

1 ALDERSON COURT REPORTING

2 EILEEN MONTEAGUDO

3 HVC099550

4 INTERVIEW OF: DR. ELEANOR ADAMS

5 Monday, April 8, 2024

6 COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY,

7 SELECT SUBCOMMITTEE ON THE CORONAVIRUS PANDEMIC,

8 U.S. HOUSE OF REPRESENTATIVES,

9 WASHINGTON, D.C.

10 The interview of the above matter was held

11 at 1140, Avenue of the Americas, Floor 17,

12 New York, New York, commencing at 9:59 a.m.

13 A P P E A R A N C E S:

14

15 ON BEHALF OF DR. ELEANOR ADAMS:

16 Jonathan P. Bach, Esquire

17 Of: Shapiro Arato Bach LLP

18 1140 Avenue of the Americas, 17th Floor

19 New York, New York 10036

20 ALSO PRESENT:

21 Denaë Kissotis, Associate

22

23 ON BEHALF OF THE SELECT SUBCOMMITTEE ON THE

24 CORONAVIRUS PANDEMIC:

25

26 FOR THE REPUBLICAN STAFF (MAJORITY):

27 MITCHELL BENZINE, Staff Director

28 JACK EMMER, Counsel

29 ERIC OSTERHUES, Chief Counsel

30

31 FOR THE DEMOCRATIC STAFF (MINORITY):

32 [REDACTED] Staff Director

33 [REDACTED] Senior Counsel

34 [REDACTED] Counsel

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## P R O C E E D I N G S

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[9:59 A. m.]

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MR. EMMER: We'll go on the record. This is a transcribed interview of Dr. Eleanor Adams conducted by the House Select Subcommittee on the Coronavirus Pandemic under the authority granted to it by House Resolution 5 and the rules on the Committee on oversight and accountability.

This interview was requested by Chairman Brad Wenstrup as part of the select subcommittee's oversight of the federal government's response to the coronavirus pandemic.

Further, pursuant under House Resolution 5, the select subcommittee has wide-ranging jurisdiction but specifically to investigate the implementation or effectiveness of any federal law or regulation applied, enacted or under consideration to address the coronavirus pandemic and prepare for future pandemics.

Can the witness please state her name and spell her last name for the record?

THE WITNESS: My name is Eleanor Adams. And the spelling of my last name is A-D-A-M-S.

MR. EMMER: Thank you, Dr. Adams. My name is Jack Emmer, and I am a senior counsel for the majority staff of the select subcommittee. I want to thank you for coming in today for this interview. This select subcommittee

104 recognizes that you are here voluntarily and we appreciate  
105 that.

106 Under the select subcommittee on oversight and  
107 accountability's rules, you are allowed to have an attorney  
108 present to advise you during this interview.

109 Do you have an attorney representing you in a  
110 personal capacity present with you today?

111 MR. BACH: This is Jonathan Bach.

112 MS. KASSOTIS: Denaë Kassotis.

113 MR. EMMER: Thank you.

114 For the record, starting with the majority's staff,  
115 can the additional staff members please introduce  
116 themselves with their name, title, and affiliation.

117 MR. BENZINE: Mitch Benzine, the staff director for  
118 the Republican side of the select subcommittee.

119 MR. OSTERHUES: Eric Osterhues, chief counsel for  
120 the Republican side of the select subcommittee.

121 [REDACTED], Democratic staff  
122 director of this subcommittee.

123 [REDACTED], Democratic counsel,  
124 select subcommittee.

125 [REDACTED]: [REDACTED], Senior counsel, Democratic  
126 staff, select subcommittee.

127 MR. EMMER: Thank you all.

128 Dr. Adams, before we begin I would like to go over

129 the ground rules for this interview. The way this  
130 interview will proceed is as follows: The majority and  
131 minority staff will alternate -- per round until each side  
132 is finished with their questioning. The majority staff  
133 will begin and proceed for an hour and then the minority  
134 staff will have an hour to ask questions. We'll then  
135 alternate back and forth in this manner until both sides  
136 have no further questions.

137 If either side is in the middle of a specific line  
138 of questions, they may choose to end a few minutes past an  
139 hour to ensure completion of that specific line of  
140 questioning, including any pertinent follow-ups.

141 In this interview while one member of the staff for  
142 each side may lead the questioning, additional staff may  
143 ask questions.

144 There is a court reporter taking down everything I  
145 say and everything you say to make a written record of this  
146 interview. For the record to be clear, please wait until  
147 the staffer questioning you finishes each question before  
148 you begin your answer. And the staffer will wait until you  
149 finish your response before proceeding to the next  
150 question.

151 Further to ensure the court reporter can properly  
152 record this interview, please speak clearly, concisely, and  
153 slowly.

154           Also, the court reporter cannot record nonverbal  
155 answers such as nodding or shaking your head, so it is  
156 important that you answer each question with an audible  
157 verbal answer.

158           Exhibits may be entered into the record. Majority  
159 exhibits will be identified numerically. Minority exhibits  
160 will be identified alphabetically.

161           Do you understand?

162           THE WITNESS: I do understand.

163           MR. EMMER: We want you to answer questions in the  
164 most complete and truthful manner possible, so we'll take  
165 our time. If you have any questions or do not fully  
166 understand the question, please let us know and we will  
167 attempt to clarify, add context to or rephrase our  
168 questions.

169           Do you understand?

170           THE WITNESS: I do understand.

171           MR. EMMER: If we ask about specific conversations  
172 or events in the past and you are unable to recall the  
173 exact words or details, you should testify to the substance  
174 of those conversations or events to the best of your  
175 recollection. If you recall only a part of a conversation  
176 or event, you should give us your best recollection of  
177 those events or parts of conversations that you do recall.

178           Do you understand?



179 THE WITNESS: I understand.

180 MR. EMMER: Although you are here voluntarily and  
181 we will not swear you in, you are required pursuant to  
182 Title 18, Section 1001 United States Code to answer  
183 questions from Congress truthfully. This also applies to  
184 questions posed by congressional staff in the interview.

185 Do you understand?

186 THE WITNESS: I understand.

187 MR. EMMER: If at any time you knowingly make false  
188 statements, you could be subject to criminal prosecution.

189 Do you understand?

190 THE WITNESS: I understand.

191 MR. EMMER: Is there any reason you are unable to  
192 provide truthful testimony in today's interview?

193 THE WITNESS: There is not any reason I cannot  
194 provide truthful testimony.

195 MR. EMMER: The select subcommittee follows the  
196 rules of the committee of oversight and accountability.  
197 Please note that if you wish to assert a privilege over any  
198 statement today, that assertion must comply with the rules  
199 of the committee on oversight and accountability.

200 Pursuant to that committee Rule 16C1 states for the  
201 chair to consider assertions or current privilege over  
202 testimony or statements, witnesses or entities must clearly  
203 state the specific privilege being asserted and the reason

204 for the assertion on or before the scheduled date of  
205 testimony or appearance.

206 Do you understand?

207 THE WITNESS: I understand.

208 MR. EMMER: Ordinarily we take a five-minute break  
209 at the end of each hour of questioning, but if you need a  
210 longer break let us know, we'll be happy to accommodate to  
211 the extent there is a pending question we ask that you  
212 finish answering the question before we take the break.

213 Do you understand?

214 THE WITNESS: I understand.

215 MR. EMMER: Do you have any other questions before  
216 we begin?

217 THE WITNESS: I have no questions at this time.

218 EXAMINATION BY

219 MR. EMMER:

220 Q. So I want to thank you again for taking part  
221 in this interview voluntarily and for your work over the  
222 years.

223 We'll start by discussing your education and  
224 experience. Where did you attend undergraduate school?

225 A. I went to Harvard College.

226 Q. And what degree did you graduate with?

227 A. I graduated with an AB.

228 Q. And where did you get your doctorate?

229 A. I went to Harvard Medical School.

230 Q. Who is your current employer and your  
231 current job title?

232 A. I work at the National Basketball  
233 Association and I'm the health and safety lead.

234 Q. And how long have you been with the National  
235 Basketball Association?

236 A. I have been with them for three years.

237 Q. Thank you.

238 So can you just briefly go through your  
239 professional career up until now?

240 A. I am -- after medical school, I was employed  
241 by New York Presbyterian Hospital for my internal  
242 medicine residency for one year. Then I did preventive  
243 medicine residency through Stony Brook University. Then  
244 I joined the New York State Department of  
245 Health -- sorry. I worked for Health Research  
246 Incorporated and was placed at the New York State  
247 Department of Health. Then I joined the National  
248 Basketball Association.

249 Q. And you brought up the Health Research  
250 Incorporated. Can you just explain the interplay  
251 between Health Research Incorporated and the New York  
252 State Department of Health?

253 A. I'm probably not the best person to explain,

254 but I think it's a 501C3 corporation.

255 Q. Got it.

256 A. And I know they place people at the New York  
257 State Department of Health.

258 Q. All right.

259 So I would like to take a moment just to  
260 discuss the New York State Department of Health and your  
261 previous role within it, and you briefly already touched  
262 on it, but when did you begin your employment with the  
263 New York State Department of Health?

264 A. Sorry. I want to get the year right. I  
265 believe it was 2010.

266 Q. Okay. And what were your duties and  
267 responsibilities within your role at the New York State  
268 Department of Health?

269 A. For about a decade, I was a supervisor for  
270 the health care epidemiology and infection control  
271 program in the metropolitan area regional office.

272 Q. Did anything change with your duties and  
273 responsibilities once the pandemic started?

274 A. I was in that same role for really the first  
275 months of the pandemic. Then I switched to a different  
276 role in August after the pandemic had started.

277 Q. Can you explain within the new role that you  
278 switched into, just a day-to-day, what your

279 responsibilities were?

280 A. Um, the new role, I was an adviser. So, a  
281 different title.

282 Q. Mm-hmm.

283 A. But we were still in incident command  
284 system, so I would say a lot of what I did was similar.  
285 But I also spoke with different people because the  
286 vaccine effort was -- we were starting to prepare for  
287 the vaccine effort.

288 So that was something new. So, I got more  
289 involved in that and I hadn't been involved in any  
290 vaccine conversations previously.

291 Q. Okay. And who did you report to?

292 A. I reported to the commissioner in my second  
293 role.

294 Q. Okay. And in your second role during the  
295 pandemic, you are referring to Dr. Zucker, correct?

296 A. Yes.

297 Q. How often were you meeting with Dr. Zucker  
298 during this period?

299 A. I mean this was after August.

300 Q. Mm-hmm.

301 A. I truly don't recall how much but -- yeah.  
302 I don't honestly remember.

303 Q. That's fine.

304 MR. BENZINE: What about before August?

305 How often would you meet with Dr. Zucker?

306 THE WITNESS: Over my 10 years, I would say  
307 rarely but occasionally. That's a ballpark.

308 Q. How much interaction did you have -- again,  
309 during the pandemic, with the Executive Chamber during  
310 your day-to-day?

311 MR. BACH: Time period?

312 Q. During the pandemic. So -- excuse me. From  
313 March 2020 through August of 2020.

314 A. Again, I don't know exactly, but on a  
315 day-to-day basis, rarely or never. Then there would be  
316 a few days where I might receive a phone call but it  
317 was -- I would still characterize it as rare.

318 Q. And you said you would receive a phone call.  
319 Were there any staffers in the Executive Chamber in  
320 particular that you would be talking with more  
321 frequently than others?

322 A. I'm just trying to remember. Um, again, it  
323 was fairly rare to talk to anybody.

324 Q. Mm-hmm.

325 A. But there -- I recall being on some  
326 conference calls that had groups of people, if that  
327 makes sense. Then there might be individuals that would  
328 call with a question. I'm just trying to think of the

329 names. I recall talking to Linda Lacewell, Jim Malatras

330 Q. Okay. So I'm going to name or I'm going to  
331 read off a list of names and -- so to make it easier on  
332 you I'm just going to read off a list of names. If you  
333 recall talking to any of these individuals for the  
334 period between January 1, 2020 and the present, you can  
335 answer yes or no.

336 A. Okay.

337 Q. So starting first with Dr. Howard Zucker?

338 A. Yes.

339 Q. Ms. Sally Dreslin?

340 A. I can't recall but may have.

341 Q. Okay. Mr. Gary Holmes?

342 A. Yes, I did speak with him.

343 Q. Former Governor Andrew Cuomo?

344 A. I do think I would say yes, to the best of  
345 my recollection.

346 Q. Former Secretary to the Governor Melissa  
347 DeRosa?

348 A. Can I ask for clarification?

349 MR. BACH: Do you want to talk to me?

350 THE WITNESS: Can they rephrase? I mean,  
351 talk to.

352 Q. If you talked to or e-mailed with during the  
353 period of January 1st, 2020 and present?

354 A. Yes.

355 Q. Okay. Thank you.

356 Mr. Gareth Rhodes?

357 A. Yes.

358 Q. Mr. Rich Azzopardi?

359 MR. BACH: Who?

360 MR. EMMER: Rich Azzopardi.

361 A. To the best of my recollection, I can't

362 recall.

363 Q. Mm-hmm.

364 A. But I -- I'm not certain about that answer.

365 Q. Ms. Danielle Lever?

366 A. I don't have a recollection of talking to

367 her.

368 Q. Ms. Beth Garvey?

369 A. Yes.

370 Q. Ms. Judith Mogul?

371 A. Yes.

372 Q. Ms. Megan Baldwin?

373 A. Yes.

374 Q. Mr. Larry Schwartz?

375 A. I can't recall, to the best of my

376 recollection.

377 Q. Ms. Jill DesRosiers?

378 A. I can't, to the best of my recollection.



379 Q. Ms. Linda Lacewell?

380 A. Yes.

381 Q. Mr. Kenneth Raske?

382 A. I truly can't recall.

383 Q. Mr. Lee Perlman?

384 A. I don't recall ever talking to him.

385 Q. Mr. Michael Dowling?

386 A. I don't recall talking to Mr. Dowling.

387 Q. Mr. Francis Collins?

388 A. No.

389 Q. Dr. Anthony Fauci?

390 A. No.

391 Q. Mr. Alex Azar?

392 A. No.

393 Q. Ms. Seema Verma?

394 A. Not to my recollection.

395 Q. Dr. Deborah Birx?

396 A. Not to my recollection.

397 Q. Dr. Hugh Auchincloss?

398 A. Not to my recollection.

399 Q. Dr. Robert Redfield?

400 A. Not to the best of my recollection.

401 Q. So now I want to ask if you had any

402 interactions with any of the following institutions

403 between January 1st, 2020 and you leaving your position

404 at the New York State Health Department.

405 So first, the U.S. Centers for Medicare and  
406 Medicaid Services?

407 A. No. Not to the best of my recollection.

408 Q. U.S. Department of Health and Human  
409 Services?

410 A. I'm trying to remember if CDC falls under  
411 health and human services.

412 MR. BENZINE: They do.

413 A. Then yes.

414 THE WITNESS: Thank you.

415 Q. The New York State Attorney General's  
416 Office?

417 A. Not to my recollection.

418 Q. The New York State Comptroller?

419 A. I'm not recalling, but I'm not confident in  
420 that answer.

421 Q. New York State Assembly Judiciary Committee?

422 MR. BACH: Are you asking these questions  
423 in terms of who she interacted with in her role  
424 at the Department of Health or asking about  
425 following her role in the New York Department of  
426 Health?

427 MR. EMMER: In her role at the New York  
428 State Health Department, but the interactions

429 with the Attorney General's Office, Comptroller,  
430 Assembly, Judiciary Committee, those would be in  
431 regards to subsequent investigations into  
432 nursing homes.

433 MR. BACH: Okay. So -- all right. Did you  
434 interact with the New York State Attorney  
435 General's Office in connection with the  
436 investigation?

437 MR. EMMER: (Nodding.)

438 MR. BACH: I will state for the record --

439 THE WITNESS: I don't know who it was.  
440 That's the problem. I don't know who reached  
441 out -- sorry.

442 MR. BACH: I would say for the record that  
443 there were interactions from the New York State  
444 Attorney General's Office.

445 MR. EMMER: Okay.

446 Q. And finally, the New York State Department  
447 of Justice?

448 A. If it is in connection with the  
449 investigations, then yes.

450 MR. BACH: Did you answer for the New York  
451 State Assembly?

452 THE WITNESS: Yeah. I believe that is yes  
453 then too.

454 MR. EMMER: Okay.

455 THE WITNESS: I don't want to misstate.

456 Q. Okay. So --

457 EXAMINATION BY

458 MR. BENZINE:

459 Q. The conversations that you had, I want to go  
460 through three or four of them and ask if they were  
461 specific to the March 25th nursing home order or  
462 subsequent issues that came with that July report from  
463 the department of health and various investigations.

464 Did you have conversations with Dr. Zucker  
465 regarding that order?

466 A. Can you clarify what you are talking about?

467 Q. There was the New York Department of Health  
468 issued an order on March 25, 2020 allowing nursing homes  
469 to take patients that were COVID positive, if they were,  
470 and that was rescinded I think 56 days later, and that  
471 was the basis of much of the investigations from the AG  
472 Office, the Comptroller and partial of the Cuomo  
473 impeachment led the Assembly.

474 So, I just want know about the specific  
475 conversations with Dr. Zucker, if you ever talked to  
476 him, about the basis of that order, the drafting of the  
477 order, the aftermath of the order?

478 A. I was not involved in this policy in my

479 supervisor role.

480 Q. Did you have any conversations with  
481 Dr. Zucker regarding the I think July 6th or 7th report  
482 that the Department of Health published regarding that  
483 order?

484 A. I had conversations with him about the  
485 report. I'm not sure -- I want to make sure it is the  
486 right one because I'm not sure if it's about the  
487 order -- you know, I think it is the only one I knew  
488 about at that time, if that is the one you are referring  
489 to.

490 Q. Yes. It was about, I guess, contextually  
491 about nursing home guests in COVID-19 and the work  
492 unfolding?

493 A. Yes, I had conversations.

494 Q. Do you recall the substance of the  
495 conversations with the former governor?

496 A. Yes.

497 Q. What were they?

498 A. They were later in the year about my  
499 employment.

500 Q. Can you provide more specifics? What about  
501 it?

502 A. I think he recommended that Dr. Zucker let  
503 me go.

504 Q. And Dr. Zucker didn't let you go?

505 A. No.

506 Q. Why -- what gives you that perception that  
507 Governor Cuomo recommended to Dr. Zucker to let you go?

508 A. I was brought into a conference call where  
509 he said he would recommend my firing.

510 Q. Do you know why?

511 A. I don't truly know why, but I was on a  
512 conference call where I made a comment explaining some  
513 of the struggles of nursing homes and I think that was  
514 interpreted in some way that might have been  
515 unfavorable.

516 MR. EMMER: Do you have an idea of when  
517 that call would have taken place?

518 THE WITNESS: Late fall of 2020, early  
519 winter, sometime around then.

520 Q. What were the struggles that you relayed to  
521 the governor?

522 A. I just was on one conference call and don't  
523 truly remember the substance, but something that the  
524 nursing homes -- that -- you know, I had seen on the  
525 ground and why I thought something was happening. I  
526 don't remember the actual substance of it.

527 Q. Okay. Were there any other conversations  
528 with Governor Cuomo or is that the only one that kind of

529 stands out?

530 A. At this time, I can't recall any other  
531 direct conversations, but I could be -- I could be  
532 forgetting, but I don't recall.

