not have heard them.

5 BY MS. TOOHER:

6 Q. Mr. Dopp testified before the Commission that he had
7 relayed to the Executive Chamber that he wanted to
8 speak to the Attorney General. Did he relay that to
9 the Executive Chamber in your presence at any time?

10 A. On the 22nd?

11 Q. At any time.

12 A. Okay. Well, the only time I have a clear
13 recollection of being in the Executive Chamber with
14 Darren is on the 22nd, Sunday, and I have no
15 recollection of Darren saying to Peter Pope, David
16 Nocenti, Sean Patrick Maloney, the black lady, or the
17 young white man in a suit, that he wanted to testify
18 before the Attorney General.

19 Q. Your testimony the other day was that it was made
20 clear to you from the Executive Chamber that they did
21 not want Darren to testify, is that correct?

22 A. That is correct, yes.

23 Q. And you became aware at a certain point that Darren
24 wanted to testify, is that correct?

1 MR. KOENIG: I'm going to object to the
2 extent it calls for a conversation he had with
3 his client. If you rephrase it, I'll let it
4 go.

5 Don't answer the question that's been
6 asked.

7 THE WITNESS: Okay.

8 Q. When the Executive Chamber told you that Darren did
9 not want to testify, that came from --

10 A. That's not --

11 Q. That they didn't want him to testify, who relayed
12 that information to you?

13 A. I think it was Peter Pope.

14 Q. What did you respond to Mr. Pope?

15 A. "Okay. I understand. I understand what you're
16 saying."

17 Q. What did you understand that to mean?

18 A. I understood it to mean that Peter Pope speaking on
19 behalf of the Executive Chamber was informing me that
20 they did not want Darren to talk to Cuomo because
21 they felt that there was a divergence of interest
22 between them and Darren, and they felt that because
23 of that divergence of interest, Darren shouldn't do
24 anything about speaking to the Attorney General until

1 after he was independently represented by an attorney
2 who was not affiliated with or associated with or
3 beholden to the Executive Chamber.

4 So my understanding of their position was that
5 they didn't want to advise Darren to talk to Cuomo,
6 and I inferred from that that if Darren was going to
7 talk to Cuomo, it would be on the advice of his
8 separate and independent counsel. My understanding
9 of the reason for all this was because I had been
10 told by Peter Pope and I think Sean Patrick
11 Maloney -- and I hadn't spoken with David Nocenti --
12 but that they felt that there was -- it's their
13 phrase -- a divergence of interest, which I took to
14 be the equivalent of a conflict of interest. But
15 what I drew from that was not that they were trying
16 to hide anything, but simply that they were trying to
17 make sure that Darren was separately represented
18 before he did something which was obviously as
19 significant as talked to, testified to, cooperate
20 with, or whatever, the Attorney General of the State
21 of New York.

22 I think I said to you the last time I was here
23 that I said to Darren "Hold tight. I don't
24 understand what's going on here yet." It's sort of

1 the administrative equivalent of exercise your right
2 to remain silent until the lawyer knows what's going
3 on, and that was in regard to talking with Cuomo.

4 So it was really, you know -- it was really
5 just the advice that when I came in, I said, "Don't
6 you do anything until I understand more about this
7 situation here," and that's where all that comes
8 together.

9 Q. Mr. Dopp relayed to the Commission that he had a
10 desire to testify before the Attorney General's
11 Office --

12 A. Yes.

13 Q. -- concerning this matter.

14 A. Right. That was in our mutual presence.

15 Q. Yes. The Chamber had expressed that they did not
16 want Mr. Dopp to testify, that they did not believe
17 Mr. Dopp should testify before the Attorney General?

18 A. Correct.

19 Q. And your role at that point was to advise Mr. Dopp
20 concerning, among other things, whether or not he
21 would testify before the Attorney General?

22 A. Well, in the fullness of time, that certainly would
23 have been advice that I would have --

24 MR. KOENIG: Ah, ah, ah (phonetic). No

1 attorney-client advice you would have given,
2 could have given or should have given.
3 Attorney-client privilege.

4 MR. TEITELBAUM: It's not communication.
5 It's not communication.

6 MR. KOENIG: What advice he would have
7 given?

8 MR. TEITELBAUM: He didn't tell his client
9 anything. She's not asking for a
10 communication.

11 MR. KOENIG: But his thought processes and
12 what he would have communicated, what his
13 answer started to be is what I would have done,
14 that thought process of what he would have done
15 is based upon information he would have
16 learned. The information he would have learned
17 would have been from his client. His client is
18 not waiving the attorney-client privilege
19 therefore it's an improper question to ask.

20 MS. TOOHER: Could you read back the
21 question, Diane?

22 (Ms. Shanks and the witness conferring.)

23 MR. TEITELBAUM: There's a question
24 pending. Counsel, there's a question pending.

1 Please don't confer with the witness when
2 there's a question pending. Counsel, please
3 don't confer with the witness when there's a
4 question pending.

5 MS. SHANKS: Sir --

6 THE WITNESS: Listen.

7 MR. TEITELBAUM: Even at a deposition
8 that's inappropriate.

9 THE WITNESS: I'm sorry. I'm not going to
10 answer questions unless I can talk to my
11 lawyer.

12 MR. TEITELBAUM: I have no objection to
13 you talking to your lawyer but not while a
14 question is pending. It's just not
15 appropriate. Let him answer the question and
16 then you can talk to him.

17 MS. SHANKS: Sir, I'm an attorney here. I
18 will do what I believe is in my client's best
19 interest. If you have an objection, you can
20 file it with whatever forum you believe is
21 appropriate, but please do not lecture me on
22 when I may speak with my client.

23 MR. TEITELBAUM: I'm not lecturing you.
24 I'm asking you not to do it. I'm not lecturing

1 you. Please don't do it. It has the
2 appearance that you're prompting the witness.

3 MS. SHANKS: Sir, whatever inference you
4 choose to draw, I suppose we could ask your
5 colleagues here to describe, but it is my job
6 here to represent my client, and I will do so,
7 and if and when I believe that I need to speak
8 with him, I will do so.

9 MR. TEITELBAUM: Can I have the last
10 question read back?

11 (Thereupon, the following excerpt was read
12 back by the reporter:

13 QUESTION: "And your role at that point
14 was to advise Mr. Dopp concerning, among other
15 things, whether or not he would testify before
16 the Attorney General?")

17 BY MS. TOOHER:

18 A. My role --

19 MR. KOENIG: I would object.

20 The answer, if your role was to advise,
21 not what advice you gave.

22 THE WITNESS: Right. That's my answer.

23 A. My role was to give Mr. Dopp legal advice.

24 Q. Was it your understanding that that included giving

1 him legal advice as to whether or not he would
2 testify before the Attorney General?

3 THE WITNESS: No objection?

4 MR. KOENIG: What's the question again?

5 Could I have the last question read back?

6 A. Could I have the question read back?

7 (Thereupon, the following excerpt was read
8 back by the reporter:

9 QUESTION: "Was it your understanding that
10 that included giving him legal advice as to
11 whether or not he would testify before the
12 Attorney General?")

13 MR. KOENIG: I'm going to object to that.

14 MR. TEITELBAUM: He's not asking what the
15 advice is.

16 MR. KOENIG: Giving advice to whether or
17 not to testify.

18 MR. TEITELBAUM: No. Did his role include
19 giving that advice.

20 MR. KOENIG: To testify, the advice to
21 testify.

22 MR. TEITELBAUM: No. Whether or not.

23 MR. KOENIG: It was whether or not in the
24 question (directed to reporter)?

1 REPORTER: Yes.

2 MR. KOENIG: If it was, then I withdraw my
3 objection. If it wasn't, then I object to his
4 answer.

5 MS. SHANKS: Well, I'm going to object
6 because this is asking for the scope of his
7 employment. I think we are back to the
8 situation we discussed earlier which was if
9 this was a transitional meeting, and what
10 you're asking is whether or not Mr. Pope or
11 Mr. Nocenti, who were his previous attorneys,
12 were trying to tell his new attorney what the
13 scope of his employment was or was not. It's
14 an inappropriate question and I do direct him
15 on the basis --

16 MS. TOOHER: That is not the question.

17 Please read back the question.

18 (Thereupon, the following excerpt was read
19 back by the reporter:

20 QUESTION: "Was it your understanding that
21 that included giving him legal advice as to
22 whether or not he would testify before the
23 Attorney General?")

