TP.ONE

BARBARA MOORE

HVC163550

INTERVIEW OF: ANDREW CUOMO

Tuesday, June 11, 2024

U.S. HOUSE OF REPRESENTATIVES,

COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY

SELECT SUBCOMMITTEE ON THE CORONAVIRUS PANDEMIC

WASHINGTON, D.C.

The Interview commenced at 10:02 a.m.

Appearances

For the SELECT SUBCOMMITTEE ON THE CORONAVIRUS CRISIS:

MITCH BENZINE, Majority Staff Director
JACK EMMER, Staff Counsel
DR. BRAD WENSTRUP, Chairman
ERIC OSTERHUES, Majority Counsel
NICOLE MALLIOTAKIS, Member, Covid Select Subcommittee
ELISE STEFANIK, Member
NICK LONGWORTHY, Member
MARC MOLINARO, Member
[redacted] Senior Minority Counsel
[redacted] Minority Counsel
[redacted] Minority Staff Director
DR. RAUL RUIZ, Ranking Member
DEBBIE DINGELL, Member, Select Subcommittee

For the Witness:

RITA GLAVIN, ESQ.
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EXHIBITS

The Witness. Can I ask you a question?

I have an opening statement. Could we submit it for the record?

Mr. Benzine. Yes.

The Witness. Could I give a brief summary of a couple of comments on the opening statement?

Mr. Benzine. We should go through the rules first, and then you can.

The Witness. Thank you.

Ms. Glavin. So I am going to be -- so everyone is clear on this, I'm actually going to be recording this.

Mr. Benzine. No, you're not.

Ms. Glavin. Why not?

Mr. Benzine. That's not allowed.

Ms. Glavin. Is there a rule?

Mr. Benzine. Yes. It's the House rules. The only record of this is this transcription by the official court reporter.

Ms. Glavin. Will we get a copy of the transcript?

Mr. Benzine. You'll get to review it for

errata, so the transcript belongs to the Committee.

Ms. Glavin. What's the objection to us having our own accurate record?

Mr. Emmer. It goes against House rules.

Ms. Glavin. Here is the issue, Chairman: My concern, you know, I'm a lawyer. I'm not a politician, I'm a lawyer.

The Witness. You could be both, by the way.

Ms. Glavin. But my concern is if we don't have a recording of what occurred here, my concern is that there will be selective leaks.

Dr. Wenstrup. That's our concern as well, and that's why you're not able to do that. You will get it so you can make any corrections that you feel need to be corrected, but it belongs to the Committee.

Ms. Glavin. So can we strike an agreement then that if I'm not provided --

Dr. Wenstrup. I can't change House rules.

Ms. Glavin. I get that, but if I'm not recording us, I understand what the House rules

are. I'm not a member of the House, so I don't know that I'm subject to any House rules. But can we strike an agreement, because I understand you're afraid that we might selectively leak. So I want an agreement that you won't. Otherwise, it's -- this is a one-way street.

Dr. Wenstrup. You're going to have to describe "leaking."

Ms. Glavin. Well, what I've seen, and it's been a little bit frustrating -- that's why I like being in the courtroom because everybody can come and see it and everybody gets the transcript -- is the governor is not going to be given a copy of this transcript, which I do want it noted for the record that I object to, because the statements he makes today, the public should be able to have that. He should be able to have that, as opposed to certain portions of it leaked.

And what I have been reading, and usually the New York Post seems to be a favorite outlet for this, is snippets of what people have purportedly said or summaries of it have been going out to the

press. And we want the ability to say to a reporter that isn't what we said. Here is the actual recording. Can I get a copy of this transcript?

Mr. Benzine. To keep?

Ms. Glavin. Yes, absolutely.

Mr. Benzine. No.

Ms. Glavin. Will a copy of this transcript be publicly released?

Mr. Benzine. Yes.

Ms. Glavin. When?

Mr. Benzine. When the Chairman decides.

Dr. Wenstrup. When it has gone through the process where everyone has had a chance to review it and make corrections, so there's no set time.

Ms. Glavin. Let me ask you this.

Dr. Wenstrup. It's interesting that you're asking for set times.