533 Q. All right.

534 What about Ms. DeRosa, do you recall those  
535 conversations?

536 A. I recall a direct phone call asking for  
537 certain data.

538 Q. Data surrounding nursing homes?

539 A. Yes.

540 Q. Do you recall what kind of data it was?  
541 Death data, case data?

542 A. I don't recall at this time what it was.

543 Q. Do you recall about the timeframe?

544 A. I would say it would have been June or early  
545 July of 2020.

546 Q. Was it a question regarding the impending  
547 report?

548 A. I recall that it was during the time that we  
549 were having conversations, so I think it could have  
550 been, but I don't know for certain.

551 Q. Okay. Did you ever have any conversations  
552 with Georgio DeRosa or anybody affiliated with  
553 Bolton-St. John?

554 A. Not to my recollection.

555 Q. Okay. And then the last name on the list  
556 that I want to ask to be more specific about is Ms.  
557 Garvey. Do you recall the substance of those  
558 conversations?

559 A. I recall that there were general  
560 conversations that she was on about nursing home issues.

561 And I think that's all I can actually  
562 remember. I don't feel like I'm remembering everything.

563 Q. That's okay. Hopefully our last kind of  
564 name questions.

565 So we had a similar interview with Dr. Zucker  
566 last year -- last November, I believe. Since then, has  
567 anyone contacted you regarding being interviewed by the  
568 committee? Have you had any conversations with anyone  
569 affiliated with former Governor Cuomo, Dr. Cuomo, Ms.  
570 DeRosa, regarding this interview?

571 A. I have not taken any phone calls. I don't  
572 know if anyone who is working with me has.

573 Q. No. And I'm not going to ask about  
574 attorney-client or any counsel conversations. I was  
575 just trying to understand if anyone reached out to you.

576 MR. BACH: To you personally.

577 A. No.

578 Q. Okay.



579 EXAMINATION BY

580 MR. EMMER:

581 Q. So, I know we already spoke through your  
582 day-to-day responsibilities at the Department of Health,  
583 but I just want to ask you generally how the Department  
584 of Health guidance was issued.

585 So, we'll start from the beginning. How is  
586 Department of Health guidance initiated?

587 A. I have no idea.

588 Q. Okay.

589 A. I wasn't --

590 Q. So, you were never involved in determining  
591 whether guidance was necessary?

592 A. I'm sure over 10 years there might have been  
593 a question, but I wasn't in a group that did policy.

594 Q. Mm-hmm.

595 A. I was more, what I would say, front lines.

596 Q. Okay. So, a few more just general  
597 questions.

598 Did you ever conduct official Health  
599 Department business via personal e-mail?

600 A. We weren't allowed to do that.

601 Q. So, did you ever conduct official business  
602 via personal cell phone?

603 A. I had my state cell phone and that's what I

604 used for work.

605 Q. Are you aware of any internal New York  
606 Health Department messaging app or service such as  
607 Microsoft Teams?

608 A. I wasn't aware of that, no.

609 Q. That's perfectly fine.

610 MR. BACH: What was the question?

611 MR. EMMER: Whether there was any internal  
612 New York Health Department messaging apps to  
613 communicate with other staffers such as  
614 Microsoft Teams.

615 Q. And to clarify, you didn't have any e-mail  
616 through the Health Research Incorporated nonprofit?

617 A. No.

618 Q. Okay. While at DOH, were you ever  
619 instructed to delete official e-mails?

620 A. No.

621 Q. Okay. I'm now going to introduce what will  
622 be labeled as Majority Exhibit 1. And this is an e-mail  
623 thread, which you are not a part of, between Melissa  
624 DeRosa, senior Executive Chamber of staff and  
625 Dr. Zucker. It has bates marked NYDOH9253.

626 And I want to direct your attention to the top  
627 of the e-mail or the top e-mail from Secretary DeRosa on  
628 Thursday, January 28th at 8:33 am where she says in all

629 caps delete this chain. Don't respond to it.

630           Again, I know you were not part of this e-mail  
631 chain, but were you aware of the request from the  
632 Executive Chamber to delete e-mails?

633           A.       (Perusing). Sorry. I'm just reading.

634           Q.       Take your time.

635           A.       I have no recollection of being aware of a  
636 message to delete.

637           Q.       Okay. And to your recollection, no one ever  
638 instructed you to delete records?

639           A.       No. I don't recall ever being told to  
640 delete messages.

641           Q.       Thank you.

642                    So I would like to now just pivot to the  
643 beginning of the pandemic and New York. To the best of  
644 your recollection, when did you learn about COVID-19?

645           A.       January, 2020.

646                    MR. BACH: January what?

647                    THE WITNESS: 2020.

648           Q.       And what did you know about it at that time?

649           A.       We generally follow infectious disease  
650 reports from around the globe and I just recall it being  
651 initially one of many viruses. We watch for flu. We  
652 watch for everything. So, I think initially, it was one  
653 of many reported viruses.

654 Q. Were you able to identify which populations  
655 were most at risk during this time?

656 A. Could you clarify the time you are talking  
657 about? January?

658 Q. January of 2020.

659 A. I don't think we had much information at all  
660 at that time.

661 Q. So to the best of your recollection, when  
662 would you have learned that the elderly in particular  
663 were vulnerable to COVID-19?

664 A. I can't recall exactly. We did not have a  
665 lot of information from China. We started to get a  
666 little more from Italy. Then we were learning on the  
667 ground in New York. So, I think it was an evolving  
668 situation.

669 Q. Thank you.

670 So, on March 1, 2020 Governor Cuomo announced  
671 the first confirmed case of COVID-19 in New York. Do  
672 you recall?

673 A. I believe I do.

674 Q. And can you generally describe the initial  
675 acts the administration took in response to COVID-19?

676 A. I don't -- I just don't -- I wasn't involved  
677 in the policy.

678 Q. And that was going to be my next question.

679 Were you involved in any of the initial steps that the  
680 administration took during March of 2020?

681 A. I was really an on-the-grounds person,  
682 clinically, I would say. Yeah.

683 Q. And you already discussed this before, but  
684 as far as New York State Department of Health guidance,  
685 you were not involved in the issuance or the development  
686 or issuance of any guidance?

687 A. Not that I can recall.

688 EXAMINATION BY

689 MR. BENZINE:

690 Q. Specifically, not involved in the drafting  
691 of the March 13, 2020 nursing home guidance. We have it  
692 if you need to look at it.

693 MR. BACH: March 25, 2020.

694 MR. BENZINE: March 25. I'm sorry.

695 A. I have no recollection of being involved in  
696 the March 25th guidance.

697 Q. Do you have any recollection of any water  
698 cooler talk about the drafting of the March 25, 2020  
699 guidance? Was anyone sitting around being like, oh,  
700 this thing happened?

701 A. I don't even know if I was in the office  
702 most days at that time. I was not -- I have no  
703 recollection of water cooler talk about it.

704 Q. Not a lot of water coolers in March of 2020.

705 A. I was downstate.

706 EXAMINATION BY

707 MR. EMMER:

708 Q. I apologize if you already answered this,  
709 but did you ever talk to Dr. Zucker about where the  
710 March 25th order originated from?

711 A. I don't recall having conversations about  
712 that.

713 Q. So, is it your testimony today that you do  
714 not have any -- or you weren't involved and you have no  
715 idea the background of the March 25th order, who drafted  
716 it and issued it?

717 MR. BACH: I'm going to object to the way  
718 you phrased that. You can ask her if she has  
719 any specific information relating to the  
720 March 25th guidance and I think she has answered  
721 no.

722 When you say you have no idea about the  
723 background, you are kind of casting very broadly  
724 in that.

725 MR. EMMER: I apologize for that.

726 MR. BENZINE: We are before the hour, but I  
727 think this is a decent point to take a break and  
728 come back and talk about the report. We can go

729 off the record.

730 (Whereupon, an off-the-record discussion  
731 was held.)

732 [REDACTED] We can go back on the record.

733 EXAMINATION BY

734 [REDACTED]

735 Q. Good morning, Dr. Adams. My name is [REDACTED]  
736 [REDACTED] and I'm senior counsel with the Democrats on the  
737 select subcommittee, and I want to echo my Republican  
738 colleagues thanks for you agreeing to come in and speak  
739 with us today. We do appreciate you taking the time.

740 As an initial matter, it seems that a lot of  
741 what we'll be discussing today relates back to the  
742 politicalization of science and public health. What are  
743 some of the drawbacks to politicizing science and public  
744 health?

745 A. That's a broad question.

746 Q. I can give you a little more specific.

747 MR. BACH: Well, let me ask you this. Are  
748 you going to be asking her about her opinions  
749 and views generally or are you going to be  
750 asking her about her historical knowledge?

751 [REDACTED] Mostly, we are going to be  
752 asking about her historical knowledge. This is  
753 just some framing.

754 MR. BACH: Maybe you should start with her  
755 historical knowledge...

756 [REDACTED] Okay. We can do that.

757 Q. Have we seen a disregard for public health  
758 safety measures in this country?

759 A. I think public health has been in the  
760 spotlight more than it ever was and so people generally  
761 have opinions about everything and so public health  
762 before wasn't paid a lot of attention to. And so, I  
763 think since it became something that everybody started  
764 to learn about, then there started to be opinions.

765 Q. Great. Thank you.

766 I'm going to turn over some questions to my  
767 colleague here, [REDACTED]

768 EXAMINATION BY

769 [REDACTED]

770 Q. Good morning, Dr. Adams. Thank you again  
771 for your voluntary participation in today's interview.  
772 My name is [REDACTED] and I'm a counsel with the  
773 minority.

774 On the prior administration's pandemic  
775 response, there has been a lot of retrospective  
776 conversation around the March 25th advisory and the  
777 DOH's disclosures of that data. On that second piece,  
778 the July 6th DOH report has drawn significant attention



779 and kind of serves as a framing device.

780 But if we could, I would like to just zoom out  
781 a little and talk about decision making around DOH's  
782 public reporting. It might be helpful to somewhat set  
783 the stage with what appears to be DOH's official  
784 position on this point.

785 And for that, I will introduce a March 2022  
786 report by the New York State Comptroller that assessed  
787 the use, collection and reporting of infection control  
788 data. This is Minority Exhibit A.

789 MR. BACH: What's the name? March 27th of  
790 what year?

791 [REDACTED] It was a March '22 report by  
792 the New York State Comptroller on infection  
793 control.

794 MR. BACH: What year?

795 [REDACTED] March, 2022.

796 MR. BACH: 2022.

797 [REDACTED] (Handing).

798 Q. Do you recognize this report?

799 A. I don't recognize this report.

800 Q. Sure. DOH had an opportunity to respond to  
801 a draft of this report. On the issue of decision making  
802 around DOH's public reporting, we can turn to page 44.

803 A. (Witness complies.)

804 Q. The last paragraph, midway through, starting  
805 with "as the draft report acknowledges..."

806 Have you found it?

807 A. (Perusing). I have found it, yes.

808 Q. Okay. I'll just read DOH's response for the  
809 record.

810 Their response is, "as the draft report  
811 acknowledges and the New York State Assembly concluded  
812 during its investigation concerning the state's public  
813 disclosures, the scope of health data that was released by  
814 the prior administration was determined by that executive  
815 chamber, not department personnel, and any department  
816 issued data was accurately described."

817 Dr. Adams, do you agree with DOH's response here  
818 that there was an extent to which chamber determined the  
819 scope of health data that the DOH publicly released?

820 A. I think it's hard for me to comment because  
821 I wasn't involved in upper-level conversations. So, to  
822 make a broad statement is a bit difficult for me here.  
823 I just -- I just know my small work and my interaction.  
824 That's a big -- a general statement.

825 Q. Have you ever been involved with members of  
826 chamber in conversations about the scope of public  
827 health data that DOH would publicly report?

828 A. Yes.

829           Q.       And those conversations, did those members  
830 of chamber either attempt to limit or expand that scope?

831           A.       In general, I always espouse to follow what  
832 I was used to, which was the scientific process. And  
833 for that, for the process, you -- you know, pick your  
834 dataset, you describe the methods, the results,  
835 conclusion, and you need to say what the limitations  
836 are.

837                    So, you know, I would always argue for an  
838 appropriate, but the appropriate, usually a large  
839 dataset with the limitations coming from a scientific  
840 paper part, and for folks that weren't from a scientific  
841 background, I would see sometimes would think about  
842 things in a different way in terms of, you know, what  
843 they might want to include.

844                    Is that --

845           Q.       Could you be more specific about the  
846 different approach that you saw?

847           A.       Um, I don't want to speak for everyone in  
848 the Health Department, but in my group we were used to  
849 writing papers that would be published in a scientific  
850 journal.

851                    So, we would follow, you know, the very  
852 prescribed set of rules and guidance of what you would  
853 do for a scientific paper, and that's, you know,

854 generally what I saw within the Department of Health.

855 I learned throughout the pandemic that people  
856 would try to write things maybe for different audiences,  
857 for lay audiences, and sometimes that process was just  
858 different.

859 I don't know -- I can't comment on if it was  
860 standard or not because I wasn't really involved in  
861 other report writing, but it was different from -- in  
862 certain aspects -- from what we would say -- we would  
863 typically do to try to publish an article in a peer  
864 reviewed article.

865 Q. Thanks.

866 Different in what certain aspects?

867 A. Um, I think for a scientific article, you  
868 might have a hypothesis but you take whatever dataset is  
869 best and then make sure you do analyses that are, I  
870 would just, for lack of a better term, say  
871 mathematically appropriate. Really, the  
872 biostatistical analyses that you would want to do would  
873 depend on what type of analysis was needed. And you  
874 would have to strictly follow that, and then you would  
875 prepare the results and make sure you had a limitation.

876 You wanted to present the data in a way that  
877 somebody else could replicate it. You were benchmarking  
878 it, saying this is what we did. And there may not be

879 one way necessarily to do it, but by describing your  
880 methods, somebody else could try to replicate that in a  
881 different city or use the same methods for comparison.  
882 If not, they could say why it is different.

883           People don't always have to do things the same  
884 way, but it is the transparency that is important for a  
885 scientific article.

886           I don't -- having not written reports, I don't  
887 know the process for that, but my understanding is that  
888 it could be different.

889           Q.       You mentioned that the transparency is  
890 important when writing a scientific report.

891           In your conversations with Chamber, did the  
892 members of chamber that you were discussing this topic  
893 with also approach this issue of transparency in a  
894 scientific paper the same way that you just laid out?

895           A.       I don't know how they approached it because  
896 I wasn't involved in those conversations, but we would  
897 suggest certain edits to increase transparency.

898           Q.       What certain edits, if you recall?

899           A.       Um, it's -- it's been almost four years.  
900 Um, I do recall wanting limitations to be mentioned.  
901 Um, like, what the limitations were, and just describing  
902 the dataset that was used.

903           Q.       Okay. Thank you.

904                   What I would like us to do is go through some  
905 e-mails and documents and explore the idea, as I  
906 understand it, page 44 that we just read, and use what I  
907 understand to have been DOH's daily nursing home death  
908 reports as our anchor.

909                   Minority Exhibit B is a January 28, 2021  
910 e-mail, and the attachments are describing nursing home  
911 deaths. I'll give you some time to flip through them.

912                   ██████████ (Handing).

913                   THE WITNESS: Thank you.

914                   A.       (Perusing).

915                   Q.       If you would like to go through them, feel  
916 free.

917                   A.       Yes.   (Perusing). Okay.

918                   Q.       Okay. Dr. Adams, you are on this e-mail and  
919 you may have received dozens of e-mails like this one,  
920 but in general, do you recall seeing documents like  
921 these two attached here with a title NH\_ACF\_Summary\_the  
922 date\_modified?

923                   A.       My recollection is more general just of  
924 occasionally seeing data. I can't recall an exact  
925 file or e-mail.

926                   Q.       That's fair.

927                   For the record, the subject line reads  
928 "updated 1/27 NH ACF website report." As I understand

929 things, every day as early as April 2020 DOH posted to  
930 their website a PDF showing deaths related to nursing  
931 homes; is that correct and is this such an example of  
932 such a PDF?

933 A. I can't verify dates at all. I wasn't part  
934 of the groups that was posting this data.

935 Q. Sure.

936 A. So, I don't recall when that started or what  
937 was posted on a specific time period.

938 Q. But do you recall that DOH posted PDFs for  
939 public viewing related to nursing home deaths?

940 A. I know that there was a website where data  
941 was posted.

942 Q. Okay. Do you know that this is an example  
943 of such a PDF?

944 A. I don't know the link. I wasn't commonly  
945 looking at the public website. I feel like I can't  
946 verify, but I know data was posted.

947 Q. Okay. Just to make sure I understand what  
948 we are looking at, the data attachments represents total  
949 statewide COVID confirmed and presumed nursing home  
950 deaths broken down at the county and facility level.

951 Does that all sound right?

952 A. So, my interpretation, just looking at this  
953 in the three minutes we have been here, is that there's

954 nursing home data, but there is also assisted living  
955 data because there is an ACH section.

956 And I think it is also important to see that  
957 this is only for the confirmed and presumed deaths  
958 within nursing homes and it doesn't include data for  
959 those that occurred outside the facility.

960 So, I think people often use a broad term like  
961 nursing home deaths. And again, this is the data part  
962 of it, right? Is it in nursing home or is it nursing  
963 home residents, right? There is a distinction.

964 So, I would say that's my understanding of  
965 this data looking through it right now, if that's  
966 helpful.

967 Q. That is helpful.

968 Are you familiar with the HERDS surveys that  
969 nursing homes submitted information through back to the  
970 DOH?

971 A. Yes. I was not part of the group that  
972 administered the HERD surveys, but I knew about them  
973 generally.

974 Q. Generally, is the HERDS survey how DOH got  
975 the data that went into this PDF --

976 A. Oh --

977 Q. -- if you know?

978 A. Again, I wasn't part of that division so I



979 want to be clear to say, this might not be correct, but  
980 that's my general feeling, was yes, there was a lot of  
981 data that was captured via HERD surveys.

982 Q. As I understand things back in March and  
983 April of 2020, the HERD survey underwent some  
984 significant changes to ensure more comprehensive data  
985 collection. Do you have a recollection of those  
986 changes?

987 A. I generally do recall that there were  
988 changes that were made. I don't recall if that was the  
989 date, but yes, there were -- I can say generally, there  
990 were some changes.

991 Q. Sure. Minority Exhibit C is an evolving set  
992 of COVID-related questions DOH began asking nursing  
993 homes early in the pandemic. You can look through them  
994 as you would like. These are the HERDS related  
995 questions.

996 [REDACTED] (Handing).

997 A. (Perusing).

998 MR. BACH: What is the date at the bottom  
999 of the page?

1000 [REDACTED] Which page?

1001 MR. BACH: The page that says April 1,  
1002 2020, but the time stamps are different for  
1003 every page?

1004                   ██████████ Yeah. There is essentially  
1005                   three different documents in here. First is a  
1006                   March 2020 version of the HERDS survey. That's  
1007                   the first two pages. The next document is a  
1008                   mid-April survey update. The third document is  
1009                   a supplemental questionnaire for nursing homes.

1010                A.        Okay.

1011                Q.        If you can, turn to Bates 68273?

1012                A.        (Witness complies.)

1013                Q.        That's the start of the mid-April survey  
1014                   update for the nursing homes. Can you confirm that for  
1015                   me?

1016                A.        Could you please repeat where you want me to  
1017                   turn?

1018                Q.        Yeah. 68273. It's the third page.

1019                A.        Got it. Okay.

1020                Q.        Do you understand this to be the mid-April  
1021                   survey update?

1022                A.        I see the comment that says update 4/19/20.  
1023                   I don't have a recollection from back at the time if  
1024                   this was. So, I'm just seeing this. So, I'm -- from  
1025                   what it says, it would indicate it likely is, but I  
1026                   don't have a recollection of the exact documents that  
1027                   were sent out when they are --

1028                Q.        That's fine.

1029 A. Yeah.

1030 Q. If you could now turn to 68275?

1031 A. (Witness complies.) Okay.

1032 Q. And at the bottom there is a section of the  
1033 daily survey where nursing homes would provide seemingly  
1034 detailed information about COVID-19 resident deaths.