24 THE WITNESS: Okay (directed to

1 Ms. Shanks)?

2 BY MS. TOOHER:

3 A. My understanding was that I was there to provide him
4 legal advice concerning any legal issues that came up
5 while I was representing him.

6 MR. KOENIG: I'm going to stop that there
7 because I think anything else goes to
8 attorney-client privilege. I think that's
9 right, because the understanding -- I'll
10 explain it, Mr. Teitelbaum. The understanding
11 he had was that the scope of what he was being
12 asked to do would include conversations that he
13 had with his client. That is privileged. What
14 advice his client seeks from him is privileged.

15 If a client goes to him and says "Here's
16 the murder weapon. What should I do with it,"
17 that's a privileged communication.

18 MS. TOOHER: For the record, the
19 attorney-client privilege is something that's
20 well recognized, certainly by the courts and in
21 this room. However, it is your burden,
22 Mr. Koenig, to show that the attorney-client
23 privilege applies in a particular situation
24 because you are asserting the privilege.

1 Mr. Dopp has testified concerning these
2 matters -- please -- and the law is clear that
3 once he testifies concerning the subject
4 matter, the attorney-client privilege is
5 waived.

6 He has testified in this room that he
7 relayed his desire to testimony -- to testify.
8 He has testified in this room that he wanted to
9 testify, and his communications in that regard
10 under the case law are clear within his waiver.

11 MR. KOENIG: This issue came up the other
12 day and I had talked with the Commission about
13 researching this issue, and Mr. Teitelbaum
14 informed me that it's the Commission's position
15 that once someone testifies, they waive
16 attorney-client privilege is Hornbook Law, I
17 believe.

18 MS. TOOHER: Not as to everything.

19 MR. KOENIG: Hold on a second. Let me
20 finish. Let me finish. The law, as I have
21 researched it says that: Waiver does not occur
22 merely because the client testifies about the
23 same facts he discussed with counsel, and
24 quoting a Court of Appeals case in

1 New York State: Testimony about an event
2 should not be construed as a waiver of the
3 privilege merely because the subject of
4 testimony may also have been discussed in the
5 privileged communication.

6 So that Mr. Dopp came in and testified as
7 to facts --

8 MR. TEITELBAUM: No. He testified as to
9 what he wanted to do. That's what he testified
10 to.

11 MS. TOOHER: And I --

12 MR. KOENIG: That is a fact. That is --

13 MR. TEITELBAUM: We don't know whether it
14 is a fact or not, do we?

15 MR. KOENIG: I believe, and we have a
16 disagreement, over whether or not the
17 attorney-client privilege stands here. I
18 believe it does. I believe the law is that
19 when someone testifies, they do not waive the
20 attorney-client privilege, and it is simply
21 that. Mr. Dopp came in here and testified. He
22 did not testify as to the nature of his
23 communications with his attorney. The nature
24 of the communications with the attorney would

1 waive the privilege if he testifies about the
2 nature of the communications. He can testify
3 exactly about things he spoke to his attorney
4 about, but you can't ask him questions about
5 what he spoke to his attorney about. The
6 underlying facts and the nature of the
7 privileged communication may be the same, but
8 they're treated differently in attorney-client
9 privilege context. He is free under the case
10 law to talk about, to testify, and he can
11 testify about the same subject matters and the
12 same facts. That does not waive the
13 attorney-client privilege.

14 MS. TOOHER: I would take issue with the
15 cases and certainly it's not going to be
16 resolved here, but I would say that Mr. Dopp
17 has put in issue his intent at the time that he
18 signed the statement, and, therefore, his
19 intent and his state of mind waives his
20 attorney-client privilege.

21 MR. KOENIG: I do not believe that the law
22 is entirely foursquare on that either.

23 MS. TOOHER: I believe the law in the
24 Second Circuit in the State of New York is

1 foursquare on that, that once an individual
2 puts their intent and their state of mind in
3 issue, that they waive attorney-client
4 privilege in that regard.

5 MR. KOENIG: We'll have to argue that in
6 the proper forum.

7 BY MS. TOOHER:

8 A. I consider this to be privileged. I myself consider
9 it to be a privilege and I respectfully decline to
10 answer it for that reason.

11 Q. You consider what to be privileged, Mr. Kindlon, just
12 for the record?

13 A. I consider the answer to the question which is still
14 outstanding to require me to violate the
15 attorney-client privilege, and for that reason, I
16 will respectfully decline to answer it.

17 MR. KOENIG: I will also put on the
18 record, as I said the other day, Miss Tooher,
19 if they would like to share with me their case
20 law, and if I'm wrong, I will withdraw my
21 objection. I've done research, as well, on it,
22 and I believe I'm right. I would welcome their
23 case law to prove I'm wrong in which case I'd
24 be more than happy to withdraw my objection.

1 MR. TEITELBAUM: You'll get our case law.

2 MR. KOENIG: Fine. And you'll get mine.

3 MR. TEITELBAUM: In the proper forum
4 you'll get our case law --

5 MR. KOENIG: Fine. Fine.

6 MR. TEITELBAUM: -- and we'll get yours.

7 MR. KOENIG: Fine.

8 BY MS. TOOHER:

9 Q. Let's go back to the execution of the statement, the
10 product of the statement itself. When did you first
11 become aware that you would be preparing a statement
12 for Darren Dopp to execute?

13 A. I don't recall if it was on Saturday afternoon or
14 Sunday morning.

15 Q. Did there come a time where the Chamber communicated
16 to you that they wished to have Mr. Dopp execute a
17 statement?

18 A. Well, there came a time when I became aware that
19 there was a statement to be prepared, but I honestly
20 don't recall who first conveyed that information to
21 me.

22 Q. Did there come a time where you reviewed a draft
23 statement from the Executive Chamber?

24 A. Yes.

1 Q. Do you recall how you received that statement?

2 A. My recollection is that I received it by e-mail on
3 Sunday morning, but I don't remember exactly what
4 time. Again, I was still readjusting to eastern
5 daylight savings time from London daylight savings
6 time.

7 (Document given to the witness.)

8 Q. I'm going to show you what's previously been marked
9 as Commission's 115. It's an e-mail from David
10 Nocenti to you --

11 A. Right.

12 Q. -- and it appears to contain a statement of some sort
13 marked Draft. Can you identify this document?

14 A. Well, this is a version of the statement that after
15 revision was ultimately signed by Darren Dopp on the
16 22nd. I do not know if this is the first version.
17 1:00 p.m. seems kind of late. I think it started in
18 the morning. I think that I may have received the
19 first one in the morning. I caution you that there
20 were -- and this is bound to implicate
21 attorney-client areas because --

22 MR. KOENIG: Well --

23 A. -- there were --

24 MR. KOENIG: Well --

1 MR. TEITELBAUM: Is there a question
2 pending?

3 MS. TOOHER: I just asked him if he could
4 identify the document.

5 A. Okay. Well, I withdraw my answer to the question
6 that wasn't pending. Sorry.

7 Q. So is it your testimony that this is not the first
8 version that you had seen of the statement?

9 A. I'm not sure.

10 Q. Do you recall how many versions there were of the
11 statement?

12 A. No.

13 Q. This e-mail appears to come from David Nocenti.

14 A. That's what it says.

15 Q. Did you have conversations with Mr. Nocenti that
16 morning concerning this statement?

17 A. Not that I recall.

18 MS. TOOHER: Can you mark this?

19 (Commission Exhibit No. 116 was marked for
20 identification.)

21 (Document given to the witness.)

22 BY MS. TOOHER:

23 Q. Mr. Kindlon, I've just handed you what's been marked
24 as Commission's Exhibit 116. It appears to be an

1 e-mail from you dated 7/22 at 1:43 p.m. to David
2 Nocenti. Can you identify this document?

3 A. This is an e-mail from my e-mail address at 1:43 p.m.
4 on 7/22. It says:

5 "I understand that the Attorney General's
6 Office and the State Inspector General's Office are
7 conducting inquiries into two sets of allegations:
8 (1) that Senator Bruno used State aircraft and
9 vehicles for political purposes, and (2) that the
10 Governor's Office had targeted Senator Bruno for
11 State Police surveillance.