1035 The survey asked for gender --

1036 A. Mm-hmm.

1037 Q. -- COVID-19 confirmed or presumed status,  
1038 age, race, on the next page, comorbidities and place of  
1039 death. And place of death is further broken down for  
1040 nursing home, hospital, or other.

1041 There may have been issues with data  
1042 clarification and data reconciliation, early issues, but  
1043 is it fair to say from mid-April 2020 onwards, nursing  
1044 homes submitted similar types of information to DOH as  
1045 that purported in this exhibit, that is that nursing  
1046 homes didn't stop reporting this information; is that  
1047 fair?

1048 A. I'm not sure if I follow the question.  
1049 Would you mind just stating it again?

1050 Q. From the time of this mid-April survey  
1051 update, did nursing homes continue to report these types  
1052 of information?

1053 A. Sorry. From what date?

1054 Q. Let's say April 2020, onwards.

1055 A. I'm not sure I understand the full question,  
1056 but the nursing homes reported data as instructed and my  
1057 understanding was that they kept reporting the data as  
1058 instructed.

1059 Q. Are you aware of a version of this survey  
1060 after April 2020 that stopped requiring nursing homes to  
1061 submit these types of information?

1062 A. I don't recall -- I don't recall the details  
1063 of the surveys because I wasn't on --

1064 Q. Sure.

1065 A. -- we had different teams that dealt with  
1066 sending out the surveys and then collecting the data.  
1067 We would look at it for, like, an individual facility,  
1068 if that makes sense.

1069 So I don't -- I'm trying to remember, but I  
1070 can't recall if there was a date that things changed per  
1071 se. I have a general recollection that at times there  
1072 was a desire -- you do things so fast at the beginning.  
1073 I think we all learned along the way, how to ask  
1074 questions to get information that was needed over time.

1075 And so I know that was something that the  
1076 Department of Health, you know, worked on over time.  
1077 And so there were different versions of surveys where  
1078 questions changed over time.

1079 Q. Okay. Minority Exhibits D and E are the  
1080 May 2nd and May 5th website PDFs.

1081 [REDACTED] (Handing).

1082 Q. That first one is the May 2, which is what  
1083 on DOH's website on May 2. This next one is what was on  
1084 DOH's website on May 5th.

1085 [REDACTED] (Handing).

1086 A. (Perusing).

1087 MR. BACH: Of 2020?

1088 [REDACTED]: Yes, 2020.

1089 A. Okay.

1090 Q. Based on the internal e-mails and documents  
1091 we reviewed, and public documents like the Comptroller  
1092 report, our understanding is that early May of 2020 DOH  
1093 stopped including hospital deaths in nursing home  
1094 website PDFs. If you can look at Exhibit E, that's the  
1095 May 2 version. It presents deaths up to April 30th.  
1096 And its county level data includes out-of-facility  
1097 deaths; is that correct?

1098 A. (Perusing).

1099 Q. Page 4.

1100 A. (Perusing). Could I verify that you mean  
1101 this one that says -- the first one, data as of 4/30?

1102 Q. Yes, that was, from what I can tell, the  
1103 most up-to-date version available on May 2, 2020.

1104 A. (Perusing). I mean, what I'm seeing is it  
1105 says resident deaths in the nursing home.

1106 Q. Right, but on page 4 there's data relating  
1107 to out-of-facility deaths at the county level.

1108 MR. BACH: Where are you referring to?

1109 [REDACTED] In the orange, number includes  
1110 the residents that died either in a facility for  
1111 in a hospital.

1112 A. I can see on page 4 on that section in the  
1113 county level data, that the grand total section has the  
1114 asterisk that says include a resident that died in  
1115 either a facility or a hospital.

1116 I, myself, am not familiar with the dataset,  
1117 so I don't know if there was more information about it.

1118 Q. Sure.

1119 A. Yeah. I can see what is here.

1120 Q. Sure. Let's turn to Exhibit E now.

1121 A. (Witness complies.)

1122 Q. Do you see any data relating to  
1123 out-of-facility deaths in this exhibit?

1124 A. I see a footnote that says that the data  
1125 captures COVID-19 confirmed and COVID-19 presumed deaths  
1126 within nursing homes and adult care facilities. This  
1127 data does not reflect COVID-19 confirmed or COVID-19  
1128 presumed positive deaths that occurred outside the

1129 facility.

1130 Q. Do you see a similar footnote on Exhibit D?

1131 A. (Perusing). D is the prior document?

1132 Q. Yes.

1133 A. I do not. I see a footnote but it's not  
1134 worded the same. It makes a point -- I mean, there are  
1135 multiple footnotes, I should say. I see two. And one  
1136 speaks to presumed and confirmed deaths.

1137 Q. Right. So then nothing is saying that this  
1138 dataset excludes out-of-facility deaths?

1139 A. (Perusing). So for the -- I think there are  
1140 three different datasets here. Um, and I don't see the  
1141 notes for -- I don't see a footnote. Sorry.

1142 Q. If it's not there, it's not there. It's  
1143 fine.

1144 A. I just don't want to misspeak. (Perusing).  
1145 I don't see the same wording on this one previously, but  
1146 I don't personally know the datasets well enough on  
1147 here.

1148 Q. Okay. Do you recall there being a DOH  
1149 reporting switch in early May 2020 to exclude  
1150 out-of-facility deaths from its publicly reported data  
1151 related specifically to nursing homes?

1152 A. I don't recall at that time being involved  
1153 in the day-to-day reporting on the public website. I

1154 was more doing my day-to-day work, which was working at  
1155 individual facilities.

1156 So at the time, I was not looking, for  
1157 example, at the public website daily, if at all. I was  
1158 really focused on my job at the time.

1159 So I would maybe look at, like, an individual  
1160 nursing home's numbers when they were calling me to see  
1161 how I could help them with what they needed.

1162 Q. Thank you.

1163 Minority Exhibit F. I would now like us to  
1164 look at some e-mails where DOH is sending around the  
1165 daily PDFs that would be posted to the website. E-mails  
1166 of this kind were sent daily. So, what we have here is  
1167 hopefully a smaller, but representative, sent.

1168 You are only on the first e-mail, but maybe  
1169 you can help us out with some of the language that is  
1170 contained in all of the e-mails.

1171 This is Minority Exhibit F.

1172 [REDACTED] (Handing).

1173 A. (Perusing).

1174 Q. They are very similar, aside from the  
1175 numbers, which you don't really need to pay attention  
1176 to.

1177 A. (Perusing) Okay.

1178 Q. So, what we have here are e-mails from



1179 February and January of 2021, then December, November,  
1180 October, September, August, July and June of 2020, and a  
1181 couple e-mails of the same kind within each month.

1182 If we can go to the first e-mail, the February  
1183 13, 2020 e-mail that you are on, the top line  
1184 reads, "Here are the 2/13/2021 NH, AL, and OACF reports  
1185 as per chamber for posting to the website."

1186 A couple of questions about the per chamber  
1187 piece, which you saw is also on all the other e-mails.

1188 What did you understand per chamber to mean?

1189 A. I don't know.

1190 Q. Did you ever have a sense that this process  
1191 of posting website PDFs with website numbers was one  
1192 that required chamber's approval?

1193 A. That was my overall general feeling, but I  
1194 didn't -- wasn't involved in the mechanics, so I can't  
1195 say for sure.

1196 Q. What evidence did you have to have that  
1197 feeling?

1198 A. I generally recall folks that were in the  
1199 daily unit saying that they were sharing the numbers  
1200 with Chamber.

1201 Q. Why did they tell you that?

1202 A. I don't know. We would work, you know,  
1203 closely together, and so sometimes we would talk about,

1204 you know, the current situation. Maybe they were  
1205 working late, waiting. I -- I -- my memory is not  
1206 probably what it would have been four years ago.

1207 Q. That's fair. I guess there may be a  
1208 theoretical difference between sharing information with  
1209 someone versus requiring that someone's permission to  
1210 post that information online.

1211 A. Mm-hmm.

1212 Q. Is there anything more that you recall that  
1213 leads you to believe that beyond sharing chamber  
1214 required DOH to seek for approval in this process?

1215 A. I think why I'm having difficulty giving you  
1216 an answer is because I wasn't involved in decisions to  
1217 post or the daily information. I was more, you know, if  
1218 there was thought that maybe one nursing home's numbers  
1219 didn't add up, or maybe we had been talking to them  
1220 about the outbreak in their facility, and maybe, you  
1221 know, maybe we had written down it was four, but they  
1222 had said five, you know, we would want to just make sure  
1223 what the difference was. And we could always resolve  
1224 it.

1225 Sometimes it was just, you know, data being  
1226 submitted by a certain time or something. So I'm  
1227 feeling as though I'm not, you know, in the position --

1228 Q. Sure.

1229           A.       -- where I was involved. We had two other  
1230 groups, to my knowledge, that were dealing with the  
1231 mechanics of reporting. And you can see some of the  
1232 names here.

1233           Q.       Sure.

1234           A.       I'm not on any of these e-mails, you will  
1235 see, I think, until the latest one here. (Pointing).  
1236 So going back, I wasn't -- I just wasn't part of the  
1237 decisions of the process. I wasn't close to it.

1238           Q.       I may test your patience with this next  
1239 question, but do you know if DOH passed their reports to  
1240 chamber for approval before posting?

1241           A.       I was not part of that process. So I just  
1242 don't know how that worked.

1243           Q.       Sure. So Katarzyna Petronis, Gregory  
1244 Schoonmaker, Shu-Kuang Tai, and Richard Rees are all in  
1245 the sender lines of these e-mails.

1246           A.       Mm-hmm.

1247           Q.       Were they from the same department within  
1248 DOH?

1249           A.       I actually don't know. There were two  
1250 different departments and I didn't get a chance to meet  
1251 or interact with all those folks.

1252           Q.       Sure.

1253           A.       So I actually don't know between the

1254 departments which they were from.

1255 Q. What were the two departments that you are  
1256 talking about?

1257 A. I'm going to get the names wrong but  
1258 the -- the order might be wrong but we had  
1259 O-P-C-H-S-M --

1260 Q. Okay.

1261 A. -- primary care health system  
1262 management -- something like that. And then there was  
1263 an office that dealt with patient safety and data.

1264 I'm forgetting the acronym after all these  
1265 years, but -- I'm actually sure it is probably in one of  
1266 these documents. O-Q-P-S -- something like that.

1267 Q. That sounds fair.

1268 A. And so those are the two departments that I  
1269 think were probably -- I know were more involved.

1270 Q. Is it your understanding that the PDF  
1271 originated with one of those departments that you just  
1272 mentioned?

1273 A. I'm so sorry, but I just don't know how this  
1274 originated.

1275 Q. Okay. Minority Exhibit G is a September 18,  
1276 2020 e-mail chain and its attachments. I'll let you  
1277 take a look.

1278 ██████████ (Handing).

1279 A. (Perusing).

1280 Q. So Erin Silk asks Gregory Schoonmaker if he  
1281 can send "grand totals" for daily nursing home  
1282 fatalities for September 2nd to September 18th, and that  
1283 chamber is requesting. Schoonmaker responds that he has  
1284 attached quote, "two flavors we sent," for September 2nd  
1285 and as an example and asks which flavor Silk needs. One  
1286 of the attached spreadsheets has a familiar title,  
1287 NH\_ACF\_summary\_090220\_modified. The other spreadsheet  
1288 is a little different. Its title is NH\_09\_02\_2020.

1289 So , what I would like us to do is just  
1290 compare the county and facility level data between the  
1291 two attachments. If it's easier for you, the summary  
1292 county level data for the first spreadsheet is on  
1293 page 4. And the summary county level data for the  
1294 spreadsheet is on page 8.

1295 Just let me know when you see all that?

1296 A. (Perusing). Okay.

1297 Q. When just considering the summary county  
1298 level data between both spreadsheets, so ignoring the  
1299 ACF data, let's just look at the nursing home data, the  
1300 only significant difference between the two spreadsheets  
1301 is that the first spreadsheet has out-of-facility  
1302 deaths, and the second spreadsheet with modified in its  
1303 title does not.

1304 Do you have a similar or different  
1305 understanding between these spreadsheets?

1306 A. I'm going to need one second. (Perusing).

1307 So on the exhibits that you presented to me, I  
1308 see a few differences. One, which you mentioned, was  
1309 that ACFs are included in the -- sorry -- I guess it is  
1310 the same exhibit, but in the second section I see that  
1311 for the second part, they have adult care facilities.  
1312 Um, there is a footnote that talks about the data, and  
1313 says that it does not include -- reflect COVID-19  
1314 confirmed or COVID-19 presumed deaths that occurred  
1315 outside the facility.

1316 And it does not have the total deaths overall,  
1317 a total deaths at facility column that was in the first  
1318 one. In the first one, there is more data that is given  
1319 about the time of the survey and notes that it is only  
1320 for the deaths for which the patient demographic  
1321 information was provided.

1322 So those are the differences that I see.

1323 Q. If we could look at the COVID confirmed  
1324 deaths at nursing homes in the second spreadsheet, so  
1325 same page, page 8, and the COVID confirmed deaths at  
1326 facility on the first spreadsheet, would you say that  
1327 those numbers are more similar or more dissimilar?

1328 A. The fourth column of the first and the

1329 second column of the second chart provided look, at my  
1330 quick glance, to have the same values. I could be wrong  
1331 looking quickly but have the same values generally in  
1332 that category.

1333 Q. I'm assuming that because DOH asked for all  
1334 of the information in these spreadsheets and made the  
1335 time to make daily records of it, DOH considered this  
1336 information valuable from a public health perspective;  
1337 is that true?

1338 A. I don't want to speak for the whole  
1339 department.

1340 Q. Sure.

1341 A. I can speak from my point of view, that data  
1342 generally is considered valuable if it's collected in a  
1343 way that is valid or has good methodology for the  
1344 collection of data.

1345 Q. In your day-to-day, did you consider  
1346 out-of-facility death data at the times you had it when  
1347 thinking about how to help nursing homes on the ground  
1348 navigate the pandemic?

1349 A. I was part of a group that was trying to  
1350 limit spread, limit control, look at infection control  
1351 methods within a facility. So, for us being able to  
1352 trace how transmission may have occurred within a  
1353 facility was one of the goals.

1354                   So, we did use data for all individuals who  
1355 passed away in whatever time period we were looking at.

1356           Q.        Sure.

1357                   If you go to page 3, do you recall ever seeing  
1358 a spreadsheet or a tab within a spreadsheet that looked  
1359 similar to what we are seeing on page 3 where it  
1360 included information relating to the deaths of nursing  
1361 home residents at a hospital or other locations?

1362           A.        I remember seeing general data.     I just  
1363 can't recall at the time, you know, exactly what the  
1364 source was, if it was in a PDF like this or not.

1365           Q.        Do you ever recall there being a divide  
1366 between two periods, the first period would be where you  
1367 considered out-of-facility death data to be unreliable,  
1368 the second period was a time when you considered that  
1369 data to be reliable? Was there ever like a switch in  
1370 your thinking?

1371           A.        I do recall that generally at the beginning,  
1372 the deaths -- um, the first few cases were very  
1373 controlled. The numbers were low, everybody was  
1374 following the case, details were known about the case.

1375                   Then when cases started to pick up, it was at  
1376 a time where nursing homes and hospitals were extremely  
1377 busy with not only the confirmed cases, but with  
1378 presumed cases. And with everything that came along



1379 with that.

1380 And I recall that the reporting of data, and  
1381 I'm just going to say generally, was -- started to get  
1382 more challenging. And that, for example, if somebody  
1383 came into a hospital not breathing, the immediate  
1384 concern clinically was helping that person, not figuring  
1385 out where they came from.

1386 So I do recall that there -- that the initial  
1387 data -- I wouldn't even say the initial -- the very  
1388 initial data was very well known. Then there came a  
1389 period where, yes, I would say there was -- um, there  
1390 was thought that the data didn't always reflect where  
1391 the person came from due to everybody rushing. And if  
1392 there was an attempt to go back and look at that data  
1393 more closely to make sure it was accurate.

1394 Q. Do you recall when this period for the  
1395 review of the data and seeing if it all checks out was?

1396 A. I recall that there was additional -- I  
1397 mean, as we are going through this, I am being reminded  
1398 that there were different surveys sent out at different  
1399 points of time. I don't recall when those times were.

1400 I think the folks that were in the other two  
1401 divisions I talked about would know exactly.

1402 Q. Based on your recollection, this period was  
1403 associated with a changing of the surveys, just so I can

1404 understand what you are saying?

1405 A. I don't know what you mean by "this period."

1406 Q. This period of an increased effort to check  
1407 that the data was accurate and reflected where nursing  
1408 home residents died?

1409 A. I'm just not sure that I understand your  
1410 question. Would you mind saying it again?

1411 Q. Did this period of DOH putting in some extra  
1412 efforts to verify data and perhaps struggling but then  
1413 learning how to do it better, is this period associated,  
1414 in your recollection, with the HERDS survey being  
1415 updated?

1416 A. I think the HERD survey was an attempt to  
1417 get more data.

1418 Q. Okay. If you can recall, around what month  
1419 and year did you feel comfortable with the reliability  
1420 of the summed up out-of-facility death numbers?

1421 A. So that wasn't my focus. My focus was,  
1422 like, working with each institution to see what their  
1423 situation was and working with them. So, I wasn't  
1424 looking on a daily basis. I wasn't using this to look  
1425 at totals per se. What I was, okay, this is the data  
1426 we have. These are the limitations of the data. Do I  
1427 need to do something when I'm talking to a facility to  
1428 adjust my thoughts? You know, to say, okay, this is

1429 what you are submitting, this is what you know.

1430 So, I just -- I think I wasn't in the role  
1431 that was sitting there looking. We had a whole data  
1432 quality unit. I was in a disease control unit. So, I  
1433 just wasn't -- what you are posing was not what I even  
1434 did on a daily basis.

1435 Q. Okay.

1436 [REDACTED] I think that is all for now.

1437 Thank you.

1438 [REDACTED] We can go off the record.

1439 (Whereupon, an off-the-record discussion  
1440 was held.)

1441 MR. EMMER: We can go back on the record.

1442 Q. Dr. Adams, I would like to start introducing  
1443 what would be labeled as Majority Exhibit 2 (Handing).

1444 A. (Perusing).

1445 Q. It's Bates numbers NYDOH2186 through 2191.  
1446 This is an e-mail thread started by secretary DeRosa to  
1447 senior executive staff that was ultimately forwarded to  
1448 you and health department staff on May 17 of 2020.

1449 The subject line reads, "Please give this a  
1450 read. Send back any edits you have and we shall place  
1451 in the New York Post from Dr. Zucker tomorrow."

1452 Do you remember this e-mail chain?

1453 A. I don't off the top of my head.

1454 Q. Okay.

1455 A. So, I'm looking at it now.

1456 Q. Take your time.

1457 A. Thank you.

1458 (Perusing). Okay.

1459 Q. Do you recall this e-mail chain?

1460 A. I don't honestly recall it in real time.

1461 There were a lot of e-mails that got sent. I would say  
1462 thousands. So -- but I'm seeing what you put in front  
1463 of me.

1464 Q. Well, I guess generally, do you recall the  
1465 Cuomo administration, including Dr. Zucker, arguing that  
1466 the March 25th guidance was consistent with CDC and CMS  
1467 guidance?

1468 A. I have a general recollection of that.

1469 Q. So, directing your attention to the last  
1470 page, the e-mail from Secretary DeRosa on May 17, 2020,  
1471 are you aware whether the draft op-ed was drafted by  
1472 Ms. DeRosa herself?

1473 A. I have no recollection.

1474 Q. So, I want to direct your attention to 2187.  
1475 That is the second page, and we are looking at  
1476 Meagan -- the e-mail sent from Meagan Baldwin to you and  
1477 other health department officials saying, "that MDR is  
1478 asking for the CMS guidance we referenced on

1479 nondiscrimination policy and where the 27th state came  
1480 from. Need this ASAP."

1481 MDR is referring to secretary DeRosa, correct?

1482 A. Those are her initials. That's all I can  
1483 say.

1484 Q. Okay.

1485 A. But I don't know if there was someone else.

1486 Q. And the CMS guidance that Ms. Baldwin is  
1487 referring to, she is specifically asking about the  
1488 change that was made to the op-ed and we are looking at  
1489 the fifth paragraph of the op-ed. And it looks like the  
1490 third paragraph, and I'll read it out loud for the  
1491 record.

1492 It says, "Our department followed President  
1493 Trump's CDC guidance in saying nursing homes could not  
1494 discriminate against COVID patients. The CDC issued  
1495 that guidance at a time when the primary fear was that  
1496 hospital capacity would be overwhelmed and was premised  
1497 on having hospital beds for Urgent Care. We, along with  
1498 states across the country, agreed with President Trump's  
1499 CDC as the overriding operational mandate has always  
1500 been that a nursing home can only accept or retain a  
1501 patient if it can adequately and effectively care for  
1502 that patient."

1503 Now in subsequent drafts, that paragraph was

1504 changed to BCMS and Ms. Baldwin asked why or relayed  
1505 that MDR, Ms. DeRosa was asking why that change was  
1506 made.

1507 I know it has been four years, but do you  
1508 recall why that change was made from CDC to CMS in  
1509 subsequent drafts?

1510 A. I have no recollection at all.

1511 Q. Okay.

1512 EXAMINATION BY

1513 MR. BENZINE:

1514 Q. Were you ever asked to do an analysis of the  
1515 order of whether or not it actually followed CMS and CDC  
1516 guidances?

1517 A. I have no recollection of being asked to do  
1518 an analysis with regard to policy.

1519 Q. Any other analysis?

1520 You specified with regard to policy. Were you  
1521 asked to do any other analysis centering on the order?

1522 A. I -- oh, about the order? So, I -- my group  
1523 would sometimes be asked for specific data for  
1524 something. We didn't always know what it was for or if  
1525 somebody else had done something to look in on it.

1526 I think at my level we were -- I don't want to  
1527 say low down because it was a very -- the people I  
1528 worked with are amazing. We are amazing people. They

1529 were amazing people. And it was a good group, but we  
1530 were not connected to a lot of the conversations about  
1531 decision making or why.

1532 So just to characterize, I think sometimes,  
1533 like, technical questions would come. Like, where would  
1534 one find a reference, for example, right?

1535 Q. Mm-hmm?

1536 A. Or you know, what have you looked at? And  
1537 we, from our part, like, had looked at the cases  
1538 ourselves because we wanted to see what we could do  
1539 better to stop the spread.

1540 Q. Mm-hmm. In the Department of Health  
1541 structure, would your group have been the nursing home  
1542 communicable disease experts?

1543 A. So, the way -- my understanding of the  
1544 department structures where we did have a regulatory  
1545 department that dealt with the regulatory side of  
1546 hospitals, nursing homes, assisted living, diagnostic  
1547 treatment center, and they had experts that would go in  
1548 to see with infectious control. We were in a  
1549 communicable disease department, and we did focus on  
1550 facilities. So, we would look at multidrug resistant  
1551 organisms over time and things like that.

1552 So, we had individuals who had expertise in  
1553 infection control methods as well, but I wouldn't say we

1554 were the only experts because there were some great  
1555 experts in the regulatory unit.

1556 Q. So, it wouldn't have necessarily been odd or  
1557 outside the standard course of business that a nursing  
1558 home regulation dealing with infectious disease would  
1559 get issued without going through your group first?

1560 A. Very frequently.

1561 Q. Okay?

1562 A. Very frequently, yeah.

1563 EXAMINATION BY

1564 MR. EMMER:

1565 Q. So, I would now like to introduce what would  
1566 be marked as Majority Exhibit 3. (Handing).

1567 A. (Perusing).

1568 Q. This is an e-mail thread between senior  
1569 Executive Chamber and Health Department staff on  
1570 June 22, 2020 flagging an article entitled, "Verma,  
1571 Cuomo contradicted federal nursing home guidance." And  
1572 I'll give you a minute to review it.

1573 MR. BENZINE: Not that there is a whole lot  
1574 to review.

1575 MR. EMMER: Yeah.

1576 A. (Perusing). Okay.

1577 Q. So I guess the first question would be, do  
1578 you remember when CMS administrator Verma saying that



1579 the March 25th guidance contradicted federal guidance?

1580 A. To be honest, I was just too into the  
1581 nitty-gritty of my job that I was not really in the loop  
1582 with things that were happening outside of my orbit.  
1583 And that would probably include the federal level. I  
1584 just was so busy.

1585 Q. Okay. Well, as you can see, the e-mail  
1586 thread, including your e-mail, is heavily redacted. Do  
1587 you recall generally what the Executive Chamber was  
1588 discussing in response to Verma's conclusion?

1589 A. I cannot recall four years ago what was in  
1590 the redacted section.

1591 Q. And you wouldn't recall what your response  
1592 would have been?

1593 A. I have no recollection looking at this, what  
1594 the long e-mail thread was about.

1595 Q. Okay.

1596 EXAMINATION BY

1597 MR. BENZINE:

1598 Q. Do you recall ever being directed by anyone  
1599 to defend or find a way that CMS and CDC guidance were  
1600 applicable to that order?

1601 A. I don't have a recollection of ever being  
1602 asked to defend. I just sometimes remember being asked  
1603 about specific questions about data.

1604                   That's my recollection. This was not at my  
1605 level.

1606           Q.       This is more of a blanket question. Do you  
1607 ever recall being asked to do anything that you  
1608 disagreed with?

1609           A.       I think over 10 years, there were always  
1610 things.

1611           Q.       During the pandemic, were there any  
1612 directions that you had material disagreements with?

1613           A.       I think reasonable people can disagree with  
1614 a lot of things. And there was not one way to go about  
1615 the thing in the pandemic. So, I think I would  
1616 certainly have to say, yes. Things that came to mind  
1617 were whether we should tell clinicians to use steroids  
1618 or not. The data coming out of China was really mixed.  
1619 Then there were, you know, different questions too about  
1620 subsequent things.

1621                   So, I don't think it's unusual for there to be  
1622 things that, you know, I -- the way I phrase it is was  
1623 I, personally, would have taken one tact and I don't  
1624 think it was unreasonable to take another. But I was  
1625 approaching it from a very physician view.

1626           Q.       Any nursing home specific ones that you  
1627 disagreed with?

1628           A.       Um --

1629 Q. And we'll --

1630 A. I think I remember feeling like we all  
1631 didn't have the data to know what was right and that was  
1632 the hardest thing in the moment, was that, you know,  
1633 maybe I would have done something, but I didn't even  
1634 know what was right.

1635 And that was one of the hardest struggles, was  
1636 that you just didn't -- there's -- at the time, there  
1637 seemed to be all these cases popping up.

1638 And you were putting in traditional infection  
1639 control measures. We were talking to CDC, they were  
1640 telling us what they were learning in the west coast  
1641 because they had initially more cases for us.

1642 And we were still seeing cases, and at that  
1643 point, we just didn't -- I won't speak for everyone, but  
1644 I do think it is fair to say I and many others didn't  
1645 understand the asymptomatic transmission component.

1646 So, there was this feeling that we were trying  
1647 different things, and we still weren't getting an  
1648 outcome. And I didn't know even what I would  
1649 necessarily argue to do differently. Too many variables  
1650 you were trying to play with at the same time --

1651 Q. Yeah?

1652 A. -- to control. And it was just really  
1653 difficult watching everything unfold.

1654 Q. We'll get to it in a little bit more detail  
1655 later, but it was why it was reported in the July 6<sup>th</sup>  
1656 report that you expressed your disagreement to the  
1657 Executive Chamber on how they expressed the death  
1658 counts. We'll get to it in a little bit more detail,  
1659 but is that accurate?

1660 A. I argued for a more scientific type of paper  
1661 to go out that was, you know, transparent about methods  
1662 and that used a dataset with my colleagues at the DOH,  
1663 and therefore, I understood it and knew it. So that was  
1664 a personal comfort I had.

1665 And I was, you know, willing to say why I  
1666 would have thought that was the method the DOH could be  
1667 using, but again, you know, I was in the position I was  
1668 in.

1669 Q. I should have just asked this specifically,  
1670 but were you directed to take the Executive Chamber's  
1671 numbers and not the Department of Health?

1672 A. I would just say that what we wrote was a  
1673 draft of a scientific paper, and there was one time that  
1674 I was asked to summarize other things that weren't  
1675 taken, but I didn't write --

1676 Q. The final one.

1677 A. -- another report in how I view it. There  
1678 were aspects that I had written that were used.

1679                   So, I don't want to mis - you know, I want to  
1680                   characterize that correctly.

1681                 Q.        Okay. Thank you. That's good on that one  
1682                   for now. We'll come back to it.

1683                 EXAMINATION BY

1684                 MR. EMMER:

1685                 Q.        Generally, just because you mentioned  
1686                   earlier that you were really on the ground, did you work  
1687                   with nursing homes on how to cohort suspected and  
1688                   positive COVID-19 residents?

1689                 A.        Yes.

1690                 Q.        Can you just generally describe what type of  
1691                   mitigation measures you implemented to cohort these  
1692                   vulnerable populations?

1693                 A.        Um, so there are general principles in  
1694                   epidemiology and infection control. There's a wonderful  
1695                   document of CDC that is this thing (indicating). But it  
1696                   goes through respiratory, contacts, all the different  
1697                   categories of outbreaks and all the different infection  
1698                   control measures.

1699                               And I'll just say, there are multiple tools  
1700                   that one can use. And that can include using personal  
1701                   protective equipment, it can involve physical movement  
1702                   or spacing, it can involve the number of interactions  
1703                   with other individuals in a facility.

1704 I'm not using the scientific terms here. We  
1705 have scientific terms for all of these, but there were  
1706 just a myriad. Also, you know, treatment actually can  
1707 be an infection control measure.

1708 As you know at the time, that was sort of a  
1709 struggle, trying to figure out what treatments would  
1710 work, but certain things can cut down on infectivity.

1711 So, I'll just - there's hundreds of pages  
1712 about this, so I'm not going to detail everything, but  
1713 that maybe gives you a snapshot.

1714 Q. From your experience and what you saw on the  
1715 ground, were nursing homes prepared to cohort COVID  
1716 positive and suspected residents?

1717 A. I think it's hard to make a general  
1718 statement. I think that nursing homes had a lot of  
1719 experience with respiratory diseases because of  
1720 influenza every year and other types of diseases. So,  
1721 in terms of the basic principles, they knew.

1722 I think a pandemic is a pandemic because of  
1723 the magnitude, right? There are many components that go  
1724 into defining a pandemic and that is a whole other  
1725 thing, but to have the number of individuals become so  
1726 sick all at the same time, has been a challenge across  
1727 the world.

1728 Q. Do you recall whether any nursing homes

1729 reached out and said that they didn't have the capacity  
1730 to cohort COVID positive or suspected patients?

1731 A. I mean, we were talking to nursing homes  
1732 every day and they were dealing with their own  
1733 challenges, like, their staff were getting sick  
1734 themselves. So sometimes there wouldn't be enough  
1735 staff. I think everybody was trying to obtain the  
1736 limited personal protective equipment that was needed at  
1737 the time.

1738 So, I recall as a general statement, that -- I  
1739 mean, it was everybody. Hospitals and nursing homes  
1740 trying to figure out how to implement something on a  
1741 mass scale was -- you know, involved challenges that  
1742 they had to work through.

1743 Q. Do you recall whether any of those  
1744 conversations involved questions of the March 25th  
1745 guidance and admitting these patients?

1746 A. So, I don't have recollection of specific  
1747 conversations.

1748 Q. Mm-hmm.

1749 A. Um, yeah.

1750 Q. And to the best of your recollection, are  
1751 you aware of any nursing homes or hospitals transferring  
1752 residents to nursing homes where the nursing home was  
1753 not capable of adequately cohorting populations?

1754           A.       I don't recall my conversations at that  
1755           time, so I don't -- you know, I do worry I'm not  
1756           remembering everything.

1757                    Generally, nursing homes, as well as everybody  
1758           else, were very careful, you know, to do things safely.  
1759           They wanted to do the right things because it affected  
1760           their other residents and their staff.

1761                    So, I recall a lot of conversations about how  
1762           to do X in a certain way and we would give our best  
1763           recommendation. That's my general recollection.

1764           Q.       Did you ever work with any hospitals and  
1765           nursing homes on readmissions and admissions of COVID  
1766           patients back into the nursing homes?

1767           A.       Um, you know, we would be used as technical  
1768           experts. So sometimes, especially I recall clinically,  
1769           there was a lot of, you know, if somebody gets COVID,  
1770           even if they are not infectious, they could still have  
1771           clinical issues that are ongoing. So still need  
1772           breathing treatments, how do you give that safely, you  
1773           know, there is a lot of talk about nebulizer safety  
1774           during this.

1775                    So, I recall a lot of discussions that were  
1776           very clinical about readmission of patients and how best  
1777           to care for them. You know, what medications they were  
1778           on, and also, if somebody needed dialysis, that was



1779 always a logistical challenge.

1780           Everybody worked through it. It was actually  
1781 amazing what was done to keep dialysis patients on  
1782 dialysis. But a lot of that sort of -- that type of  
1783 discussion.

1784           Q.       Do you have an idea of who at the department  
1785 of health would have been involved in overseeing  
1786 admissions and readmissions?

1787           A.       I don't even know if -- the answer is, I  
1788 don't know. I don't know if there is anyone that  
1789 oversees. I just know we have a regulatory -- had a  
1790 regulatory unit that could look into things.

1791           I believe but could be wrong that the majority  
1792 of admission and readmission discussions just happened  
1793 between a hospital and a nursing home. It wasn't as if  
1794 though every admission or readmission ever for every  
1795 disease was necessarily -- okay, but that could be  
1796 wrong. There could be certain diseases.

1797           MR. BENZINE: When we talked to Dr. Zucker,  
1798 he said that the Department of Health did some  
1799 of the transfers. Do you know anything about  
1800 that?

1801           The WITNESS: I don't have a recollection,  
1802 but I know everybody was trying to figure out  
1803 how to help individual patients at some time.

1804                   If there were tricky situations, I'm sure that,  
1805                   you know, everyone was trying to do as much as  
1806                   they could do for any specific person.

1807           Q.       Do you recall the request to transfer  
1808           patients to the Javits Center and USS Comfort?

1809           A.       Again, being in the communicable disease  
1810           group, we weren't really involved. I have a general  
1811           memory of the Javits Center situation, but that was not  
1812           handled by my group.

1813           Q.       All right. I would like to introduce what  
1814           will be marked as Majority Exhibit 4. (Handing).

1815           A.       (Perusing).

1816           Q.       This is an e-mail thread that was forwarded  
1817           to you by Danielle Green from Stephanie Benton on  
1818           June 7, 2020. Ms. Benton attaches an article, seemingly  
1819           critical of the March 25th order, and writes, and I'll  
1820           read this into the record, "This is going to be the  
1821           great debacle in history books. The longer it lasts,  
1822           the harder to correct. We have a better argument than  
1823           we made. Get a report on the facts because this legacy  
1824           will overwhelm any positive accomplishment. Also, how  
1825           many COVID people were returned to the nursing homes in  
1826           that period, how many nursing periods? Don't you see  
1827           how bad this is or do we admit error and give up?"

1828                   First, who is Ms. Benton?

1829           A.       I don't know her exact role, but I know she  
1830 worked at the chamber.

1831           Q.       And do you recall this e-mail thread?

1832           A.       I can't explain to you the volume of e-mails  
1833 that came through and this is not one that I remember,  
1834 but I'm reading it now.

1835           Q.       When Dr. Zucker testified in November, his  
1836 impression of this -- or his belief was that this e-mail  
1837 was actually drafted by the former governor. Did he  
1838 ever -- are you -- well, first, I guess, do you have  
1839 any reason to believe that is the case?

1840           A.       I'm looking at what you are looking at, so  
1841 the only thing I can say is that it was sent from  
1842 someone with an exec.ny.gov e-mail, the part that you  
1843 read, I should say. But I don't know enough about the  
1844 communication patterns to be able to say anything  
1845 definitively.

1846           Q.       So further up the page secretary DeRosa  
1847 writes, "Linda, Tracy, please set a call with this group  
1848 for today after the press conference goes through."

1849                   Do you recall a phone call taking place?

1850           A.       There were so many calls. Um, so I don't  
1851 know if this was one that took place or not.

1852           Q.       So the third sentence, "Get a report on the  
1853 facts because this legacy will overwhelm any positive

1854 accomplishment."

1855 I presume that that sentence is referring to  
1856 the July 6th report. Do you have any reason to believe  
1857 that's the case?

1858 MR. BACH: This is before?

1859 MR. EMMER: Yeah, June 7th.

1860 EXAMINATION BY

1861 MR. BENZINE:

1862 Q. I'm recalling Dr. Zucker's interview. He  
1863 talked about that maybe at this point, you guys being  
1864 the Department of Health, were thinking about writing a  
1865 more scientific article about the nursing home  
1866 situation. And you have kind of touched on the data use  
1867 in a scientific article versus a more political one.

1868 But at this point had you started drafting or  
1869 putting together any kind of scientific publication on  
1870 nursing home data?

1871 A. So, the -- I recall it was around June 11th  
1872 or 12th, 2020 that we shared a draft of a scientific  
1873 article. So that had to have been going on for a few  
1874 days.

1875 I don't remember what date we started, if it  
1876 was by June 7th, but in our minds we had been talking  
1877 for a while about different ways we could get things  
1878 out.

1879 I would presume at this time -- you can't  
1880 throw together analyses overnight for a whole paper.

1881 So, in my mind, we were working but we had not  
1882 shared because we wanted things to be right. So, if you  
1883 are asking about June 7th, we likely hadn't shared with  
1884 you our draft yet, but maybe had mentioned it. I do not  
1885 recall the exact sequence.

1886 Q. Dr. Zucker testified that it was around this  
1887 point or maybe a little bit after that that scientific  
1888 article changed into what became the July 6th report, a  
1889 more layman's term report.

1890 Do you recall or have any memory of kind of  
1891 when the flip took place?

1892 A. So, I don't know what was going on in other  
1893 groups. I believe it was not until around the 19-22nd  
1894 that I saw anything that said sort of -- had the format  
1895 of the report that got put out.

1896 Q. Had you done any drafting or editing in  
1897 between that or did you send things up --

1898 MR. BACH: I think you are making  
1899 presumptions about the facts based on what  
1900 Dr. Zucker said. I think you need to lay more  
1901 foundation.

1902 MR. BENZINE: I was just going off of a  
1903 scientific publication that had been started

1904                   around this time, 10th, 11th, 12th, something  
1905                   like that, of June 2020. Four weeks after that,  
1906                   the DOH report came out and it was not a  
1907                   scientific publication.