12 "I received requests for information
13 relating" --

14 Q. Mr. Kindlon, I didn't ask you to read the document.
15 I asked you if you could identify the document.

16 A. Well, I'm reading it to see if I can identify it.

17 (Witness looking at document.)

18 A. Okay.

19 Q. Can you identify this document?

20 A. Well, this seems to be -- let me say this about that.

21 I've never seen this document before, but it seems to
22 be a printed version of an e-mail that I sent.

23 Q. What was the context in which you sent that e-mail?

24 A. Well, it was sent by me to David Nocenti's e-mail.

1 Q. Address?

2 A. Address, yes.

3 Q. Was it your understanding you were sending it to
4 David Nocenti at that time?

5 A. My recollection is that my conversations were with
6 Peter Pope. That's what I recall.

7 Q. But you were sending your responses to David Nocenti
8 at that time, is that correct?

9 A. Well, I was replying to the e-mail that I received
10 from the Chamber. I think at that point I didn't
11 even know who David Nocenti was. So it wasn't that I
12 sat down and said I think I'll send this e-mail to
13 David Nocenti, counsel to Governor Spitzer, and it's
14 what I received, what I worked on, what I sent back.

15 BY MR. TEITELBAUM:

16 Q. You're talking about 115 is the e-mail that you were
17 responding to? 116 and 115 that you have in front of
18 you, is 116 in response to 115?

19 A. Well, it appears to be. I mean, I don't know if
20 there are E-mails in between here. I don't know if
21 there are communications between myself and Darren
22 Dopp. I just don't know.

23 BY MS. TOOHER:

24 Q. Can you compare 115 and 116 and identify the

1 difference in those two documents?

2 MS. SHANKS: The documents speak for
3 themselves.

4 MR. TEITELBAUM: Just let the record note
5 that counsel has whispered loud enough to her
6 client an answer to a question.

7 MS. SHANKS: I didn't --

8 MR. TEITELBAUM: She said "The document
9 speaks for itself."

10 MS. SHANKS: That's correct. I didn't
11 whisper anything. I made a --

12 MR. TEITELBAUM: It was loud enough for us
13 to hear.

14 MS. SHANKS: No. I made a legal objection
15 that the document speaks for itself. I wasn't
16 whispering an answer, Mr. Teitelbaum. That's a
17 legal objection. The documents speak for
18 themselves.

19 MR. TEITELBAUM: The documents never speak
20 for themselves.

21 MR. KOENIG: Is that Hornbook Law?

22 MS. SHANKS: It must be.

23 MR. TEITELBAUM: The documents never speak
24 for themselves.

1 MS. SHANKS: I'm very sorry. I teach that
2 to my students.

3 BY MS. TOOHER:

4 A. Well, do you want me to read them? I mean, what do
5 you want to do? Do you have an analysis? What is
6 this? What kind of question is this?

7 Q. Mr. Kindlon, the document that you were sent,
8 Commission's 115 --

9 A. Right.

10 Q. -- on the second paragraph, first line, "I sought
11 information that I believed the public had a right to
12 know relating to Senator Bruno's usage of State
13 aircraft."

14 A. Right.

15 Q. The document that you returned to David Nocenti
16 indicates "I received requests for information
17 relating to the use of state aircraft by public
18 officials from members of the media."

19 A. Right.

20 Q. Did you make that change to the statement?

21 A. I don't know.

22 MR. KOENIG: It's attorney-client
23 privilege.

24 A. I just don't know.

1 MS. TOOHER: Whether or not he made the
2 change to the document?

3 A. That's --

4 MR. KOENIG: Hold on a second.

5 A. This implicates attorney-client privilege.

6 MR. KOENIG: Hold on a second.

7 Read the question back, please.

8 (Thereupon, the following excerpt was read
9 back by the reporter:

10 QUESTION: "Did you make that change to
11 the statement?")

12 MR. KOENIG: Yeah. I think that's an
13 improper question. I mean, if you're asking
14 did he physically type the change, that's
15 different and not objectionable. If you're
16 asking anything further than that, that's
17 objectionable.

18 MS. TOOHER: Okay.

19 BY MS. TOOHER:

20 Q. Did you physically type the change to that statement?

21 A. You know, I just don't know. I don't know how many
22 E-mails there were between 1:00 p.m. and 1:43. I
23 don't know if E-mails were exchanged between myself
24 and Darren Dopp during that time period. That's the

1 problem. Again, I'll --

2 MR. KOENIG: If that's the problem -- if
3 that's the problem, then I'm going to say
4 attorney-client privilege.

5 A. This very clearly -- this directly implicates advice
6 given by lawyer to client.

7 MR. KOENIG: I'm objecting on
8 attorney-client privilege ground.

9 Q. Did you discuss that change in the document that I
10 just read with anyone from the Executive Chamber?

11 A. I have no recollection as to who I discussed that
12 with, if anyone, from the Executive Chamber.

13 Q. There are a number of differences between
14 Commission's 115 and Commission's 116.

15 A. Uh-huh.

16 Q. Did you discuss changes in the statement of Mr. Dopp
17 with anyone from the Executive Chamber during the
18 course of those edits?

19 A. I don't have any independent recollection today as I
20 sit here as to whether or not I discussed changing
21 this word or that word, this comma or that sentence
22 structure. I don't.

23 Q. Not the particular changes themselves. Did you
24 discuss the changes to the statement, the subject

1 matter of changes to the statement with members of
2 the Executive Chamber?

3 A. Not that I recall.

4 MR. KOENIG: I have a question to clarify.
5 There may not be an objection. When you say
6 "Executive Chamber," do you mean including
7 Dopp? Dopp was still a member of the Executive
8 Chamber at that point in time.

9 MS. TOOHER: I did not mean Mr. Dopp for
10 purposes of these questions.

11 (Mr. Kindlon and Ms. Shanks exited the
12 proceeding.)

13 (Pause.)

14 THE WITNESS: May I say something about
15 the attorney-client privilege here?

16 MR. TEITELBAUM: You know, we want to go
17 home at 5:00. I have no objection,
18 Mr. Kindlon, to you putting something on the
19 record, but let's get the questions and answers
20 as best we can.

21 MS. SHANKS: This is the answer to the
22 question, Mr. Teitelbaum.

23 MR. TEITELBAUM: There's no question
24 pending.

1 MS. SHANKS: The question was --

2 MR. TEITELBAUM: It was answered. It was
3 answered.

4 THE WITNESS: Well, listen, I mean, we're
5 going to just go around in circles. I'm going
6 to say this --

7 MR. TEITELBAUM: Go ahead.

8 THE WITNESS: -- and if you don't like it,
9 tough. The fact of the matter is that this day
10 was spent working on this statement, and it
11 involved conversations between my client and
12 myself throughout the day. When you're asking
13 me to separate the cream from the coffee with
14 this precision as to what happened between 1:15
15 and 1:20, it is virtually impossible for me to
16 do that. Even if I had been keeping a
17 contemporaneous time record, I wouldn't be able
18 to do it.

19 The fact of the matter is that I was on
20 the telephone. I was on the landline. I was
21 on my cell phone. I was on my e-mail. I was
22 talking back and forth. It's all inextricably
23 intertwined with the attorney-client privilege.
24 We were trying really hard to come up with an

1 accurate and true statement concerning Darren's
2 activities. That's what we were doing. You're
3 asking me questions that I can't possibly
4 answer, either because I don't remember or
5 because they involve the attorney-client
6 privilege and --

7 MR. KOENIG: Which I will not let him
8 answer.

9 THE WITNESS: It doesn't matter how
10 elliptically or in what passive voice the
11 question is phrased, I can't answer it. It's
12 impossible.

13 You're asking me to violate that which is
14 more important to me practically than life
15 itself, the attorney-client privilege, and I'm
16 getting real tired of it, okay. I've had it.
17 I mean, the fact of the matter is that I don't
18 know how to answer these questions without
19 violating the privilege, and I'm not going to
20 do it. Haul me away. Lock me up. I don't
21 care. I mean, come on. This is the
22 attorney-client privilege, all this stuff.