1908                   And I'm wondering when, from your  
1909                   perspective, when the change happened. When did  
1910                   it go from we are no longer going to publish --

1911                   MR. BACH: You are saying there is an it.  
1912                   A singular document that changed. And I think  
1913                   you should back up and pose more general  
1914                   questions because I think she is going to have a  
1915                   hard time accepting the premises of your  
1916                   questions.

1917                   Q.       DOH never published a scientific publication  
1918                   on nursing home data, correct?

1919                   A.       I mean it has been years and I don't  
1920                   actually know.

1921                   Q.       In your time there, what you were drafting  
1922                   as a theoretical scientific publication, that version  
1923                   was never published?

1924                   A.       I do not believe that was ever published.

1925                   Q.       And you sent that version to the Executive  
1926                   Chamber sometime early-mid June?

1927                   A.       So, we shared with Dr. Zucker, a draft of  
1928                   the paper. I believe it was around the 11th of June.

1929 Q. Okay. And when you then saw another version  
1930 of a nursing home paper, not necessarily yours but  
1931 another nursing home paper, was late June, and it was  
1932 formatted like you just said, more on the lines of the  
1933 July 6th report than your original publication?

1934 A. So, I only saw certain things.

1935 Q. Mm-hmm.

1936 A. There was an interim period where we were  
1937 part of a working group where there were other analyses  
1938 being done. So, there was a lot that was being sent  
1939 around.

1940 So, this is where I'm not sure of the premise.  
1941 It's -- there were processes and there were many  
1942 different types of processes going on. I just know that  
1943 the scientific paper that we wrote wasn't published as  
1944 we drafted.

1945 Q. So, somewhere between after Dr. Zucker got  
1946 it, it just kind of, from your perspective, just went  
1947 away?

1948 A. If I recall, he was still pushing for that  
1949 paper to be published. At one point, he said he had  
1950 reached out to editors of two fairly notable journals.  
1951 So, I don't think in our minds, it went away. Um, or we  
1952 were hoping -- you know, we -- yeah.

1953 Q. Hopeful that it would still be published?

1954           A.       Yes.  Yeah, we were hopeful it would be  
1955 published.

1956           Q.       If the answer is you don't know, that's  
1957 entirely fine.  I'm trying to figure out when the find  
1958 of, like, you first saw the beginnings of the July 6th  
1959 report versus a more scientific paper?

1960           A.       So, at the beginning of June, I was asked to  
1961 listen in on a call that had a bigger group and that had  
1962 another analyses that were not being done by my  
1963 department of health colleagues.

1964                     And so, there were just different processes  
1965 and at one point, I was asked to summarize everything.  
1966 My understanding was it was for talking points.

1967                     So, there was a time where I took some of the  
1968 key findings from our report and just put basically all  
1969 in one document, attributing to whoever did it, some of  
1970 what the other findings were, making it clear who did  
1971 the report.

1972                     So, there was that and sort of an interim time  
1973 period.  And then I think it was mid to end June that  
1974 there was a document that had a, what I would -- I'm  
1975 using the term report structure, but I want to be clear  
1976 that sometimes there were scientific articles can use  
1977 the title report.  MMWR has the word report titled in  
1978 the journal.



1979                   But for the purposes of this discussion and  
1980                   what was published, I'll say that something that was a  
1981                   different format and had different -- some different  
1982                   content, but some of the same content.

1983                   Q.           And the other group during the analysis, was  
1984                   that McKinsey?

1985                   A.           That was my understanding, that was one of  
1986                   the groups that was doing the analyses, but I don't know  
1987                   if there were others being done internally.

1988                   Q.           Okay.

1989                   EXAMINATION BY

1990                   MR. EMMER:

1991                   Q.           So, I would like to introduce Majority  
1992                   Exhibit 5. (Handing).

1993                   A.           (Perusing).

1994                   Q.           This is an article entitled, "New York  
1995                   didn't count nursing home coronavirus victims for weeks  
1996                   then suddenly rushed for a death toll" published on May  
1997                   19, 2020.

1998                   On the bottom of the second page -- actually,  
1999                   I'll give you a minute to review it.

2000                   A.           (Perusing). Okay.

2001                   Q.           So, on the bottom of the second page, it  
2002                   states, "On Wednesday, April 15th, operators of New York  
2003                   State's 613 nursing homes received an urgent e-mail from

2004 the state health department they were ordered to dial  
2005 into a mandatory call with Dr. Howard Zucker."

2006 Were you on that call or do you recall?

2007 A. I don't remember at all.

2008 Q. Okay. So, this time period, April of 2020,  
2009 were you involved in any decisions related to how  
2010 nursing home fatalities would be counted?

2011 A. I don't recall that being part of what I  
2012 did.

2013 Q. So, I would like to turn to Minority Exhibit  
2014 B, the controller's report.

2015 A. (Witness complies.)

2016 MR. BENZINE: Yeah.

2017 Q. So, I would like to direct your attention to  
2018 page 12 of that report -- excuse me, 13. We are looking  
2019 at the first paragraph, first sentence, and I'll read it  
2020 out loud for the record.

2021 It stays, "When the department first started  
2022 collecting information about deaths in nursing homes,  
2023 data accuracy was poor; however, even as data accuracy  
2024 improved, the department consistently underreported the  
2025 total number of nursing home deaths to the public until  
2026 February 4, 2021. Throughout the pandemic, the  
2027 department used alternating methodologies to account for  
2028 nursing home deaths with varying levels of accuracy and

2029 completeness."

2030 Dr. Adams, do you agree with the controller's  
2031 characterization that nursing home deaths were  
2032 undercounted?

2033 A. I mean I'll say what I said before, which is  
2034 I just wasn't really involved in the day-to-day counting  
2035 and collection throughout. What I always thought was  
2036 important because that you would say what the  
2037 limitations of the data were being transparent about it.  
2038 So I don't think I'm the best person to ask.

2039 You know, to agree, we had a whole regulatory  
2040 unit and data quality unit. But I wasn't involved in  
2041 that reporting.

2042 MR. BENZINE: Were you interviewed at all  
2043 for the comptroller's investigation?

2044 THE WITNESS: I don't think I -- not that  
2045 I can recall.

2046 Q. Dr. Adams, I want to direct your attention  
2047 just quickly to that same page, and it would be the  
2048 second paragraph, we are looking at the sentence, and  
2049 I'll read it out loud for the record, the second  
2050 sentence.

2051 "For the next 18-day period, April 15 to May  
2052 2, 2020, the department added reporting of presumed  
2053 deaths by county as well as both confirmed and presumed

2054 deaths by individual facility, but only if the facility  
2055 had five or more deaths, thus over 50 percent of the  
2056 deaths that should have been reported at the end of that  
2057 period were not, an error rate of over 40 percent."

2058 Dr. Adams, do you have any idea why death  
2059 tolls at facilities like death totals at facilities with  
2060 less than five deaths weren't included in those totals?

2061 A. I do. It's a common practice in some types  
2062 of reporting to be very careful about patient  
2063 identifiable data and when you get to small numbers, if  
2064 somebody knew that somebody died at a facility, but  
2065 didn't know of what, and then a report comes out saying  
2066 there was one person who died of this disease at this  
2067 time, you are basically sharing with the public their  
2068 cause of death. And that patient confidentiality is a  
2069 big thing.

2070 If you look at many articles that have CDC  
2071 reportings, you'll see a lot of times what their minimum  
2072 number is. They will only report -- you know, if you  
2073 get down to a granular situation where you have other  
2074 identifiable information such as where someone  
2075 lives -- this is literally the address of where they  
2076 are.

2077 So, I think you should verify what I'm saying  
2078 with another group, but I am fairly certain that that's

2079 the reason.

2080 At the time, there was a lot of desire to know  
2081 individual names of patients, and I think there were big  
2082 issues with privacy that came out with some of the first  
2083 cases in New York being identified publicly.

2084 So, I would just say that I think there is a  
2085 general practice that happens. And I would believe -- I  
2086 can't verify -- but I believe that this was plated that  
2087 five is a typical number that tends to be used.

2088 EXAMINATION BY

2089 MR. BENZINE:

2090 Q. They would still be counted, correct, just  
2091 not reported?

2092 A. Yes.

2093 Q. Okay.

2094 A. The department --

2095 Q. The interim numbers would say five people  
2096 died at this facility --

2097 A. I'm talking generally collecting for any  
2098 disease, you generally would collect the data and then  
2099 have to be careful, especially if it is one person with  
2100 a rare disease or something that people are really  
2101 prying, you have to be really careful not to break  
2102 confidentiality.

2103 Q. With some of the other county issues, it

2104 comes across that you just didn't -- it looks like we  
2105 just didn't count those, but if five people died in a  
2106 facility, it just wouldn't be reported, is that --

2107 A. I can't say to the process that was used  
2108 here because I honestly wasn't a part of it, but I would  
2109 say, yeah, general practice, you would either describe  
2110 the limitations and that would be a limitation so people  
2111 who would read would know that, hey, we are giving you  
2112 this data so there is a limitation for a data, so that  
2113 is one way to deal with it.

2114 Q. Mm-hmm?

2115 A. And then another way to deal with it is to  
2116 aggregate it to a bigger level. Maybe you don't include  
2117 it for a specific nursing home but maybe you have  
2118 another chart where you talk about a whole region,  
2119 right? And hope that nobody -- you then wouldn't have  
2120 the home address associated with it. There's this  
2121 general feeling that once you have a certain amount of  
2122 data around, there is a certain number where people can  
2123 figure out who it is.

2124 EXAMINATION BY

2125 MR. EMMER:

2126 Q. So still on the controller report, the very  
2127 next sentence reads, "Subsequently for May 3, 2020 to  
2128 February 3, 2021 the department excluded deaths that

2129 occurred at other locations and separated confirmed and  
2130 presumed deaths failing to report about 30 percent of  
2131 the COVID-19 nursing home deaths at the end of that  
2132 period, a 35 percent error rate."

2133 Do you know what would have necessitated that  
2134 change?

2135 A. Sorry, what change are you referring to?

2136 Q. To exclude deaths that would have occurred  
2137 at other locations?

2138 MR. BACH: Outside of facilities?

2139 MR. EMMER: Outside of nursing homes,  
2140 correct.

2141 A. I wasn't really involved in the verification  
2142 of data, I think as I said before, generally that did  
2143 turn out to be a harder -- it's just a harder thing to  
2144 collect, right? Because you need wherever the person  
2145 died, you need that place to identify the person as a  
2146 nursing home resident and to accurately report back.  
2147 And so, you know, people -- they don't always stay at  
2148 one place.

2149 So, my general sense was that it was a  
2150 challenge, but I don't know the answer to your specific  
2151 question if that was a reason.

2152 Q. Do you know who at DOH would have been  
2153 involved in those type of decisions?

2154           A.       I don't know what I don't know or wasn't  
2155 included in. Um, so, I think maybe other people could  
2156 give you a better sense.

2157           Q.       So, in August of 2020, Dr. Zucker testified  
2158 to the U.S. state assembly. When asked about nursing  
2159 home data, he remarked, "I know that you want that  
2160 number and I wish I could give you that number today. I  
2161 need to be sure it is absolutely accurate." He also  
2162 declined to provide a ballpark figure.

2163                    Do you recall Dr. Zucker testifying in August  
2164 of 2020?

2165           A.       I do.

2166           Q.       And do you recall what reason the Department  
2167 of Health would have had to not provide those numbers  
2168 that the assembly was asking for?

2169           A.       I don't recall what he said.

2170 EXAMINATION BY

2171 MR. BENZINE:

2172           Q.       Did you help prepare Dr. Zucker's testimony?

2173           A.       I answered whatever factual questions were  
2174 needed for it.

2175           Q.       Did he ask during the preparation about  
2176 total death numbers in nursing homes?

2177           A.       I truly don't remember the specifics of what  
2178 he asked.



2179 EXAMINATION BY

2180 MR. EMMER:

2181 Q. So, I would like to introduce what will be  
2182 marked as Majority Exhibit 6. (Handing).

2183 A. (Perusing).

2184 Q. So, this is the impeachment investigation  
2185 report to judiciary committee chairs Charles Levine and  
2186 the New York State Assembly Judiciary Committee.

2187 I believe we discussed this at the beginning  
2188 of our questioning, but do you recall or were you  
2189 investigated or were you interviewed for this or during  
2190 the New York State Assembly Judiciary Committee's  
2191 investigation?

2192 MR. BACH: Well, let's clarify the question  
2193 so she can answer it cleanly. I believe you are  
2194 simply asking when she was interviewed?

2195 MR. EMMER: Yes.

2196 MR. BACH: Yeah, I don't believe she was  
2197 investigated.

2198 THE WITNESS: I was not.

2199 MR. BACH: You were not investigated but  
2200 were you interviewed by Davis Polk?

2201 THE WITNESS: Can I consult with my  
2202 attorney?

2203 MR. EMMER: Yes.

2204 MR. BENZINE: We can go off the record.

2205 (Whereupon, an off-the-record discussion  
2206 was held.)

2207 MR. BENZINE: We can go back on the record.

2208 THE WITNESS: I would like to say that I  
2209 was interviewed by Davis Polk.

2210 EXAMINATION BY

2211 MR. EMMER:

2212 Q. So, I want to direct your attention now to  
2213 page 41. We are looking at subsection G, paragraph 3.  
2214 And I'll read it into the record.

2215 It states, "Around August, 2020 the same  
2216 senior DOH official also prepared a letter to the  
2217 members of the legislature reporting the full nursing  
2218 home death total and provided it to the executive  
2219 chamber for approval. To the senior DOH official's  
2220 knowledge, the executive chamber never authorized  
2221 releasing the letter. A task force also revised  
2222 releasing the full dataset at this time, but the  
2223 executive chamber did not do so. The task member  
2224 believed that it was because the Executive Chamber  
2225 wanted to audit the data further."

2226 Dr. Adams, were you the senior DOH official  
2227 that recommended releasing the numbers?

2228 A. I don't know if I'm the one they are

2229 referring to. I just -- without a name, I don't know  
2230 who that is.

2231 Q. Yeah.

2232 EXAMINATION BY

2233 MR. BENZINE:

2234 Q. Did you ever prepare a letter to the  
2235 legislator reporting the full numbers?

2236 A. I don't recall myself preparing a full  
2237 letter.

2238 Q. Did you facilitate the preparation of the  
2239 letter? It sounds like there is something that maybe --

2240 A. I just don't remember. I know if I was  
2241 asked any technical specific questions, I'm sure I would  
2242 have. I truly don't remember.

2243 Q. That's fine. I was just trying to jog it.  
2244 It sounded like there was something there.

2245 A. Yeah, I don't remember.

2246 EXAMINATION BY

2247 MR. EMMER:

2248 Q. You said that you may have been referred to  
2249 under this report as a senior DOH official. Is it --

2250 A. I just don't know.

2251 Q. Okay. But were you recommending that the  
2252 numbers be released in August of 2020?

2253 A. My recollection is I always thought the data

2254 would be most useful, the more data that was released.

2255 I think that was an early position I took.

2256 And so, I don't know if specifically, if  
2257 anything refers to anything I said, but I would say  
2258 generally, as I just said, I thought that -- you know,  
2259 different people had different views on what would be  
2260 helpful, and I felt that it would be helpful to other  
2261 physicians.

2262 Q. Do you recall the individuals who had views  
2263 contrary to yours that the data should not be released?

2264 A. Um, I think as it says here, there were  
2265 individuals that may have thought that more auditing  
2266 needed to be done. It was a very difficult dataset, as  
2267 I think we learned. So, I think there were a variety of  
2268 views, but I was more technical.

2269 MR. BENZINE: Okay.

2270 Q. My final question for this hour is, do you  
2271 know who the task force member that supported releasing  
2272 the data, do you know who that is?

2273 A. I don't know who they are directly referring  
2274 to. I mean, this is so vague.

2275 MR. BENZINE: Yes. Are you good?

2276 MR. EMMER: (Nodding.)

2277 MR. BENZINE: We can go off the record.

2278 (Whereupon, an off-the-record discussion

2279                   was held.)

2280                   ██████████ We can go back on the record.

2281           EXAMINATION BY

2282           ██████████ ██████████

2283                   Q.       Dr. Adams, when we left off, we were talking  
2284                   about the July 6th report that was released by DOH. So  
2285                   I'm just going to let us look at that and dive right in.

2286                   A.       Mm-hmm.

2287                   Q.       (Handing).

2288                   A.       (Perusing).

2289                   Q.       So as I said, this is Minority Exhibit H.  
2290                   And this is the July 6th Department of Health report  
2291                   entitled "factors associated with nursing homes and  
2292                   fatalities in New York State during the COVID-19 global  
2293                   health crisis."

2294                               Are you familiar with this report?

2295                   A.       I am.

2296                   Q.       And this was the first in-depth analysis of  
2297                   nursing home data publicly released by DOH, right?

2298                   A.       I don't know.

2299                   Q.       Okay. Well, we were talking with my  
2300                   colleague, ██████████, about PDFs that were data lists.  
2301                   They were charts that just listed a bunch of data.

2302                   A.       Okay.

2303                   Q.       Is that correct?

2304           A.       You know, I honestly don't know what was  
2305 released.

2306           Q.       Okay.

2307           A.       Um --

2308           Q.       Prior to this?

2309           A.       Yeah, I don't know.

2310           Q.       That's fine.

2311                     You mentioned that you had been working on a  
2312 scientific report or article. This is not that  
2313 scientific report or article that you were working on,  
2314 right?

2315           A.       No.

2316           Q.       But it's similar in the data that it's  
2317 reporting, just not in as scientific of a way?

2318           A.       I probably would characterize it  
2319 differently.

2320           Q.       Okay.

2321           A.       For a scientific article, you have very  
2322 specific sections. Do your analysis in a certain way  
2323 and then you have to submit it for peer review and it  
2324 has to be accepted and, you know, then published.

2325           Q.       Sure.

2326           A.       So, it's a whole process that involves an  
2327 editorial board there. So, this, to my knowledge,  
2328 didn't go through any journal -- scientific journal or

2329 editorial review board.

2330 Q. And I think --

2331 MR. BACH: Can you repeat your question?

2332 (Whereupon, the referred to question was  
2333 read back by the Reporter.)

2334 [REDACTED] I believe she did answer that,  
2335 but if there is additional information,  
2336 please --

2337 MR. BACH: Let me talk to her.

2338 [REDACTED] We can go off the record.

2339 (Whereupon, an off-the-record discussion  
2340 was held.)

2341 [REDACTED] Back on the record.

2342 EXAMINATION BY

2343 [REDACTED]

2344 A. This is not what was in the report that we  
2345 said -- that -- so the draft scientific article  
2346 contained certain information that we had put in and  
2347 this contains different datasets.

2348 Q. Okay.

2349 A. That's probably the best way to say it, was  
2350 that the dataset that we used for the analysis for the  
2351 paper seemed to differ with the dataset that was used  
2352 for this report.

2353 Q. Okay. And we'll take a look at some of the

2354 exact data that was included in the report, which may  
2355 help you point to some of those differences.

2356 But I do want to ask, the scientific report  
2357 that you were working on, I assume multiple people at  
2358 DOH were involved with that, not just you?

2359 A. Oh, definitely.

2360 Q. Okay. Can you explain just a little bit to  
2361 us about the process that you all had working on that  
2362 report?

2363 A. So first, there was a discussion about, you  
2364 know, what would be helpful to put in a journal article  
2365 in terms of sharing -- you know, trying to look at the  
2366 data to see what we could learn so we could do things  
2367 better and also help other jurisdictions who hadn't been  
2368 hit with high numbers.