23 MR. TEITELBAUM: Let's get to the next
24 question.

1 BY MS. TOOHER:

2 Q. Mr. Kindlon, did you discuss other issues with the
3 Executive Chamber on July 22, 2002, besides the
4 statement itself?

5 A. You know, the only other thing that I can recall
6 discussing with the guys from the Executive Chamber
7 was the fact that I was training for a marathon.
8 That's the only other -- that's the only other
9 independent recollection that I have.

10 Q. Do you recall being asked about a second FOIL request
11 presented to the Albany Times Union during the
12 afternoon of the 22nd?

13 MR. KOENIG: Can I have it read back?

14 (Thereupon, the following excerpt was read
15 back by the reporter:

16 QUESTION: "Do you recall being asked
17 about a second FOIL request presented to the
18 Albany Times Union during the afternoon of the
19 22nd?")

20 Q. By members of the Executive Chamber.

21 A. No, I don't.

22 MS. TOOHER: You can mark this.

23 (Commission Exhibit No. 117 was marked for
24 identification.)

1 (Document given to the witness.)

2 MR. TEITELBAUM: Are you going to assert
3 attorney-client privilege?

4 MR. KOENIG: Yes. In response to one of
5 Mr. Kindlon's most recent responses to a
6 question he, I think, in the heat of his
7 answer, said something about we were trying to
8 get the statement correct and accurate or true,
9 whatever word it was, and he used the word
10 "we." I just want to be clear to the extent
11 there was an inadvertent reference to anything
12 that was an attorney-client privilege. The
13 objection I make to attorney-client privilege
14 information coming out should be imposed there.
15 To the extent the word "we" was used, does not
16 and should not be taken away from the
17 attorney-client privilege.

18 BY MS. TOOHER:

19 Q. Mr. Kindlon, I'm showing you what's been marked as
20 Commission's 117. This appears to be an e-mail dated
21 7/22/07 from Sean Maloney to you.

22 A. Right. "Need your position on genesis on 2d Albany
23 Times Union, ATU, foil request -- what was the
24 point?"

1 Q. Do you recall getting this inquiry?

2 A. I do not.

3 Q. Did you respond to this inquiry?

4 A. If I did, I have no present recollection of having
5 responded to this.

6 Q. But your e-mail address, is it tkindlon [REDACTED] ?

7 A. Absolutely.

8 (Commission Exhibit No. 118 was marked for
9 identification.)

10 (Document given to the witness.)

11 BY MS. TOOHER:

12 Q. Mr. Kindlon, you have in front of you what's been
13 marked as Commission's 118.

14 A. Correct.

15 Q. Which appears to be an e-mail from you 7/22 3:05 p.m.
16 to Sean Maloney. Can you identify this document?

17 A. This is an e-mail from my e-mail address to Sean
18 Maloney at Chamber State New York, blah, blah, blah.

19 "Sean -- ODATO FOIL #1, FILED ON OR ABOUT 6/27" --

20 Q. Not to read the e-mail, but can you identify the
21 e-mail?

22 A. It appears to be an e-mail from me. I don't have any
23 recollection of sending this at the time. I don't
24 know. I don't have any recollection.

1 Q. Were other people utilizing your e-mail at the time
2 to communicate with the Chamber?

3 A. There was nobody who could have sent this but me but
4 what I'm saying is I don't have any recollection of
5 sending this.

6 Q. Take a moment to just review the content of that
7 e-mail.

8 A. Yes. I have done it.

9 Q. Is there any reason to believe that the content in
10 that e-mail is not correct according to you?

11 MR. KOENIG: Not to the extent of any
12 conversations you had with --

13 MR. TEITELBAUM: It's a "yes" or "no"
14 answer.

15 MR. KOENIG: What was the question? "Yes"
16 or "no." Let's have the question read back.

17 (Thereupon, the following excerpt was read
18 back by the reporter:

19 QUESTION: "Is there any reason to believe
20 that the content in that e-mail is not correct
21 according to you?")

22 MR. KOENIG: Yeah, he can't answer that
23 question.

24 THE WITNESS: Yeah.

1 MR. KOENIG: That is attorney-client
2 privilege.

3 BY MS. TOOHER:

4 Q. At this time, were there any other subject matters
5 that you communicated with the Executive Chamber on
6 the afternoon of 7/22?

7 A. Again, I have no independent recollection of what
8 subject matters I may or may not have communicated to
9 the Executive Chamber concerning on the afternoon of
10 July 22, 2007.

11 Q. Did there come a time where the Executive Chamber
12 requested that you come to the Chamber --

13 A. Yes.

14 Q. -- on the afternoon of the 22nd?

15 A. Yes.

16 Q. What were the circumstances of that?

17 A. Somebody from the Executive Chamber said that they
18 wanted -- Darren and I should come there so that he
19 could sign the statement that had been drafted --
20 worked out, drafted during the day.

21 (Commission Exhibit No. 119 was marked for
22 identification.)

23 (Document given to the witness.)

24 BY MS. TOOHER:

- 1 Q. I'm showing you what's been marked Commission's 119.
2 It appears to be an e-mail from Sean Maloney at 7/22
3 at 5:33 p.m. to you. Can you identify this document?
- 4 A. This is an e-mail originating by its information on
5 the top from Sean Maloney/NYEC -- which I think means
6 New York Executive Chamber -- to me with copies to
7 David Nocenti and Peter Pope. "We've received
8 confirmation from the Attorney General's Office that
9 they'll accept sworn statements, including one from
10 Darren. We need it executed tonight to wrap this up.
11 Would you and Darren please come to David Nocenti's
12 office immediately (we're out of pocket after about
13 7:30) so we can have him sign it. We'll notarize it
14 (David is a notary)."
- 15 Q. What did you take "out of pocket" to mean?
- 16 A. That is a phrase that they all seem to use up in the
17 Executive Chamber to mean I wouldn't be in my office.
18 That's what I took it to mean.
- 19 Q. You took it to mean that after about 7:30 they would
20 no longer be in that location?
- 21 A. Correct.
- 22 Q. Did you take that to mean that you needed to execute
23 the statement before 7:30?
- 24 A. Well, I took it to mean that we needed to get down

1 there before 7:30. If we got there after 7:30, there
2 wouldn't be anybody there except presumably David
3 Nocenti who seems to live there.

4 Q. The time on the e-mail is 5:33 p.m.

5 A. Okay.

6 Q. Do you know where you were at 5:33 p.m. on 7/22?

7 A. I was probably at my house in Glenmont.

8 Q. Do you know where Mr. Dopp was when you received this
9 e-mail?

10 A. I think he was probably at his house in Saratoga
11 County. He was not with me, and I was not with him.

12 Q. Did you respond to this e-mail?

13 A. I don't have any specific recollection of responding
14 to it, although I probably did. I probably said
15 something like, "Okay, I'll see you," or something
16 like that because I did go to the Capitol building
17 thereafter.

18 (Commission Exhibit No. 120 was marked for
19 identification.)

20 (Document given to the witness.)

21 BY MS. TOOHER:

22 Q. Mr. Kindlon, you're being shown Commission's 120. It
23 appears to be an e-mail from you to Sean Maloney at
24 5:41 p.m., 7/22.

- 1 A. Correct.
- 2 Q. Can you identify this document?
- 3 A. This is an e-mail indicating it's from me to Sean
4 Maloney at the Chamber, and it says -- the way that
5 they print these out down there, it contains the
6 message to me at the bottom part of the display and
7 their response at the top part. My response says "Be
8 there asapm. tlk." Obviously, I added an "m." It
9 should say "Be there as soon as possible."
- 10 Q. Did you take any action to be there as soon as
11 possible?
- 12 A. Well, yeah. I got in my car and I drove to the
13 Capitol building.
- 14 Q. Was Mr. Dopp also at the Capitol building?
- 15 A. He was there. I don't know if we got there
16 simultaneously, or if he got there first, or if I got
17 there first, but we were both there together that
18 afternoon.
- 19 Q. And do you know what time you arrived at the Capitol?
- 20 A. Well, it was still light out. I assume it was before
21 7:30 because Sean was going to be out of pocket at
22 7:30, and I assume it was after 5:41 p.m. which is
23 when this was sent, so I would say between 6:00 and
24 7:30, sometime in there.

1 Q. What happened when you arrived at the Capitol?

2 A. I went in -- I forget exactly how I got in. I think
3 it was all locked up and I had to either call
4 somebody on my cell, or maybe Darren got there at the
5 same time and he had a swipe card to get us in. I
6 can't recall. I can't remember that detail, but I
7 did go up to the Chamber and met with the individuals
8 I've described before and Darren.

9 Q. Did you reach out to anyone from the Attorney
10 General's Office between the time you were contacted
11 by the Chamber and you got to the Capitol?

12 A. No.

13 Q. Did you on July 22nd ever speak with anyone from the
14 Attorney General's Office?

15 A. Not that I recall. I don't recall speaking to
16 anybody from the Attorney General. I don't have a
17 recollection of talking to anybody from the AG's
18 office.

19 Q. Did you ever speak to anyone from the Attorney
20 General's Office on this matter, the state police
21 investigation?

22 A. When?

23 Q. July 21st, 22nd, 23rd.

24 A. No.

- 1 Q. Did you ever speak to someone from the Attorney
2 General's Office on this matter?
- 3 A. Much later. A fellow named Steve Cohen contacted me
4 and I spoke with him a few times, but that was much
5 later, you know. It was months later.
- 6 Q. When you say "much later," this is the end of July?
- 7 A. It would be September, maybe October. I know that he
8 called me and I know I called him back from my son's
9 volleyball game, so that would be September, October
10 sometime.
- 11 Q. What was the subject matter that you discussed with
12 Mr. Cohen?
- 13 A. He said that he wanted Darren to come talk to the
14 Attorney General.
- 15 Q. And did Darren go talk to the Attorney General?
- 16 A. No.
- 17 Q. Did you have any other contact with Mr. Cohen?
- 18 A. I think I spoke with Cohen maybe a number of times,
19 maybe three, four, five times. I never saw him
20 face-to-face. I only spoke with him on the
21 telephone.
- 22 Q. Was there any other subject matters that you
23 discussed with him?
- 24 A. Not concerning Darren. I mean, we talked about kids

1 and volleyball and the fact that he used to be a
2 criminal defense lawyer in the big city and a few
3 other things, but generally speaking, our business
4 conversation was limited to the subject of Darren
5 Dopp. That was about it.

6 Q. Was there any other topics discussed beyond Darren
7 testifying?

8 A. "Testifying" was not a word that was used. I think
9 the word that was used was "talking."

10 Q. Did he indicate what he wanted to talk to Mr. Dopp
11 about?

12 A. He wanted to talk to Mr. Dopp about Joe Bruno, FOIL
13 requests, James Odatto, and that's about all I can
14 recall. There may have been other things, but,
15 again, you know, it seemed like every time I spoke
16 with Cohen, I was always -- for some reason it was
17 always when I was at a volleyball game. He always
18 called me late in the afternoon, and my kid's
19 volleyball games were at 4:00 on Monday, Wednesday
20 and Friday. It just seemed like he called me when I
21 was there and I'd have to go outside the school.

22 Q. Did he tell you why he wanted to speak to Darren?

23 A. He said that he thought Darren had information that
24 the Attorney General would be interested in but he

1 didn't say specifically, to my recollection, what
2 that information was. I think it was sort of a
3 generalized approach.

4 (Mr. Kindlon conferring with Ms. Shanks.)

5 THE WITNESS: Hang on for a second.

6 (Mr. Kindlon and Ms. Shanks exited the
7 proceeding.)

8 (Pause.)

9 MR. TEITELBAUM: Is there a question
10 pending?

11 MR. KOENIG: I don't know what the
12 question is.

13 THE WITNESS: I'm actually still answering
14 the last question.

15 MR. TEITELBAUM: You're in the middle of
16 an answer?

17 THE WITNESS: Yes.

18 MR. TEITELBAUM: You've spoken to your
19 attorney now?

20 THE WITNESS: I have, yes. I was
21 concerned about implicating the attorney-client
22 privilege, and I didn't want that to happen.

23 MR. KOENIG: Do your counsel and I need to
24 have a conversation to see if that's going to

1 come up (directed to Mr. Kindlon)?

2 MS. SHANKS: You know, I think we should.

3 MR. TEITELBAUM: This is in the context of
4 relaying a conversation between him and --

5 MS. SHANKS: It is the answer to the
6 question about what did Steve Cohen --

7 MR. KOENIG: I'll probably talk to Laurie
8 first without you (directed to Mr. Kindlon).

9 THE WITNESS: Yeah. Well, I'm going to go
10 to the bathroom.

11 MR. KOENIG: I am stepping out to speak
12 with Mr. Kindlon's attorney because
13 Mr. Kindlon's attorney has indicated to me that
14 an issue of potential attorney-client privilege
15 with Mr. Dopp has arisen, therefore, I think it
16 is appropriate that Miss Shanks and I have this
17 conversation.

18 (Mr. Kindlon, Ms. Shanks and Mr. Koenig
19 exited the proceeding.)

20 (Pause.)

21 MR. TEITELBAUM: Where are we? Are we in
22 the middle of an answer?

23 MS. TOOHER: Yes.

24 BY MS. TOOHER:

1 A. Steve Cohen called me on a number of occasions during
2 the autumn. He wanted to talk to Darren -- now, I've
3 got to put this in context, okay. Darren's wife,
4 Sandy, and Andrew Cuomo are friends. Darren's
5 daughter -- I don't know her name, she's a junior, I
6 think, at Fordham -- was working for Andrew Cuomo
7 during the summer of 2007. So Andrew was connected
8 to Cuomo.

9 MR. TEITELBAUM: Darren.

10 MR. KOENIG: Darren.

11 A. Darren was. Darren also considered himself to be
12 Andrew Cuomo's friend. So Steve Cohen, when he
13 called me wanted Darren to come in and to see his
14 friend -- Darren's friend, Andrew, to talk about
15 Nocenti, Pope, and Maloney, and the governor, as
16 well. Also, to keep this in context, on the 22nd,
17 while I was attempting, endeavoring to provide legal
18 advice to Darren concerning my understanding of the
19 situation, Pope and Nocenti, and to a lesser extent
20 Maloney, were all friends with Darren, and I was
21 talking to him in Chambers, but everybody was all
22 over the place. I mean, Darren was talking to them
23 outside of my presence, and you don't have to go very
24 far outside of my presence for me to not hear you.

1 They clearly had been talking to him up until that
2 day, on that day, on the telephone, perhaps by
3 e-mail, I don't know, and it certainly continued
4 after that day. I know that Nocenti would go to
5 Darren's house in Saratoga County and see him. I
6 know that Sandy Dopp would have telephone
7 conversations with David Nocenti. David Nocenti was
8 a very good friend of Darren Dopp's.

9 One thing that sticks in my mind, during
10 football season -- so now we're into the autumn -- I
11 spoke with Darren, and --

12 MR. KOENIG: Don't.

13 A. This is not attorney-client.

14 MR. KOENIG: No.

15 A. I mean, this is just conversational with nothing to
16 do with legal advice. Darren said that David Nocenti
17 had been at his house at a touch football game and he
18 commented that David throws like a girl. So that's
19 why it stuck in my mind, David throws like a girl.
20 "I tried to teach him how to throw the football and
21 he throws like a girl."

22 So, Nocenti to be sure, continued to talk to
23 Darren until, I don't know, maybe this afternoon, for
24 all I know. I mean, they just kept talking to each

1 other. I wasn't able to chase him away or anything
2 else.

3 When I say that this was like walking into
4 somebody else's family, this group of people, these
5 guys had been together for decades. They'd been
6 together forever. I think Pope and Nocenti went to
7 college and law school with each other and with
8 Spitzer. Darren had worked in the Cuomo
9 Administration, the Assembly, the Attorney General's
10 Office. I mean, they had all been together for years
11 and years and years. So they were a very tight
12 group. I think you need to know that to keep
13 everything in context.

14 I'm trying to give him legal advice -- and
15 understand something, this is a very complex world
16 that they're occupying, and I'm doing my very best to
17 give legal advice here, but they're all doing
18 political advice, and that's a whole different thing.
19 You can look at a situation as a legal issue or as a
20 political issue, and, you know, it's like -- it can
21 mean two very different things to two very different
22 groups of people.