2369 And so then, we spoke with what dataset would  
2370 be best. And in doing that, looked at the limitations  
2371 of what would be included in that dataset. And then we  
2372 had statisticians who were able to help to determine the  
2373 best statistical methods.

2374 And then you get your results and then you  
2375 look to see if there are any specific items that might  
2376 not have been done correctly.

2377 There is an internal review process where you  
2378 keep going over. And whatever the results are, you do



2379 that.

2380 So, there were drafts of this and I was in the  
2381 field a lot so a lot of the colleagues were helping the  
2382 drafting. This was a -- you know, there were multiple  
2383 people working on it.

2384 Q. And just to be clear, those people you were  
2385 working on that report with were all within DOH?

2386 A. Yes.

2387 Q. Okay. You mentioned that a draft was shared  
2388 with Dr. Zucker on, I believe you thought, June 11th or  
2389 12th?

2390 A. Yes.

2391 Q. Do you know if that draft was shared with  
2392 the Executive Chamber?

2393 A. I wasn't involved or didn't see e-mails, so  
2394 I don't know what was or wasn't shared.

2395 Q. Okay. Looking at some of the data in this  
2396 report, so looking at Exhibit H, let's turn to page 31.

2397 A. (Witness complies.)

2398 Q. So, this appears to be a chart of nursing  
2399 home facilities, their cases and their deaths and their  
2400 share of COVID deaths by state.

2401 A. (Perusing).

2402 Q. If you find New York alphabetically, it's on  
2403 page -- actually, it's not alphabetically. It is in

2404 order of share of COVID deaths.

2405 So, New York ends up at number 46, which is on  
2406 page 32, with a share of COVID deaths for nursing home  
2407 facilities at 21 percent.

2408 Does that match with what you knew about the  
2409 data at this time?

2410 A. I didn't know all the other state data  
2411 because we aren't involved in that.

2412 Q. Just not even comparing to other states,  
2413 just thinking about New York, was it accurate that  
2414 21 percent of New York's COVID deaths were nursing home  
2415 deaths?

2416 A. So, for any dataset, you have to know the  
2417 time period that they are looking at the data that they  
2418 have included and know how they are defining it.

2419 And I'm not -- I just don't remember what I  
2420 thought and what this period of time is as you are  
2421 putting it in front of me right now.

2422 Q. Okay. Would that be a number that would  
2423 have been in the scientific report you were working on?

2424 A. Yes. In our draft -- well, I should  
2425 rephrase. I'm not sure if this answers your question,  
2426 but in our draft paper, we included the numbers of in  
2427 and out of nursing home, deaths of nursing home  
2428 residents.

2429                   And described our limitations with that data,  
2430                   although I do think we did exclude a few nursing homes  
2431                   that were -- or made a note -- I don't recall -- because  
2432                   they were pediatric and there was a very  
2433                   different -- again, sometimes different age ranges can  
2434                   skew data.

2435                   Q.           Sure.

2436                   A.           For it to be meaningful, I think we did make  
2437                   some comment -- it has been a while since I have looked  
2438                   at the draft, multiple years -- but there was something  
2439                   where we had -- again, that limitation, but as always,  
2440                   we described that.

2441                                But again, I don't know this -- I can't recall  
2442                   the specifics of this data.       And again, you choose  
2443                   what you present and then -- so I don't remember what  
2444                   the New York Times -- how they presented it.

2445                   Q.           Sure.

2446                                MR. BACH:   When you are asking her if she  
2447                   would include that number in her scientific  
2448                   report, are you asking her if she would have  
2449                   included the number 21 percent of her scientific  
2450                   report?

2451                                ██████████    Yes.

2452                                MR. BACH:   Or are you asking her whether  
2453                   she would focus on the question that's on the

2454 general?

2455 [REDACTED] The question is about whether  
2456 this 21 percent of deaths was an accurate  
2457 reporting based on your understanding of the  
2458 numbers at the time.

2459 A. I misunderstood your question, so I don't  
2460 think I answered the part about the 21 percent.

2461 Q. Okay.

2462 A. I thought you were referring to another  
2463 column.

2464 Q. I do -- I understand that remembering  
2465 specific numbers four years later is difficult.

2466 A. Okay.

2467 Q. So, I'm not expecting you to respond with a  
2468 specific number.

2469 A. I do -- if you are asking -- because again,  
2470 I'm not sure I answered your -- the question I thought I  
2471 answered is not I think the one you are now saying you  
2472 posed.

2473 So, if you are asking if the share of COVID  
2474 deaths, if that 21 percent was in our draft scientific  
2475 article, I don't have a recollection of that, but I  
2476 also -- of that data point, like the share -- but I have  
2477 not read the draft in multiple years.

2478 Q. Okay. I'm going to introduce Minority

2479 Exhibit I.

2480 [REDACTED] (Handing).

2481 Q. This is a New York Times article originally  
2482 published March 4, 2021.

2483 I can give you a moment to look it over.

2484 A. (Perusing).

2485 Q. Are you familiar with either this specific  
2486 article or what it is generally talking about?

2487 A. I am familiar with the article.

2488 Q. Okay. I just want to ask you about a couple  
2489 of statements included in the article.

2490 The first, starting at the very beginning,  
2491 just a few words in, "A report written by state health  
2492 officials had just landed and it had included a count of  
2493 how many nursing home residents in New York had died in  
2494 the pandemic. The number, more than 9,000 by that point  
2495 in June, was not public and the governor's most senior  
2496 aides wanted to keep it that way. They rewrote the  
2497 report to take it out according to interviews and  
2498 documents reviewed by the New York Times."

2499 Did you in the scientific report that you were  
2500 writing, did you include that 9,000 number?

2501 A. Yes. We included a number of deaths that  
2502 was more than 9,000.

2503 Q. On the second page of the article, the

2504 paragraph right above the picture block, it says, "The  
2505 changes sought by the governor's aides fueled bitter  
2506 exchanged with health officials working on the report.  
2507 The conflict punctuated an already tense and devolving  
2508 relationship between Mr. Cuomo and his health  
2509 department."

2510 Based on your understanding, do you have any  
2511 knowledge of what that statement is referring to?

2512 A. I don't know what part of the statement -- I  
2513 mean, there are multiple clauses.

2514 Q. Okay. Can we take them one by one?

2515 A. Yes.

2516 Q. The first is that the governor sought  
2517 changes to the report.

2518 Do you have knowledge of that?

2519 A. I wasn't involved with conversations at that  
2520 time that would -- involved -- to my  
2521 recollection -- that involved what he might have said.

2522 Q. Okay.

2523 MR. BACH: What he might have said?

2524 THE WITNESS: The governor.

2525 Q. And then the second that we can look at is  
2526 "the conflict punctuated an already intense and  
2527 devolving relationship between Mr. Cuomo and his health  
2528 department.

2529                   Did you have knowledge of a tense relationship  
2530 between the governor and the health department?

2531           A.       I generally wasn't involved in conversations  
2532 at that level. And I just know that there were frequent  
2533 conversations about many issues.

2534           Q.       Okay. When the article says there is a  
2535 tense relationship between Mr. Cuomo and the health  
2536 department, I don't think you would have necessarily had  
2537 to have been a part of conversations to know.

2538                   Was there a general sense within the  
2539 department of health that there were tensions with the  
2540 executive chamber?

2541           A.       I'm just trying to remember back to that  
2542 time. I guess the best I can say is, I don't remember  
2543 right now what exactly at this point was happening.

2544           Q.       Okay.

2545           A.       At that level.

2546 EXAMINATION BY

2547 MR. LICHTMAN:

2548           Q.       Did the conference call that you mentioned  
2549 in the Majority's first hour where you were involved  
2550 with the governor where he suggested the possibility of  
2551 terminating you indicate or suggest potential tension  
2552 between the governor and the department of health?

2553           A.       I don't know.

2554 Q. Would you describe that conference call as  
2555 tense at any point?

2556 A. I know I was tense.

2557 Q. Would you say that the governor was tense  
2558 during that call?

2559 A. I think the governor was not happy, would be  
2560 how I would characterize it.

2561 Q. Do you have a sense for why he was not happy  
2562 and if that had anything to do with his sentiment toward  
2563 the department of health?

2564 A. I don't know what his motivations were.

2565 Q. Okay.

2566 A. It was not described.

2567 Q. Okay.

2568 EXAMINATION BY

2569

■■■■■■■■■■

2570 Q. Looking at the third page, the third full  
2571 paragraph, this one says, "the aides who were involved  
2572 in changing the report included Melissa DeRosa, the  
2573 governor's top aide, Linda Lacewell, the head of the  
2574 state's department of financial services, and Jim  
2575 Malatras, a former top advisor to Cuomo brought back to  
2576 work on the pandemic. None had public health  
2577 expertise."

2578 First of all, are you familiar with who



2579 Melissa DeRosa, Linda Lacewell and Jim Malatras are?

2580 A. Yes.

2581 Q. And is it accurate to say none had public  
2582 health expertise, to your knowledge?

2583 A. I don't know all their backgrounds, but I  
2584 know they weren't working in the department of health.

2585 Q. Okay. And this paragraph here refers to  
2586 changing the report, which in the first paragraph we  
2587 looked at talked about the 9,000 number of deaths from  
2588 nursing homes.

2589 As you said, that was included in your draft  
2590 of a report, or of a scientific article. But according  
2591 to this article, it was not included in the Exhibit H,  
2592 the Department of Health report from July 6th that we  
2593 were discussing.

2594 To your knowledge, is that correct that that  
2595 9,000 number of deaths was not included in this report?

2596 A. (Perusing). I don't recall that it was  
2597 included in this report.

2598 Q. Thank you.

2599 Do you know personally if DeRosa, Lacewell and  
2600 Malatras worked on this July 6th report?

2601 A. So I wasn't involved in any process  
2602 sessions. So I don't have firsthand knowledge. What I  
2603 would see would be a document that would be sent back

2604 with track changes or an e-mail string where it was sent  
2605 by somebody.

2606 So I don't want to infer what somebody did but  
2607 there were -- you know, that was the only context I had.

2608 Q. Were those three names included in the  
2609 e-mail strings in the track changes that you saw on  
2610 documents?

2611 A. I -- um, I know that there were e-mails that  
2612 involved some of those folks. I can't remember if all  
2613 three, but again, it has been a while.

2614 Q. Which names do you recall?

2615 A. I believe that Jim's name was on some of the  
2616 e-mails. There were so many e-mails that were sent,  
2617 it's hard to recall which the others were on what. I  
2618 would need to probably see the documents again.

2619 Q. On the last page of this article on page 6  
2620 in the middle of the page, there is a paragraph that  
2621 says, "Dr. Eleanor Adams was the Health Department's  
2622 lead on the report but her draft was substantially  
2623 rewritten by Mr. Malatras."

2624 Is that in line with what you were just  
2625 saying?

2626 Q. So, my understanding was that there were folks in  
2627 the chamber, and I don't know exactly who  
2628 did certain edits, but there was a document

2629                   that was sent back from the chamber, and if  
2630                   I recall correctly, Mr. Malatras's name was  
2631                   one of them on it for rewriting.

2632           EXAMINATION BY

2633           ██████████

2634                   Q.       Will you turn to page 7 on the July 6<sup>th</sup>  
2635                   report?

2636                   A.       (Witness complies.)

2637                   Q.       Second paragraph midway through starting  
2638                   with the sentence beginning with "further examination of  
2639                   fatalities in our neighboring states," continuing down  
2640                   until the end of that paragraph, do you recall if that  
2641                   section was penned by Mr. Malatras?

2642                   A.       I - so I don't know who wrote the different  
2643                   sections of the report that came out and differentiating  
2644                   that from a scientific paper. So, I don't -- this is  
2645                   not a dataset that I was familiar with, although I'm  
2646                   sure, like everybody else, I could see it refers to an  
2647                   appendix. So --

2648                   Q.       So, did you write that section?

2649                   A.       I don't recall writing that section. I  
2650                   would want to be a hundred percent certain by looking at  
2651                   the draft, but we generally, if I recall, were just  
2652                   looking at our nursing homes in New York State. We  
2653                   didn't -- I don't have any recollection of including

2654 information of other states.

2655 Sometimes I might have been asked in an  
2656 e-mail, can you see if you can find a specific piece of  
2657 data, and that's what I'm not sure if I was ever asked.

2658 But I know for our -- I would want to refresh  
2659 my memory, but for our draft, I think we were focusing  
2660 on our dataset, which was New York State specific.

2661 Q. Okay.

2662 EXAMINATION BY

2663

2664 Q. I think looking at the data actually in this  
2665 paragraph gives us a good example. Here, it reports New  
2666 York's fatalities as 6,432. Which to me, it seems like  
2667 it is a lower number than the 9,000 that you would have  
2668 been including in your scientific report, correct?

2669 A. So, I'm trying to parse out quickly as you  
2670 are putting this in front of me, what this dataset was  
2671 for the time, because again, time plays a role. I do  
2672 know in our draft report we had a number that was more  
2673 than 9,000 fatalities.

2674 But again, I there's a time issue here, right?  
2675 So different datasets can still both be accurate. It's  
2676 just what you describe, right? If I look at something  
2677 from January only, it will have one number. If I look  
2678 at something January to February and define it as a

2679 different variable, that number can be vastly different  
2680 and also it can be correct.

2681 I'm just giving that as a thing. So, I think  
2682 it is more of a question of deciding what to include.

2683 And again, reasonable people can disagree, but  
2684 we in our scientific paper want probably the most  
2685 inclusiveness and transparency and use -- I think we  
2686 have multiple drafts of our draft scientific report.

2687 So, if it was a week later and we have better  
2688 data, we would update it by the week. We were trying to  
2689 keep it current.

2690 So, you know, this doesn't look familiar to  
2691 me, but I don't know -- I can't recall.

2692 Q. Okay. This article, public reporting in  
2693 general, have talked about the fact, and we have the  
2694 report, but the New York attorney general conducted an  
2695 investigation and issued a report titled nursing home  
2696 response to COVID-19 pandemic, and that was released on  
2697 January 28, 2021.

2698 Are you familiar with that attorney general  
2699 investigation and report?

2700 A. I do have a recollection in general of that  
2701 report.

2702 Q. And just to be clear, to your knowledge in  
2703 New York, the Attorney General does not report to the

2704 Governor, correct? It is a separately elected position?

2705 A. (No response.)

2706 Q. I mean it is correct but are you aware of  
2707 that?

2708 A. That is my understanding, but I don't want  
2709 to be -- I'm not an expert in that field.

2710 Q. But it seems logical that the position being  
2711 separately elected gives that attorney general  
2712 independence, correct?

2713 A. Again, that is my perception, but I am not a  
2714 legal or political expert of how -- of that area.

2715 Q. Sure.

2716 And as I said, that report was issued on  
2717 January 28, 2021. And one of its findings was that  
2718 discrepancies were made over the number of the New York  
2719 nursing home residents who died from COVID-19. Data  
2720 obtained by OAG shows that DOH publicized data vastly  
2721 undercounted these deaths.

2722 The report recommended that DOH ensured public  
2723 reporting by each nursing home and the number of  
2724 COVID-19 deaths of residents occurring at the facility  
2725 and those that occur during or after hospitalization of  
2726 the residents in a manner that avoids creating a double  
2727 counting of resident deaths at hospitals in reported  
2728 state COVID-19 deaths statistics.

2729                   On February 11, 2021, so a little less than  
2730 two weeks after this report, the New York Department of  
2731 Health released an updated version of the July 6, 2020  
2732 report.

2733                   Do you know, was the DOH report update on  
2734 February 11th released in response to this attorney  
2735 general report?

2736           A.       I don't know the sequence of events. That  
2737 was not my department, so I don't know the why.

2738           Q.       Okay. Did that updated report on  
2739 February 11, 2021 contain complete nursing home data,  
2740 both in nursing home deaths, outside facility deaths, to  
2741 be more accurate?

2742           A.       I don't remember what was actually in it.

2743           Q.       Okay. What the AG reported about the  
2744 recommendation for more comprehensive data to be more  
2745 accurate, that sounds to me to be in line with what you  
2746 wanted in your original report, to have the most  
2747 accurate data to be as transparent as possible. Was  
2748 that your goal when writing your report, to put out the  
2749 most data possible to give the public full information?

2750           A.       So, the goal of our group, and my goal  
2751 specifically, was to look at the data to see if we could  
2752 find any patterns that would be helpful to stop  
2753 transmission.

2754                   So, were we missing something? You know, was  
2755 transmission happening more in some way that we had  
2756 overlooked and therefore we needed to intervene more?  
2757 So, there was a very practical thought.

2758                   The other part was that we were the first very  
2759 big city in the U.S. to get hit with a number of cases  
2760 that we had, and so before other large cities in the  
2761 U.S. dealt with it, we wanted to share what we could.

2762                   And so, in order to do that, you want -- we  
2763 thought it would be most helpful to share the dataset we  
2764 selected, which included individuals from a nursing home  
2765 who might not have died there, thinking that, you know,  
2766 that would be helpful for them to be able to see.

2767                   But of course, we wanted to explain even the  
2768 limitation of that, right? We only had the data that  
2769 was provided to us, and there was -- you know, there  
2770 were notes to be made about the data being verified,  
2771 right? You are just always transparent about what you  
2772 had.

2773                   So, in the draft and, you know, in subsequent  
2774 talks, I did consistently argue for the dataset to be  
2775 used to be the one that had the number of deaths in and  
2776 out of the nursing home of nursing home residents.

2777                   Q.       And looking back at the report that was  
2778 released on July 6th, did you see this version of the



2779 report before it was -- so in this final version, but  
2780 not yet released, were you given that document?

2781 MR. BACH: Can you rephrase that?

2782 [REDACTED] Yes.

2783 Q. I know you were working on drafts for a  
2784 report, so I'm not talking about those.

2785 This final New York State Department of Health  
2786 report that was released on July 6th, did you see this  
2787 version before July 6th?

2788 MR. BACH: Did she see the final version  
2789 before it went out?

2790 [REDACTED] Correct.

2791 A. I don't know if I did. There were versions  
2792 along the way that I saw. I truly don't know if I saw  
2793 the last version that went out or if there were edits  
2794 that were made in between.

2795 Q. Okay. But you were aware that there was a  
2796 report being worked on that was different than the  
2797 report you had been working on?

2798 A. Yes.

2799 Q. Okay.

2800 [REDACTED] We can go off the record for a  
2801 moment.

2802 (Whereupon, an off-the-record discussion  
2803 was held.)

2804 [REDACTED] Back on the record.

2805 EXAMINATION BY

2806 [REDACTED]

2807 Q. Thinking about the role that others outside  
2808 of DOH had in DOH reports -- so not this report  
2809 specifically but other ones that were released, are you  
2810 aware of whether Mr. Malatras was involved in other DOH  
2811 reports that went out?

2812 A. I don't think I know of any other reports  
2813 that went out, so I'm -- I think you would have to tell  
2814 me what report you are referring to because off the top  
2815 of my head, I'm not sure, given the premise, that I can  
2816 answer that.

2817 Q. Understandable. My question really was, did  
2818 it seem to you that there was out of the ordinary  
2819 involvement of Executive Chamber in this DOH report?

2820 A. I will say that I just wasn't familiar with  
2821 reports in general. I had only worked through the  
2822 scientific process. So, for me, this was a new  
2823 situation. So, I don't know what would normally have  
2824 been done. I also know that it was a pandemic and there  
2825 was a lot of different roles.

2826 So, this was my own -- this was, I think, the  
2827 first experience I had with a report.

2828 EXAMINATION BY

2829 MR. LICHTMAN:

2830 Q. Is it reasonable to believe that in the  
2831 course of your tenure with New York State, you were not  
2832 just involved with response to the COVID-19 pandemic but  
2833 you were also involved in efforts to address other types  
2834 of public health crises or outbreaks or epidemics?