23 So, now, Steve Cohen was trying really hard to
24 get Darren to go in and to talk to the Attorney

1 General, and this is in the fall. This was after
2 Darren's been suspended, you know. I said to
3 Darren --

4 MR. KOENIG: Hold on.

5 THE WITNESS: Yeah, okay. Sorry.

6 MR. KOENIG: That's attorney-client
7 privilege.

8 BY MR. TEITELBAUM:

9 Q. Let me ask you this, Mr. Kindlon. Did Mr. Cohen tell
10 you why the Attorney General's Office wanted to speak
11 about Nocenti and Pope and Maloney and the governor
12 with Mr. Dopp?

13 A. He said he wanted information on them and their
14 activities.

15 Q. Did he get any more specific than that?

16 A. You know, Mr. Teitelbaum, I'm not sure if he got more
17 specific than that, or if I inferred that what he
18 wanted to do was crucify somebody. I don't
19 specifically remember. I wasn't taking notes.
20 Literally, every conversation I had with him, except
21 for one -- it's just a funny coincidence -- were all
22 late in the afternoon, and things seemed to come up
23 when my kid was at his volleyball games.

24 Q. Other than whatever you might have inferred, did

1 Mr. Cohen give you any information as to why they
2 wanted your client to come in to speak about these
3 individuals other than that they wanted him to come
4 in?

5 A. Not that I recall. I mean, I could plumb the depths
6 of my memory and think about it for a while. I
7 really hadn't expected to talk about this today and I
8 didn't review my thoughts and I didn't take any
9 notes. If I think about things long enough, I can
10 recall. Steve Cohen was a very cordial guy. I had
11 the sense that he and I had a lot in common with each
12 other, although we were of a different age.

13 Q. Did you tell him at some point that Mr. Dopp would
14 not come in?

15 MR. TEITELBAUM: Conversation with Cohen.

16 MS. SHANKS: I'm thinking of the question.

17 Hold on a second.

18 MR. KOENIG: I didn't say objection.

19 MR. TEITELBAUM: I know. I just --

20 MR. KOENIG: You could argue if I object
21 to it.

22 Would you read it back, please?

23 (Thereupon, the following excerpt was read
24 back by the reporter:

1 QUESTION: "Did you tell him at some point
2 that Mr. Dopp would not come in?")

3 MR. KOENIG: What you told Cohen, you can
4 answer (directed to Mr. Kindlon).

5 THE WITNESS: Yes.

6 A. I never told him -- and I'm not trying to be cute
7 here -- I never told him that Darren would come in.
8 I didn't say he won't come in. I just didn't say he
9 would come in.

10 Because now during this time period Darren
11 was -- I think Darren was still suspended -- oh,
12 yeah, do you know what it was, he was suspended for
13 30 days which was pretty much all in August and then
14 we got into September. I started to raise hell with
15 the Chamber to say this guy is starving to death,
16 what are we going to do. They finally worked out an
17 arrangement, and I think I worked it out with David
18 Nocenti that they would start to pay him his vacation
19 time, and he had 12 weeks accumulated -- 12 weeks, or
20 10 weeks of vacation and a week of personal leave and
21 a week of whatever it was, some other thing, but
22 anyway, it came out to 12 weeks. He could be on the
23 payroll for 12 weeks, like he had his old job back.
24 I mean, a lot of my effort was devoted to stuff like

1 that, which is pretty prosaic. I remember I talked
2 to a friend of mine, a labor lawyer to find out what
3 to say, what kind of threats to make to get him back
4 on the payroll. So Darren was on the payroll for
5 12 weeks, and it was September, October, November, so
6 it was during that period of time -- and I still
7 didn't know what was to become of Darren. I didn't
8 know if he was going to be offered his old job back,
9 I didn't know if he was going to be offered the
10 opportunity to be, you know, head of the Department
11 of Environmental Conservation. I just didn't know.
12 And now I get into attorney-client stuff and I can't
13 say any more than that.

14 Q. I think you testified that you had several
15 conversations with Mr. Cohen.

16 A. Yes. To the point where I think I got very
17 comfortable in speaking with him.

18 Q. In each one of these conversations, your
19 understanding was that the impetus of the call was
20 for him to try to get Mr. Dopp to come down and talk
21 to the Attorney General's people?

22 A. That's right.

23 Q. Was each of these phone calls essentially a replay of
24 the prior phone calls or was it providing additional

1 reasons why Mr. Dopp should come in?

2 A. Yeah. And my understanding was that outside of my
3 five senses, Andrew Cuomo was on the telephone with
4 Sandy Dopp leaning on her to get Darren to come in.

5 Q. Did he --

6 A. I mean, himself from his cell phone with the kids in
7 the back seat of his car. "Andrew called me
8 yesterday. He was on the way to the beach. His
9 three kids were in the car," blah, blah, blah, blah,
10 blah. I mean, it was like that.

11 Q. From all of these conversations, did you have an
12 idea, a more specific idea, as to why he wanted
13 Darren to come in? Were these several phone
14 conversations either with you or Mrs. Dopp?

15 A. No, he wanted --

16 MR. KOENIG: The only objection I may
17 raise here is if you're asking what Darren --
18 if Terry asked Darren "Why do you think he's
19 doing this," that's privileged.

20 MR. TEITELBAUM: I named the people.

21 MR. KOENIG: I understand.

22 A. Again, now, Mr. Teitelbaum, the problem is this. I
23 mean, things run together here. My conversation with
24 Steve Cohen, of course I didn't keep that a secret

1 from Darren. So I don't know who said what, when, to
2 whom. I just know that the decision for Darren to
3 not go talk to Cuomo was mine, and the reason for
4 that --

5 MR. KOENIG: No.

6 THE WITNESS: Okay. Sorry.

7 MR. KOENIG: Don't give a reason.

8 THE WITNESS: Yeah.

9 Q. Did Cohen indicate that he was -- he meaning the
10 Attorney General's Office -- that they were
11 conducting an investigation?

12 A. He did not indicate that to me, no. His position, as
13 I recall it, was that he wanted to -- that the
14 Attorney General and/or he wanted to speak with
15 Darren.

16 Q. Now, when you had conversations with the Executive
17 Chamber concerning the length of time that Mr. Dopp
18 was beached, what did you tell them, the Executive
19 Chamber?

20 A. I think --

21 MR. KOENIG: Well --

22 A. I think I told --

23 MR. KOENIG: He can answer that but he
24 can't go into what he told him based on what he

1 discussed with his client.

2 MR. TEITELBAUM: If he told them -- I'm
3 just asking --

4 MR. KOENIG: What he said to him --

5 MR. TEITELBAUM: I'm just asking what he
6 said to the Executive Chamber representative.

7 MR. KOENIG: That's fine.

8 MR. TEITELBAUM: That was the question.

9 A. Sandy Dopp would call me up. Sandy Dopp is Darren's
10 wife. Sandy Dopp would call me up very upset,
11 crying, angry, and she would say, "How am I supposed
12 to buy groceries? How am I supposed to pay the
13 mortgage?" And the governor had said when he
14 suspended Darren that it was -- and it was a little
15 ambiguous -- he said for no less than 30 days. So I
16 was making Xs on my calendar. We got to 30.

17 I had talked to Bryan Goldberg, my friend who
18 is a labor lawyer, and I said, "Look, if you're a
19 clerk in the Department of Motor Vehicles and you're
20 suspended for 30 days, you get your job back. So it
21 has to work for the big guys, too."

22 He made some recommendations about a letter I
23 should put together, which I did, and I sent it, I
24 think, to David Nocenti, I think, and it just said --

1 it sort of was an equitable kind of argument. I
2 think we got to the 34th day and they finally doled
3 out that they could pay him his vacation time and
4 that it would be just like he was back on the payroll
5 at least for three months.

6 Q. Did you make mention of the fact that it was
7 indicated by one of the Executive Chamber people that
8 he would be beached for about five days?

9 A. No, because that was something that I heard in
10 passing early on, but then the very next thing I
11 knew, the governor suspended him for 30 days, and
12 that kind of replaced this five-day artifact, little,
13 stray chunk of information that I had encountered.
14 The governor had said 30 days, and I'm thinking okay,
15 Article 75, I think it is, of the Civil Service Law
16 or one of those things says 30 days without pay.

17 Q. All I'm interested in now is what was said to the
18 Executive Chamber and what they said to you
19 concerning the subject of Mr. Dopp's suspension.

20 A. Well, okay. I do remember this. I do remember this.
21 This is a conversation with Peter Pope. I said,
22 "Peter, Darren's getting fucked here and this isn't
23 right." I said, "He needs to go back to work."
24 Peter Pope's only response to me was, "I can't

1 discuss that with you." End of conversation, okay,
2 and it was end of conversation. Peter wouldn't
3 discuss it with me at all, and, you know, by his
4 actions, the inference was that there was something
5 unethical about discussing this. He didn't want it
6 to look like there was a quid pro quo out there. I
7 said, "Okay, Peter. No problem," you know, and
8 didn't have much more contact with him from that day
9 forward.

10 Q. Did you discuss it with anybody else in the Executive
11 Chamber?

12 A. I think that my -- no, do you know what happened? I
13 think -- and, again, forgive me, I could probably go
14 back and reconstruct this, but I think that I spoke
15 with Bryan, the labor lawyer. I wrote this letter.
16 It was really an equitable argument. I wrote it -- I
17 think I wrote -- I think I wrote it, I'm not 100
18 percent sure, but I think I wrote it to David Nocenti
19 and sent it up there. Basically, what it says was
20 look, this guy's got a mortgage to pay, he's got a
21 kid in college with tuition. I knew that other
22 people were talking to other people, so I started
23 sort of a propaganda campaign. I put the word out to
24 a number of people that I knew that the word would

1 get back up to the decision makers that Darren was
2 getting screwed.

3 But Peter Pope really didn't talk to me about
4 anything except the time of day because he said he
5 didn't want to create any appearance of impropriety
6 any which way, and that sounded fine to me.

7 I didn't really have any contact with Sean
8 Patrick after the first couple of days.

9 I really didn't have that much contact with --
10 my contact with David Nocenti was very, very, very,
11 very minimal, and he was a very nervous guy. That's
12 what I remember about him. He was just a nervous
13 wreck all the time over everything. It seems to be
14 his personality. Somebody said to me once -- the
15 best description of David Nocenti I ever heard was
16 somebody said "He had a girlfriend when he was in law
17 school but they broke up." End of story. I mean,
18 this is a guy who was always working at 10:00 on a
19 Sunday night as near as I was able to tell from my
20 perspective.

21 Q. Let me ask you this: On the 21st and 22nd when you
22 were up at the Executive Chamber and testified that
23 there were conversations going on with Mr. Dopp,
24 Pope, and Maloney, was Nocenti there? Was he

1 participating in these --

2 A. He was in the next room mostly. This was like -- his
3 office, as I recall it, his office was next door to a
4 conference room with a big library table that we were
5 in.

6 Q. Right.

7 A. It was all kind of -- it was all kind of run down.

8 Q. People moving back and forth?

9 A. Yeah.

10 Q. Did you see them talking?

11 A. Oh, yeah.

12 Q. They were on the side talking?

13 A. Yeah.

14 Q. Did they ask you permission to talk to him?

15 A. No.

16 Q. Did you do anything to halt the conversations between
17 Pope and Maloney outside your presence?

18 A. No. I mean, it would be like trying to hold back the
19 sea. Again, this is like walking into the middle of
20 somebody else's Christmas dinner, family Christmas
21 dinner, and I was the new guy. I had only met these
22 folks the day before and didn't spend that much time
23 with them, and then this was only the second day in
24 my life that I had any contact with them. It was

1 very limited. My focus was on trying to resolve this
2 statement issue.

3 Q. Did you meet with representatives of the Executive
4 Chamber on July 23rd?

5 A. I know I met with them after the 22nd, but I don't
6 know if --

7 Q. It couldn't have been the 23rd. It was some other
8 date?

9 A. Yes. Sometime after the 22nd.

10 Q. How did that meeting come about?

11 A. Peter Pope, I think it was, called me and said he
12 wanted to meet and I said, "Okay."

13 Q. What was the subject of the meeting?

14 A. He just said he wanted to meet and I said, "Okay."

15 Q. Did you meet?

16 A. Yeah.

17 Q. Who was there?

18 A. David Nocenti and Peter Pope, and "there" was Peter
19 Pope's apartment.

20 Q. In his apartment.

21 A. Yeah.

22 MR. KOENIG: Pope's apartment?

23 THE WITNESS: Yeah.

24 Q. Was Dopp there?

1 A. No.

2 Q. What was the discussion?

3 A. Nothing in particular. It was just sort of -- it
4 didn't amount to a -- I mean, it was just a meeting.

5 Q. Was there a subject that was discussed?

6 A. No. I mean, it was really weird. I went up to David
7 Nocenti's apartment --

8 Q. Nocenti?

9 MR. KOENIG: Peter Pope's.

10 A. Peter Pope's apartment. I don't think David needs an
11 apartment because he lives behind his desk. It was
12 comical, because I came into the apartment and it's
13 right next to the -- right up from Swan Street on
14 Chestnut or one of those streets.

15 Q. Right.

16 A. It was a beautiful building. I felt like, you know,
17 Herbert Philbrick, I lead three lives. I mean, here
18 I am in this mysterious meeting --

19 Q. Was this a social occasion?

20 A. No. It was just in the middle of the day and they
21 wanted to talk to me, and I went up there --

22 Q. What did they say?

23 A. Nothing. It was a bunch of nothing. It was
24 really -- honestly, Herb, it was nothing. I just

- 1 went up there, I came in -- the furniture consisted
2 of -- I'm not making this up -- two kitchen chairs,
3 no table. Just two kitchen chairs.
- 4 Q. Did they allow you to sit in one of them?
- 5 A. I got one of the chairs.
- 6 Q. You were sitting on the kitchen chair?
- 7 A. Right.
- 8 Q. Who was sitting in the other chair?
- 9 A. I think Peter Pope was, and it was sort of as far
10 apart as our two chairs are.
- 11 Q. Now, Peter Pope, the director of policy for the
12 governor?
- 13 A. Right.
- 14 Q. And David Nocenti --
- 15 A. Counsel for the governor.
- 16 Q. -- counsel for the governor, invited you to Peter
17 Pope's apartment?
- 18 A. Right.
- 19 Q. They must have said something.
- 20 A. Whatever it was -- and I'm not trying to be cute
21 here -- I mean, it was so insignificant that I walked
22 out of there scratching my head.
- 23 Q. Tell us what the insignificant conversation was. We
24 need to know what the insignificant conversation was.

- 1 A. It was basically, "What's new? How's Darren doing?
2 We really like him. We hope that he's not suffering
3 too much. He's a great guy, and we feel terrible
4 about everything that's happened." I think I said
5 words to the effect to Peter, "Well, okay, so can he
6 get his job back?" And Peter said, "I can't discuss
7 that with you." When I left, I said to myself gee, I
8 wonder if they were tape recording me. It was weird.
9 We didn't talk about anything at all. If I thought
10 it was significant, I would have sat down and wrote a
11 memo or something at that point, but we were
12 downstream now from what had happened. It was just a
13 really weird, very unusual thing.
- 14 Q. How long was the meeting?
- 15 A. Maybe 10 minutes. It was a nice day. I didn't mind
16 the walk up from my office. It was pleasant out.
- 17 Q. This was during the day?
- 18 A. Yeah. It was a weekday.
- 19 Q. Weekday?
- 20 A. Yeah.
- 21 Q. Did they tell you why they didn't want to meet with
22 you in the Executive Chamber?
- 23 A. Yeah. They didn't want me to be seen walking into
24 the Executive Chamber because everybody knew I

1 represented Darren, and they didn't want to give the
2 impression that something was going on. But, I mean,
3 it was just a bunch of nothing.

4 Q. Other than that meeting at Peter Pope's apartment,
5 did you have any communication -- and the
6 communication that you had where Pope said he
7 couldn't say anything to you, and the letter that you
8 sent to David Nocenti, were there any other
9 communications that you had with the Executive
10 Chamber after July 22nd?