2835 A. Part of my job responsibilities involved  
2836 dealing with reportable diseases and that included  
2837 clusters or outbreaks of those reportable diseases.

2838 Q. And when you were dealing with those types  
2839 of outbreaks and interim reports that ensued from them,  
2840 did you observe that individuals -- let's just say Jim  
2841 Malatras. Was he as integrally involved in the process  
2842 of those reports that were produced in response to those  
2843 outbreaks?

2844 A. I only know what I know, but we would draft  
2845 a scientific paper of the sort and it would go up the  
2846 chain. I didn't tend to get questions or responses back  
2847 at the chamber level.

2848 Q. Okay. And so just to confirm for other  
2849 outbreaks, for other reports that you would send up for  
2850 other communicable diseases, Jim Malatras, individuals  
2851 in the chamber, would not be providing you line edits in  
2852 return; is that correct?

2853 A. So first of all, we didn't send reports up.

2854 Like, I only worked on what I would say would be  
2855 scientific papers.

2856 Q. Okay.

2857 A. So, I just want to make that statement.

2858 Q. Fair.

2859 A. Again, it could be published in a journal  
2860 and people could colloquially talk about them in  
2861 reports, so I don't want to say that word was never  
2862 used.

2863 Q. Okay.

2864 A. But it wasn't a frequent -- that frequent of  
2865 an occurrence for us to publish. And when we did, the  
2866 process was that we would send it and we likely did get  
2867 edits back.

2868 I can't remember in general, but my  
2869 recollection was that it was a smaller internal group.

2870 Q. To confirm, you said you did not receive it  
2871 back?

2872 A. No. Sometimes, we would.

2873 MR. BACH: Did you get edits from the  
2874 chamber on scientific papers that you worked on  
2875 at the DOH?

2876 THE WITNESS: No, not usually.

2877 Q. Did it strike you as unusual that Jim  
2878 Malatras, given his background, which I think we

2879 established earlier was not particularly relevant to  
2880 public health or the practice of public health, was  
2881 providing you line level feedback on material that you  
2882 were sending up?

2883 MR. BACH: I think your question -- you  
2884 are all assuming that he is long line editing  
2885 her report.

2886 MR. LICHTMAN: Okay.

2887 MR. BACH: That is not what is happening.

2888 MR. LICHTMAN: Okay.

2889 MR. BACH: That is not what is happening.

2890 Q. Is receiving line edits from Jim Malatras on  
2891 public health product that is being sent to the chamber,  
2892 did that strike you as unusual or atypical based on the  
2893 time that you had spent with New York State and your  
2894 experience prior to the COVID-19 pandemic?

2895 A. So, I don't think we got feedback on the  
2896 scientific report.

2897 Q. Right.

2898 A. We might have gotten internal feedback from  
2899 the Department of Health.

2900 Q. Okay.

2901 A. I can't recall the exact back and forth.  
2902 For the report, again, I wasn't familiar with what the  
2903 usual report process was because it wasn't what we wrote

2904 typically. So, this was new to me.

2905 So, if you are asking me what was usually  
2906 done, this, I would say, was a new process for me of how  
2907 it went.

2908 Q. Okay.

2909 EXAMINATION BY

2910 [REDACTED]

2911 Q. I just want to clarify that you are saying  
2912 this July 6, 2020 report and the scientific article you  
2913 were working on are two separate documents?

2914 A. I view them as two parallel processes.  
2915 There are sentences that are similar, but when you look  
2916 at the total product, when you do a scientific paper,  
2917 you pick your dataset, you define it and we did that in  
2918 a way where I was familiar with the dataset.

2919 I knew what was going on. I described before  
2920 there was an interim time where I was asked to put  
2921 together information, which I thought were from talking  
2922 points.

2923 So, I brought those and brought in  
2924 some -- other analyses that were done outside the  
2925 department of health so that -- because this is what I  
2926 was asked to do -- so that there was a general summary  
2927 of what different individuals and groups had put  
2928 together. And then there was this report.

2929                   So, I considered it to be a parallel process,  
2930                   which, you know, in my mind was a different document  
2931                   even though there could be some similarities in terms of  
2932                   the general concepts.

2933                   But when you are using a different dataset, in  
2934                   my mind, it's different, right? You use a dataset, you  
2935                   define it, and that's what it is. If you are using a  
2936                   different dataset for something, even if it structurally  
2937                   has some similarities or same or different conclusions,  
2938                   it's different.

2939                   So, in my mind, I would characterize them as  
2940                   two separate processes that were cooccurring. So of  
2941                   course there was some general conversation about both.

2942                   EXAMINATION BY

2943                   MR. LICHTMAN:

2944                   Q.           But of course, recognizing you were working  
2945                   with different datasets, different datasets can reveal  
2946                   consistent trends; is that correct?

2947                   MR. BACH:   Just asking as a mathematical --

2948                   MR. LICHTMAN:   Conceptually, yes.

2949                   A.           Conceptually, yes. You can have any  
2950                   conclusion from any dataset be possible. So of course,  
2951                   similar is one possibility.

2952                   Q.           So, then the caveat that you were working  
2953                   with two different datasets or the products for each

2954 parallel process were derived from different datasets,  
2955 would you say that the conclusions that were drawn from  
2956 the parallel processes or the trends that were observed  
2957 in those parallel products consistent with one another  
2958 or inconsistent?

2959 A. I think that is a very general statement  
2960 because if you read there is a lot of different  
2961 conclusions that are drawn. Even, I should say,  
2962 results, right? So, they are conclusions but we look at  
2963 results and their different graphs.

2964 The dataset that was used for this article was  
2965 not shared with me. So, I, you know, don't know that I  
2966 can say that much about the -- all the conclusions.

2967 Q. From an epidemiological perspective, from  
2968 somebody trained in epidemiology, do you have a view  
2969 from that lens about the findings in these products were  
2970 epidemiologically consistent with each other?

2971 A. Would you be able to rephrase or say what  
2972 you mean by epidemiologically consistent?

2973 Q. Sure. If we are looking at data points of  
2974 an epidemiological background -- so prevalence,  
2975 incidence, morbidity, mortality within that realm of  
2976 data points, that school of thought, that school of  
2977 scholarship, the practice of epidemiology, do you feel  
2978 that the products that emerged from those parallel



2979 processes, with the caveat of course that these are from  
2980 different datasets, ultimately arrived at  
2981 epidemiological conclusions that were consistent with  
2982 one another?

2983 And to the extent they were inconsistent, what  
2984 would you attribute that to other than differences in  
2985 the datasets?

2986 A. That is such a broad question. I think  
2987 that's almost impossible to answer.

2988 Q. Why would you say it is impossible to  
2989 answer?

2990 A. Because I don't have my report in front of  
2991 me to go through and compare right now.

2992 Q. Okay.

2993 EXAMINATION BY

2994 [REDACTED]:

2995 Q. What do you know about the dataset that was  
2996 used in the July 6th report that was not the one that  
2997 you used?

2998 A. I don't know, because I don't have the  
2999 dataset.

3000 Q. How do you know it was a different dataset?  
3001 Because it is just a different report or --

3002 A. Well, so I know the dataset we used and  
3003 there was actually multiple because there were multiple

3004 iterations of our draft.

3005 So again, as time went by, we would add in the  
3006 time that would go. And I knew our data scientists who  
3007 pulled that for our group and who did the analysis. So  
3008 I know that dataset.

3009 The other datas that were presented and that  
3010 was used running some analysis that I thought were  
3011 similar got different numbers, so I made the assumption,  
3012 and also because they didn't ask for our dataset, I  
3013 don't know how it could be -- I should rephrase that.

3014 I don't know if they asked for our dataset,  
3015 but I was told by our research scientist that they  
3016 hadn't seen the other dataset.

3017 EXAMINATION BY

3018 MR. LICHTMAN:

3019 Q. Did you at any point ask for their dataset?

3020 A. Our group did ask for their dataset.

3021 Q. Was it provided to you?

3022 A. My understanding was that as of some point  
3023 in the beginning of July, it hadn't been shared with at  
3024 least the folks I spoke with that were part of the group  
3025 that was drafting our scientific paper.

3026 Q. Was a justification provided for not sharing  
3027 the dataset with you and the team?

3028 A. I wasn't given a reason.

3029 Q. Did you ask for a reason?

3030 A. I don't recall.

3031 Q. Okay.

3032 EXAMINATION BY

3033 [REDACTED]

3034 Q. Minority Exhibit J is an October 31, 2020  
3035 e-mail from the New York State Division of the budget to  
3036 an assortment of people from that division, chamber and  
3037 DOH, you among them. The e-mail was sent in advance of  
3038 a November 2, 2020 BCG COVID reports and analytics  
3039 steering committee meeting.

3040 I'll just let you take a look at it for a  
3041 second.

3042 A. (Witness complies.)

3043 Q. We are only going to be looking at one or  
3044 two pages, but if you would like, you can spend some  
3045 time with it.

3046 A. (Perusing). Okay.

3047 Q. So, this is an invitation for meeting number  
3048 2 in a series of three meetings and you are listed as  
3049 one of the attendees.

3050 Do you generally recall attending these  
3051 meetings?

3052 A. I have a vague recollection.

3053 Q. If you could turn to Bates 9367, there's a

3054 chart of sorts, details topic areas and the relevant  
3055 decision makers. And at the bottom, there is a box that  
3056 lists individuals involved with "executive level  
3057 decisions."

3058 Do you see that?

3059 A. I do.

3060 Q. First of all, in the context of what is at  
3061 issue in these meetings, health data and reporting, what  
3062 is an executive level decision?

3063 A. I don't know.

3064 Q. If you could now turn to page 9380.

3065 A. (Witness complies.)

3066 Q. So, this page describes some external and  
3067 internal dashboards and reports. At the bottom there is  
3068 information about two separate daily reports related to  
3069 nursing home fatalities or deaths.

3070 So, it's the second and third lines from the  
3071 bottom. One is a nursing home and ACF fatality report.  
3072 Another is a nursing home and ACF death report.

3073 Do you generally recall that these reports  
3074 existed?

3075 A. (Perusing). There was so much being sent  
3076 around that I don't recall, like, the individual  
3077 reports.

3078 Q. Okay.

3079 [REDACTED] I think that's all for me.

3080 [REDACTED] Off the record.

3081 (Whereupon, an off-the-record discussion  
3082 was held.)

3083 MR. EMMER: We'll go back on the record.

3084 EXAMINATION BY

3085 MR. EMMER:

3086 Q. So, Dr. Adams, we are going to stick with  
3087 the July 6th report. I just want to ask you very  
3088 quickly, do you recall the central conclusions of the  
3089 report?

3090 A. I would have to remind myself of them.

3091 Q. There's two that I want to focus on. The  
3092 first one being that the March 25th directive admitting  
3093 COVID positive patients was not the cause for nursing  
3094 home deaths.

3095 Do you recall that one?

3096 A. That sounds familiar.

3097 Q. Is the analysis that you and Dr. Zucker  
3098 worked on, did your analysis conclude the  
3099 same -- something similar to that?

3100 A. So, what I recall -- I would like to refresh  
3101 my memory to be certain because I don't have the draft  
3102 in front of me, but we were looking at the data in  
3103 general and not a policy itself, if that makes sense.

3104 It was more about the -- I would have to be reminded.

3105 Q. Okay.

3106 EXAMINATION BY

3107 MR. BENZINE:

3108 Q. Would it have be more, like -- and I'm not a  
3109 scientist, so excuse my going back to, like, eighth  
3110 grade bio.

3111 But like more of a bell curve of admissions  
3112 corresponding to deaths, or not looking at when a policy  
3113 was put into effect but looking at a -- you know, there  
3114 were this many deaths -- like the peak of deaths was  
3115 here versus valleys, that kind of analysis versus a  
3116 March 25th order came into place, there were X number of  
3117 deaths after and X number of deaths before?

3118 A. Yes, I recall it being more general and  
3119 looking at trends over time and looking at possible  
3120 factors, from staff being a part of it, and was also  
3121 just a descriptive document. So, you would describe,  
3122 here are the number of nursing homes we have, here are  
3123 the number of deaths and here's the timeframe. And it  
3124 did have graphs in it that showed the incidence over  
3125 time, if I recall correctly.

3126 Q. And this isn't a question for you but more  
3127 for clarity of the record, and this is neither you nor  
3128 your counselor's fault. We do not have the draft. The

3129 governor's office has not given it to us, just for the  
3130 record. So even if I wanted to give it to you, I could  
3131 not give it to you.

3132 EXAMINATION BY

3133 MR. EMMER:

3134 Q. Another one of the conclusions of the  
3135 July 6th report was that asymptomatic spread within the  
3136 actual nursing home staff was a primary driver of  
3137 transmission in the nursing homes.

3138 Is that another thing that you looked at when  
3139 you were doing your own analysis?

3140 A. So, I wish I had our draft in front of me to  
3141 see but that is -- what we did was, we took a dataset  
3142 and we looked at different variables.

3143 Asymptomatic spread is not an input variable  
3144 that you would have. I know this is getting technical,  
3145 but you are then afterwards seeing the results. You do  
3146 have a discussion section.

3147 So, I think we were looking at patterns of  
3148 spread. I cannot recall specifically the details of  
3149 what we had.

3150 Q. Thank you.

3151 So, I want to redirect your attention to  
3152 Exhibit 6. This is the impeachment report, and I will  
3153 read the specific section into the record. And I'm

3154 looking at subsection 2, the first sentence.

3155 "As noted above --

3156 MR. BACH: What page?

3157 MR. EMMER: 40.

3158 Q. "As noted above, the evidence obtained in  
3159 our investigation demonstrates that former Governor  
3160 Cuomo directed officials from the Executive Chamber task  
3161 force and DOH to prepare a report from DOH in order to  
3162 combat criticism of the March 25th directive. The  
3163 report was initiated by the then governor and influenced  
3164 by members of the executive chamber and task force, then  
3165 released under the offices of DOH."

3166 I'm just looking at that last sentence. The  
3167 July 6th report is authored by the New York State  
3168 Department of Health, or at least that is how it was  
3169 portrayed to the public.

3170 Would you consider yourself an author of this  
3171 report?

3172 A. No.

3173 MR. BENZINE: Would you consider the  
3174 Department of Health an author of this report?

3175 THE WITNESS: I would not. It was not the  
3176 dataset that we worked on and I consistently  
3177 voiced that I didn't think this should be a DOH  
3178 report. I provided edits as directed and asked,



3179 but they were not all accepted. And I told  
3180 Dr. Zucker that I did not think this should be  
3181 labeled as a Department of Health report as  
3182 presented.

3183 Q. In the last hour, you were directed to the  
3184 appendix B, New York Times chart.

3185 A. (Perusing).

3186 Q. I'm just curious, did you use the New York  
3187 Times data in your analysis or would you have used this  
3188 data in a scientific paper?

3189 A. I don't recall that we did.

3190 Q. Mm-hmm.

3191 A. We tend to rely on other journal articles.  
3192 Sometimes if the only evidence publicly comes from  
3193 another source, we can, but I don't recall that, because  
3194 again, we were focused on New York State data, which was  
3195 our data and our dataset.

3196 Q. Mm-hmm.

3197 A. So I don't recall. It would be nice to  
3198 refresh my memory, but I don't recall that.

3199 EXAMINATION BY

3200 MR. BENZINE:

3201 Q. It may be more of an observation with a  
3202 question attached, but it seems odd to me, like you just  
3203 said, you were using -- this is a New York State

3204 problem. You had the data internally and then the  
3205 governor's office would use reporter data instead of  
3206 their own internal data. Do you recall any  
3207 conversations about that?

3208 A. I do believe this was one of the sections  
3209 that we, as the DOH, sent back comments on. And we were  
3210 overall -- you know, I was pushing for it to be more  
3211 similar to a scientific article, because that's what I  
3212 was familiar with and was hoping that our journal  
3213 article would get published.

3214 So, a lot of my edits were in line with that,  
3215 trying to focus this on, you know, what our dataset  
3216 showed internally.

3217 Q. And then I think, and Jack can probably  
3218 correct me if I'm wrong, but the governor deemed this a  
3219 peer reviewed paper at one point. Would you consider  
3220 this a peer reviewed paper?

3221 A. From the science point of view for the peer  
3222 review process, the reviewers are picked by the journal,  
3223 so they are independently picked, and that process was  
3224 not gone through here. So, it wouldn't meet the usual  
3225 criteria for a peer reviewed paper.

3226 Q. Have you sat on peer review committees  
3227 before?

3228 A. I have.

3229 Q. Would you approve this paper?

3230 A. So as a journal article, this doesn't meet  
3231 the criteria for an academic journal article. You know,  
3232 this was issued as a report, and as I said before, I am  
3233 not familiar with general report structures in different  
3234 worlds. I just have not personally worked on them.

3235 So I was approaching this and continued to  
3236 push for the method I was familiar with, which was a  
3237 transparent process, where methods are explained, where  
3238 all the analysis methods are explained, what kind of  
3239 tests are run, full limitation sections, and I think for  
3240 every draft of this that we saw, the group I was working  
3241 with at the DOH made edits to that effect, um, and not  
3242 all were accepted in the final project.

3243 Q. Thank you.

3244 EXAMINATION BY

3245 MR. EMMER:

3246 Q. I want to return to Minority Exhibit I and I  
3247 am looking at the third page, fourth paragraph down.

3248 A. (Indicating).

3249 Q. Yes.

3250 A. (Perusing).

3251 Q. And I'll just read it for the record.

3252 It says, "In response to a detailed list of  
3253 questions from The Times, the governor's office

3254 responded with a statement Thursday night from Beth  
3255 Garvey, a special counsel, who said the out-of-facility  
3256 data was omitted after DOH could not confirm that it had  
3257 been adequately verified." She added that, "The  
3258 additional data did not change the conclusion of the  
3259 report."

3260 I guess my question here is, was it not  
3261 possible for DOH to confirm the out-of-facility data?

3262 Let me rephrase my question.

3263 Is Beth Garvey, the special counsel,  
3264 misrepresenting DOH's position on out-of-facility data?

3265 A. I don't know.

3266 Q. Did you have any concerns that data couldn't  
3267 be verified at this time?

3268 A. I do think that verification was a very  
3269 difficult process. Going through each individual person  
3270 to make sure the data was inputted correctly, I recall  
3271 was a very long process.

3272 But what I was pushing for was to use the  
3273 dataset we had with those limitations, understanding  
3274 there were limitations of that. So in our draft  
3275 scientific article, we did have the number that had been  
3276 reported to that time, understanding that there was so  
3277 much going on at this time, that verification is a  
3278 process, but feeling that it was good to get out what we

3279 did have on that matter with the limitations, again, so  
3280 someone else could replicate it and understand.

3281 So that was my understanding.

3282 EXAMINATION BY

3283 MR. BENZINE:

3284 Q. I am jumping ahead of Jack maybe, but  
3285 without having to read the very long paragraph in the  
3286 impeachment report, the impeachment report said the  
3287 former governor reviewed and edited the draft DOH  
3288 report.

3289 Did you ever see any AC initials or anything  
3290 that suggested the former governor was editing the  
3291 report?

3292 A. I do not recall seeing AC initials. I often  
3293 didn't know who was editing the report because you  
3294 couldn't see from the track changes who it always was.