11 A. I talked to Peter Pope several times.

12 Q. Could you give us a time frame?

13 A. After the 23rd.

14 Q. Was it in the --

15 A. Well, actually, yes, I can --

16 Q. Was it before or after Mr. Dopp testified before the
17 Commission?

18 A. Oh, before. Well before.

19 Q. Did you have any communications with anybody in the
20 Executive Chamber after Mr. Dopp testified?

21 A. No, not at all.

22 Q. So we're talking about before the testimony?

23 A. Well, I can remember this. I had a conversation with
24 Peter Pope -- his daughter goes to prep school

1 someplace fancy, and I remember that I spoke with him
2 and -- I spoke with him at his house down by the
3 city.

4 Q. You were at his house in the city?

5 A. No. No. I was on the telephone but he was there. I
6 remember that he told me his daughter's friends from
7 school were all there. They were like seniors at
8 prep school.

9 Q. What was he talking to you about besides the fact
10 that his daughter's friends were there?

11 A. Just, you know, a general situation.

12 Q. What did he say?

13 A. You know, again, I'm not trying to be elusive here
14 but I don't specifically recall what it was that he
15 said to me.

16 Q. Can you give us a general answer in terms of what the
17 subject was, what he was saying? If you don't
18 remember the specific words --

19 A. You know, I really don't. I was constantly bugging
20 these guys to see if I could get Darren back on the
21 payroll because Sandy was continuously calling me at
22 all hours of the day and night to complain about the
23 fact that they were going to starve to death.

24 Q. Was there another conversation that you had other

1 than the conversation where Mr. Pope was in his
2 apartment in New York City with the girls in the
3 apartment and friends of his daughter?

4 A. Yes. We had a number of conversations, but, you
5 know --

6 Q. "Number" meaning two, three, four? What are you
7 talking about?

8 A. Maybe five or six or seven or eight or ten. I mean,
9 it was not unusual for us to talk.

10 Q. Right. In each of these conversations, am I correct
11 that at least one of the subjects was Darren Dopp?

12 A. Yeah.

13 Q. And it was always the subject of Mr. Dopp's job or
14 getting his job back or were there other things you
15 discussed?

16 A. Mostly how's he doing kind of conversations.

17 It was told to me -- and I had no reason to
18 disbelieve it -- that Darren was a beloved member of
19 the Chamber, and it did not strike me as at all
20 unusual that his friends would be calling to find out
21 how he was doing. You know, honestly, they also were
22 concerned about Sandy because Sandy was ready to blow
23 apart. She was angry, and Sandy was very angry with
24 Peter Pope. Sandy was very angry, if I recall -- I'm

1 not completely sure of this, but I recollect that she
2 was very angry with Sean Patrick. While Darren and
3 David Nocenti were very close -- this is a long term,
4 deep, sincere friendship between two men that really
5 liked each other -- Sandy was always very angry about
6 the fact that she felt, she told me, that Darren had
7 been abandoned and betrayed by these people. It was
8 her sense that -- and maybe she was more perceptive
9 than me -- it was her sense they were trying to stick
10 Darren with all the blame for everything and that
11 they were maneuvering to achieve that. She was
12 madder than a hornet. And I know she was talking to
13 Andrew Cuomo all the time.

14 Q. Did she tell you what she was talking to him about?

15 A. No, but you didn't have to be a rocket scientist to
16 figure out that she was telling him the same thing
17 she was telling me, probably in much more detail.
18 She and Andrew were really, really close. She told
19 me that when Andrew was breaking up with his wife, he
20 was crying on her shoulder. So that's a pretty
21 intimate friendship. It was a friendship, platonic,
22 but, I mean, very dependent.

23 Darren's daughter, the junior, at Fordham had
24 actually run away to Oregon or someplace with some

1 guy at the exact same time, so they were both really,
2 really dependent upon each other.

3 Q. I'm sorry. Let me ask you this, and it's a slightly
4 different subject.

5 A. I feel like a gossip here. I'm sorry.

6 Q. Did you ever have any conversations with anybody at
7 the Executive Chamber concerning Mr. Dopp working at
8 Pat Lynch's office?

9 A. No. As a matter of fact, I was surprised when I
10 heard that. What I did, we went through this
11 10 weeks or 12 weeks of vacation pay as salary, and I
12 didn't hear a word about Pat Lynch. I did talk to a
13 woman in the Chamber whose name is Terryl,
14 T-e-r-r-y-l, Brown, and Terryl Brown had been
15 detailed by somebody up there to find Darren a new
16 job. To nail it down in time, she was calling me
17 from home because she had a rotator cuff operation,
18 or something -- I don't know exactly what it was, but
19 she was working from home. We spoke oh, maybe four
20 or five times, and she presented some different
21 possibilities for a new job, and that was everything
22 that I knew about, you know, the prospective
23 employment.

24 Q. Pat Lynch was not on the --

- 1 A. Pat Lynch was never -- nobody ever said Pat Lynch to
2 me. I knew who she was, sort of, but when Darren
3 turned up with his job at Pat Lynch's, that was the
4 first I -- the first I heard about it was the public
5 announcement, and this came as a surprise.
- 6 Q. What did -- Terryl Brown was it?
- 7 A. Terryl Brown.
- 8 Q. What did she say in terms of what the options might
9 be?
- 10 A. I think like the Power Authority maybe, some job at
11 the Power Authority. I don't remember the specific
12 jobs. I remember generally the numbers. Darren had
13 been paid 175,000 in his exalted position, and these
14 jobs that I was hearing about were all like 125, 130,
15 and that's really what I remember about that.
- 16 Q. Did she express that there was any obstacle to
17 Mr. Dopp working in some other government agency?
- 18 A. She did not, no.
- 19 BY MS. TOOHER:
- 20 Q. When are these conversations taking place?
- 21 A. With Terryl Brown?
- 22 Q. Yes.
- 23 A. Well, it was in the downside of the 12 weeks of
24 vacation pay that was working as salary, and it was

1 at a time when she was home convalescing from some
2 kind of surgery or something, and it was shortly
3 before Darren turned up with the Pat Lynch job. So I
4 don't know when it was, but I think it's like October
5 or November, somewhere in there.

6 Q. What kind of time frame did the conversation take
7 place over? You said you had four or five
8 conversations.

9 A. Yeah. It was maybe a week or 10 days. Again, now, I
10 remember Sandy was livid and let me know because she
11 felt that they were being really insulting in
12 offering him a job that was paying like 35 or 40
13 percent less than he had been earning before.

14 Q. You said Sandy had what you described as an intimate
15 relationship with --

16 A. Intimate sounds sexual. It's not that. An intimate
17 friendship.

18 Q. A close relationship.

19 A. A very close friendship with Andrew Cuomo.

20 Q. When did you become aware of that and Dopp's
21 relationship with Cuomo?

22 MR. KOENIG: Which Dopp?

23 A. Yeah. See, I can't answer that question.

24 MR. TEITELBAUM: It's a when question.

1 Q. When.

2 A. It's a when question.

3 MR. KOENIG: Which Dopp? You talked about
4 Sandy's relationship.

5 MS. TOOHER: Darren and Sandy.

6 A. I would have to say almost from the very, very, very
7 beginning, the very beginning, like July 22nd, 21st,
8 someplace in there. That was one of the first things
9 I learned.

10 Q. Did you discuss Darren's relationship with Cuomo with
11 anyone from the Executive Chamber?

12 A. No. Never.

13 Q. Did they ever raise with you that they were aware of
14 Darren's friendship relationship with Cuomo?

15 A. No. And most of what I heard about it, I heard from
16 Sandy, and then later on Steve Cohen because Steve
17 knew about the Sandy/Andrew connection.

18 MR. TEITELBAUM: We don't have any further
19 questions at this time.

20 (Whereupon, the examination of Terence L.
21 Kindlon concluded at 5:14 p.m.)

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STATE OF NEW YORK)
)
COUNTY OF _____)

I have read the foregoing record of the testimony
taken at the time and place noted in the heading hereof,
and I do hereby acknowledge it to be a true and correct
transcript of the same.

TERENCE L. KINDLON, ESQ.

Sworn to before me this
___ day of _____, 2008.

Notary Public

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C E R T I F I C A T I O N

I, DIANA FREUND, a Shorthand Reporter and Notary
Public in and for the State of New York, do hereby
certify that the foregoing transcript in the
above-entitled matter is a true and accurate transcript,
to the best of my knowledge and belief.

DIANA FREUND

DATE: January 27, 2008