3295 Q. Did you ever hear anything that suggested  
3296 the governor was editing the report?

3297 A. I can't recall anything specifically, but I  
3298 don't know if I would have known.

3299 MR. BENZINE: Okay. Thank you.

3300 EXAMINATION BY

3301 MR. EMMER:

3302 Q. So final question on the DOH July 6th  
3303 report, were you aware at the time of drafting that the

3304 governor was also writing a book?

3305 A. I don't believe I was. I can't recall when  
3306 I was aware, though, and that time is a bit of a blur.

3307 Q. Okay. So, it was reported that members of  
3308 Andrew Cuomo's family, as well as people in his inner  
3309 circle, were provided -- we'll call it preferential  
3310 testing, during the early stages of COVID. Are you  
3311 aware of those reports?

3312 MR. BACH: Are you aware of the reports?

3313 A. I am aware of the reports.

3314 Q. Okay. And were you involved in preferential  
3315 testing for family members and people in his inner  
3316 circle?

3317 A. I was involved in testing in general. I  
3318 think I have a hard time feeling like I'm not going to  
3319 break confidentiality. There is a patient-doctor  
3320 confidentially that is a very important ethical tenet.

3321 So, confirming and even denying can sometimes  
3322 break that confidentially. So, I feel very  
3323 uncomfortable that I'm going to be breaking a  
3324 confidentiality.

3325 EXAMINATION BY

3326 MR. BENZINE:

3327 Q. We are not going to ask about individuals or  
3328 confirm or deny.

3329                   The one question I do want to ask is, were you  
3330                   ever instructed to administer a test where you felt like  
3331                   it was not worthy?

3332                   MR. BACH: Not worthy?

3333                   Q.        Like, the rationale that we have heard  
3334                   before and agree with, and it applies across  
3335                   governments, is that the governor is an important  
3336                   person. You don't want the governor to get sick. The  
3337                   people who are meeting with him should be tested to  
3338                   ensure that the governor doesn't get sick, but were you  
3339                   ever instructed to provide a test to anyone who did not  
3340                   meet that criteria?

3341                   A.        I tested as I was directed to do and we  
3342                   always think about the population level. So, it's  
3343                   interesting when people ask questions because it is  
3344                   often focused on a person, but we think about the  
3345                   exposure.

3346                   So, you know, I was very concerned about  
3347                   residents of nursing homes, right, as an example of a  
3348                   group that was exposed. That was a big concern for me.

3349                   Q.        I guess what we are trying to figure out is,  
3350                   at this point -- and I don't know, I haven't seen the  
3351                   data -- but a lot of tests are federally provided.  
3352                   States went out and got some of their own too. And they  
3353                   were few and far between early on in the pandemic. I

3354 think we would like them to go to nursing homes and  
3355 hospitals and those kinds of places, the ones that we  
3356 had.

3357 We are trying to figure out whether or  
3358 not -- understanding the parameters of what is rational  
3359 and I think expected, whether or not the governor  
3360 directed supplies to go where they were not needed  
3361 because they were people that were close friends of the  
3362 governor.

3363 So outside of the, like, you know, I'm not  
3364 going to ask you to confirm or deny, but outside of the  
3365 report of his brother getting a test, his brother is  
3366 going to visit the executive mansion.

3367 I understand his brother was going to get a  
3368 test, but if you were directed at all to test people  
3369 that were not in routine contact with the governor or  
3370 had no reason to be in routine contact with the  
3371 governor?

3372 A. To the best of my recollection, many years  
3373 later, I felt that when I tested, there was a  
3374 reason -- a valid reason for testing. And if there  
3375 wasn't, in general, we had many testing centers and  
3376 there were instances in general where for anybody that I  
3377 directed people there, and they went.

3378 Q. Okay. That makes sense. Thank you. That



3379 was a good balancing act of trying to get the question  
3380 and answer worded correctly.

3381 EXAMINATION BY

3382 MR. EMMER:

3383 Q. It has been reported that in some cases,  
3384 tests were conducted at personal residences --

3385 MR. BACH: Guys, this was not a topic. We  
3386 had a conversation. You told me the topics that  
3387 you were going to cover. You did not include  
3388 this.

3389 She has voiced confidentiality concerns. I  
3390 let you ask her a few questions. I think you  
3391 should stop.

3392 MR. BENZINE: I'm comfortable stopping if  
3393 that's okay.

3394 MR. OSTERHUES: Just to be clear, though,  
3395 we told you we were going to discuss what her  
3396 duties were during the pandemic.

3397 MR. BACH: You didn't --

3398 MR. OSTERHUES: No, no, no, no, no, no.

3399 Jonathan --

3400 MR. BACH: You said the March 25th and the  
3401 July 6th report.

3402 MR. OSTERHUES: We covered what --

3403 MR. BACH: You never said to me you were

3404 going to ask me about her role in testing any  
3405 individuals, including any individuals linked to  
3406 the governor's family. You never said that.

3407 MR. LICHTMAN: I would also note that this  
3408 is a topic of interest to the Minority and we  
3409 would be interested in pursuing this further.

3410 MR. BACH: Well, look, you can decide what  
3411 you are going to do. I don't have a judge here.  
3412 I don't know who in Congress I would be able  
3413 to -- but I do know that you never told me you  
3414 were going to ask about this. There are  
3415 confidentially concerns.

3416 Do what you wish, but not how I would plan  
3417 to proceed today.

3418 MR. BENZINE: We did try to word the  
3419 questions carefully to not address any  
3420 confidentially concern and not ask about  
3421 specific individuals.

3422 MR. BACH: I know you did.

3423 MR. BENZINE: I'm comfortable moving on  
3424 from this topic understanding I can't waive what  
3425 they are going to ask, but I'm comfortable with  
3426 moving on from the topic right now.

3427 EXAMINATION BY

3428 MR. BENZINE:

3429 Q. I have a couple more questions and I hate to  
3430 keep bringing it up about the conference call with the  
3431 governor where he at least insinuated that he wanted you  
3432 fired.

3433 Do you recall who else was on the call?

3434 A. Howard Zucker was there and I believe Beth  
3435 Garvey was there. I do believe there were others. I  
3436 can't recall right now.

3437 Q. I know you told me before. Do you recall  
3438 the month timeframe it was in 2020?

3439 A. I'm worried I have the month wrong, plus or  
3440 minus wrong, but I'm feeling it was November or around  
3441 November or possibly December.

3442 Q. And then you had said it was because you had  
3443 relayed some things to the governor on the call what you  
3444 were hearing on the grounds from the nursing homes.

3445 Do you remember any more specifics?

3446 A. I don't remember the specific topic of  
3447 conversation. I remember thinking that I was trying to  
3448 provide an explanation and I think it was taken as a  
3449 defense of the nursing home when I was just trying to  
3450 provide an explanation -- sort of notes from the field  
3451 type of thing.

3452 Q. Do you recall if it was at all regarding the  
3453 July 6th report or the order or anything you had been

3454 hearing from nursing homes regarding those things?

3455 A. I don't believe it was about a report. I  
3456 think it was something more general.

3457 I'm afraid I'm going to misstate. As you can  
3458 tell, my memory isn't great.

3459 Q. No, no. Yeah.

3460 A. I don't know if it was PPE or something that  
3461 was more general.

3462 Q. I guess what I'm trying to figure out, and  
3463 November, if it is plus or minus a month, it kind of  
3464 takes it off the table a little bit, but I'm trying to  
3465 see if the desire to fire you was at all related to  
3466 edits or comments made about the July 6th report?

3467 A. I do not know the answer to that and I of  
3468 course would be interested myself.

3469 Q. I appreciate that. Thank you.

3470 MR. EMMER: Thank you.

3471 We'll go off the record now.

3472 (Whereupon, an off-the-record discussion  
3473 was held.)

3474 [REDACTED] Back on the record.

3475 EXAMINATION BY

3476 [REDACTED]

3477 Q. Dr. Adams, we will try to make this as quick  
3478 as possible, but as we insinuated, we have a few

3479 questions for you about COVID testing.

3480           You mentioned it was a part of your normal  
3481 course of duties. How did doing COVID tests fit into  
3482 your normal duties at the time?

3483           A.       At the metropolitan regional office we were  
3484 tasked with setting up testing. And we also were  
3485 allocating some tests to test in nursing homes to try to  
3486 figure out the spread.           I think initially  
3487 there was hope that maybe we could contain it to a few  
3488 nursing homes. Now looking back I think that we all  
3489 know that that was unrealistic.

3490           But as a group we were trying to figure out  
3491 transmission. And part of that, in order to figure out  
3492 transmission, you have to test.

3493           Q.       And not getting into the specifics of any  
3494 individuals that you tested, did you test people outside  
3495 of nursing homes?

3496           A.       Oh, yes. We had a whole -- like early on,  
3497 there was no place to test. I mean, there was nursing  
3498 homes, but we were concerned in general also about staff  
3499 bringing it in. There were also specific instances, you  
3500 know, pregnancy -- I mean nobody knew what the effects  
3501 were.

3502           So, for all vulnerable populations, there was  
3503 a heightened concern. So testing was done as needed.

3504 Q. In the normal course of your duties, were  
3505 these tests being conducted within the New York City  
3506 area?

3507 A. They were within the region that I covered.

3508 Q. Okay.

3509 A. Which was lower Hudson Valley, New York City  
3510 and Long Island.

3511 Q. Okay. And did you personally travel to  
3512 administer tests?

3513 A. I think every tester traveled to administer  
3514 a test.

3515 Q. Outside of a normal commuting distance?

3516 A. We always, for any disease entity, would go  
3517 throughout our whole catchment area. That was -- I  
3518 mean, for measles, for anything, this -- we were in  
3519 charge of covering the whole -- our whole geographic  
3520 fourth of the state.

3521 Q. And you mentioned earlier, the primary  
3522 purpose of this testing was to prevent spread and figure  
3523 out how spread was traveling throughout nursing homes in  
3524 particular?

3525 A. That was one of the goals. I mean, there  
3526 were other, you know -- there were many things that we  
3527 were all trying to do at the same time.

3528 One was prevent vulnerable populations from

3529 getting COVID and then within those vulnerable  
3530 populations, stopping spread. And  
3531 then you know, we also at the very beginning,  
3532 clinically, were -- you know, testing was paramount to  
3533 figure out the clinical course.

3534 Q. And do you feel that you administered any  
3535 tests that were outside of those goals?

3536 A. I felt that I was -- I administered tests  
3537 that were within those goals.

3538 Q. Okay.

3539 EXAMINATION BY

3540 MR. LICHTMAN:

3541 Q. Did you always feel that the tests you  
3542 administered were provided to patients who were  
3543 maximally in advancement of the goals you articulated or  
3544 were there instances where individuals who received  
3545 tests you administered were not the most high priority  
3546 individuals for the objectives you described?

3547 A. Oh, gosh. That's a hard question.

3548 So, things happened so fast that I was not  
3549 always in receipt of complete information -- none of us  
3550 were. And so, there were other people sometimes  
3551 directing the testing and you would get part of it, but  
3552 I didn't know at the same time what all the other  
3553 requests would be, right?

3554                   In order to make a judgment like the one you  
3555                   are saying, I think one would need more complete  
3556                   information to be able to determine that.

3557                   Q.           As it relates to the goal of protecting  
3558                   population health, would you agree that administering a  
3559                   limited amount of tests to the most vulnerable  
3560                   individuals to COVID is one priority in how you would  
3561                   think about tests being administered and the regimen  
3562                   behind that?

3563                   A.           I think yes, of course, testing within a  
3564                   vulnerable population was important. I think the  
3565                   problem was, we didn't know what were the vulnerable  
3566                   populations at the time.

3567                                I mean, we had no idea -- look at the  
3568                   pediatrics story. It's fascinating. We were all so  
3569                   concerned. The data out of China -- I remember so many  
3570                   reports of younger people, younger health care workers.

3571                                Again, how it played out in the U.S. was not  
3572                   necessarily consistent with some of the earlier reports,  
3573                   which happens all the time. You learn as you go.

3574                                So, I think to make it an assumption about the  
3575                   vulnerable populations, we were learning what those  
3576                   were. And so, you know, testing -- we learned something  
3577                   from all types of testing initially and there were  
3578                   positives to that.



3579                   And then I think as time went on, you know, as  
3580 always, then one could look again at the testing needs.

3581           Q.        Would you agree with dispersing a limited  
3582 amount of tests, that in an early outbreak tests should  
3583 go to individuals with confirmed exposures, to  
3584 individuals who were positive over individuals who  
3585 suspected that they were exposed?

3586           A.        I don't think it is that easy. To me, this  
3587 is coming from the public health side of things. I  
3588 really thought that the introduction into new  
3589 populations sometimes was extremely important.

3590                   So, we had some nursing homes and hospitals  
3591 that primarily had hospice population. So, I'm giving  
3592 this as an example. To me, if that group -- again, I  
3593 didn't have all the information. I didn't really know  
3594 if that was a more vulnerable population, but it had  
3595 shown to be for other diseases, so there was reason to  
3596 think maybe that. So, I'm just giving this as a general  
3597 example.

3598                   I probably would have erred on the side of  
3599 even testing a suspected case that could have exposed  
3600 that population.

3601                   Again, I'm thinking a population level more at  
3602 times than just confirming somebody else that maybe had  
3603 a higher probability of having it, but maybe only would

3604 have exposed one people -- one person in their family.

3605 So, I just think it got very complicated and I  
3606 don't know, even now, if there was one right away to  
3607 test.

3608 Q. One last question on this.

3609 Did you ever have any moral reservations about  
3610 administering a test to a patient to whom you had  
3611 administered a test?

3612 A. If I had moral reservations, I did or would  
3613 have pushed back. That's who I am and how I am and  
3614 there were other testing methods. And as I said, there  
3615 were people who went and used those other testing  
3616 methods.

3617 There is another difficult ethical ethos, I'll  
3618 say for better lack, once you establish a patient-doctor  
3619 relationship, this goes more with primary care, which is  
3620 the world I come from.

3621 But you know, you also don't abandon people,  
3622 right? And so, you know, it was unclear -- things were  
3623 evolving during the pandemic of what was being waived,  
3624 what was allowed, and so, you know, the majority of us  
3625 physicians would continue, you know, following as  
3626 needed.

3627 But if I had moral reservations, you know, I'm  
3628 not the type of person that would not deal with that.

3629 Q. While I appreciate that, the question was,  
3630 did you ever have moral reservations about anyone you  
3631 had to administer a test?

3632 MR. BACH: That she actually administered?

3633 Q. Or to whom you were directed, advised,  
3634 asked, to administer a test?

3635 A. I tested a lot of people. I'm trying to  
3636 remember the circumstances and the specifics and I don't  
3637 feel as though I can -- can you repeat the question?

3638 Q. To anyone that you administered a test, or  
3639 were directed to administer a test, suggested to  
3640 administer a test or advised to administer a test, did  
3641 you have any moral reservations in actions you took  
3642 pursuant to those requests, directives, procedures,  
3643 protocols, et cetera?

3644 A. I will say that I do -- well, I recall not  
3645 testing some individuals and having them directed to  
3646 other testing. I cannot recall why I did that, but  
3647 that's what I'm remembering right now, was that there  
3648 were some that I did not test and asked for other  
3649 arrangements to be made.

3650 Q. I don't mean to belabor the point, but I  
3651 will just note that that is also not the question that I  
3652 asked.

3653 MR. BACH: Well, you are about done because we

3654 are about to run out of time.

3655 Frankly, I'm not sure what her morality has to do with  
3656 it, but let's wrap it up.

3657 [REDACTED] We'll move on.

3658 EXAMINATION BY

3659 [REDACTED]

3660 Q. There was discussion earlier about CMS or  
3661 CDC guidance and how that affected New York guidance.  
3662 So, I wanted us to take a look at CMS guidance.

3663 So, I'm going to admit this as Minority  
3664 Exhibit K. (Handing).

3665 The date on this was March 4, 2020, and the  
3666 guidance reads -- I'm looking at page 3 of 4 under the  
3667 second bolded headline, the headline is, "when should a  
3668 nursing home accept a resident who is diagnosed with  
3669 COVID-19 from a hospital?"

3670 Then the guidance continues, "A nursing home  
3671 can accept a patient diagnosed with COVID-19, and still  
3672 under transmission based precautions for COVID-19, as  
3673 long as it can follow CDC guidance for transmission  
3674 based precautions. If a nursing home cannot, it must  
3675 wait until those cautions are discontinued."

3676 Dr. Adams, do you agree that this federal  
3677 guidance from the Trump Administration does not bar the  
3678 readmission of COVID-19 positive patients to nursing

3679 homes?

3680 A. I haven't read through the whole thing.

3681 Q. Do you agree with what I just read, not  
3682 barring the readmission of COVID-19 positive patients?

3683 A. I'm sorry. Can you point again --

3684 MR. BACH: I'm sorry. We are going to end  
3685 this.

3686 You are asking for her interpretation of  
3687 something she may have never seen before, of a  
3688 text which speaks for itself. Her  
3689 interpretation of reading this is not important.

3690 Are we done with this interview?

3691 [REDACTED] No, we are not done.

3692 MR. BACH: Okay. I'm going to hold you to  
3693 the next two minutes.

3694 [REDACTED] Okay.

3695 Q. Moving on from that, as stated, the plain  
3696 reading of that is that it does not bar readmission, but  
3697 we can move on from that.

3698 Dr. Adams, as somebody who was involved in New  
3699 York State's early response to the COVID-19 pandemic, we  
3700 do want to get your perspective on the working  
3701 relationship between the federal government and state  
3702 governments during this time.

3703 As your understanding, what role does the

3704 federal government normally play in a public health  
3705 crisis?

3706 A. That's very broad. Could you say like what  
3707 areas you are referring to?

3708 Q. We can talk about a lot, but we know in the  
3709 early weeks in the pandemic, as you said earlier, New  
3710 York specifically was having issues getting PPE in  
3711 adequate numbers for nursing homes and hospitals.

3712 Was it your understanding that the federal  
3713 government would have a role in helping or coordinating  
3714 those efforts?

3715 A. I wasn't involved in the PPE effort and so I  
3716 recall general discussions about it. I just don't  
3717 remember at that time what -- who did what.

3718 Q. During a select subcommittee hearing last  
3719 May, we heard from Dr. David Grabowski, a professor of  
3720 health care policy at Harvard, and he said that the  
3721 community spread was a driving force of COVID-19  
3722 entering nursing homes and other congregate facilities,  
3723 not just in New York but across the country.

3724 Is that consistent with your understanding?

3725 MR. BACH: It's 3 o'clock.

3726 A. I do recall reading papers that came out  
3727 later describing the role of community, so I do feel  
3728 that it played a role.

3729 Q. And would increased PPE help in protecting  
3730 patients in nursing homes?

3731 A. I think appropriately used PPE when needed  
3732 would help. I think there were times when, you know,  
3733 people put on three gowns for Ebola and that was not  
3734 what was recommended. So, you just have to be careful  
3735 to say more isn't always better, but the CDC guidelines  
3736 outlining use of PPE were what people generally tried to  
3737 adhere to at the time.

3738 MR. BACH: One more question. Last one.

3739 Q. Under President Biden, the National  
3740 Vaccination Program started in early 2021. Did the use  
3741 of vaccines lead to reduced instances of spread within  
3742 nursing homes?

3743 A. So, I believe the overall data after has  
3744 showed that immunity in general, including that from  
3745 vaccines, generally has reduced transmission. There is  
3746 a lot of caveats that have to do with type of new  
3747 strains coming, etc. So, one has to look at a point in  
3748 time. Yeah.

3749 MR. BACH: Thank you.

3750 [REDACTED] Thank you very much. We can go  
3751 off the record.

3752 (Whereupon, at 3:02 P.M., the Interview of  
3753 this witness was concluded.)