Ms. Glavin. What times?

Dr. Wenstrup. When we had such difficulty getting you here.

Ms. Glavin. Let me address that, Chairman.

I'm a little frustrated by that because you and I never had a conversation. So when you say you had difficulty getting us here, I do think the record needs to be quite clear about what happened. Governor, I received a letter in December, okay. Asking for the governor to appear voluntarily. Governor is willing to appear voluntarily. I made that quite clear. I'm an attorney that has trial schedules. In fact, I had a trial in May. I made that quite clear to the staff members that we will accommodate. I gave them dates in August. I said if those dates don't work, let me know.

I did not hear a response. What we then got was a subpoena, and the subpoena was from May 24. I have a criminal defendant who is going to trial on May 12. Because of that subpoena, I had to go to a Federal District judge in the Southern District of New York and ask them if the trial could be adjourned. You can look at the record.

And there was tremendous frustration by the Department of Justice that the trial was not going to go forward and my client. But we had to get

the trial adjourned.

It's now adjourned to August because you would not accommodate professional responsibilities that I had. The governor also had a deposition scheduled. It was not difficult and the letter that was released by this committee was misleading and inaccurate. And it was an ambush.

So I want to be clear about that, because I don't play politics, I practice law.

Dr. Wenstrup. Thank you for that statement. We have the records of the transactions and the communications back and forth.

Ms. Glavin. So do we.

Dr. Wenstrup. We're here now.

Ms. Glavin. Yes, we are.

Dr. Wenstrup. Thank you for making accommodation. No one that is not a member of Congress understands how we make accommodations all the time for things to come up. We have to do that all the time, so I'm sorry. You were inconvenienced. It's a way of life for us, but

thank you for being here today. Let's move on.

Ms. Glavin. So just so the record is clear, we will be able to get a copy of the transcript after we go through the errata process. I will send a letter to your office asking for a copy.

Mr. Benzine. I didn't say you will be able to go through the copy after we've been through the errata process. After it's been published.

The Witness. I got it.

Dr. Wenstrup. That's how it's always worked.

Mr. Benzine. Since you made a statement for the record, I want to too. You're the only witness. We've had 30 transcript interviews. You're the only one that we had to subpoena. That shows a track record of reasonableness on behalf of the subcommittee.

You're also the only one that has objected to the transcript. I appreciate the objection. It's noted. You'll get the chance to review for errata, and you'll have a transcript when it's made public.

Ms. Glavin. You didn't have to subpoena him.

The record is the record, and we also take notes during the course of our conversation.

The Witness. Thank you, Mr. Chairman. I submitted an opening statement.

Mr. Emmer. This is a transcribed interview of Mr. Andrew Cuomo conducted by the House Select Subcommittee on the coronavirus pandemic under the authority granted to it by House Resolution 5 and the rules of the Committee on oversight and accountability.

Further, pursuant to 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 his name and spell his last name for the record.

The Witness. Andrew Cuomo, C-u-o-m-o.

Ms. Glavin. Could we just make a record on who is in the room?

Mr. Benzine. We will.

Ms. Glavin. Thank you.

Mr. Emmer. Thank you, Mr. Cuomo. My name is Jack Emmer, and I want to thank you for coming in today for this interview. The Select Subcommittee recognizes that you are here voluntarily, and we appreciate that.

Under the Select Subcommittee and Committee on Oversight and Accountability rules, you are allowed to have an attorney present to advise you during this interview.

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

The Witness. I think you met her.

Mr. Emmer. For the record, starting with -- will counsel please identify themselves for the record.

Ms. Glavin. Yes, Rita Glavin. I'm the attorney for Andrew Cuomo and along with my colleague, Leo Korman, who works with me.

Mr. Emmer. Thank you. For the record, starting with the Majority staff, can the

additional staff members please reintroduce themselves with their name, title, and affiliation.

Mr. Benzine. Mitch Benzine, Staff Director for the Republican side.

Mr. Osterhues. Eric Osterhues, Chief Counsel for the Republicans.

[redacted], Senior Counsel for the Democratic side.

[redacted], Democratic counsel.

[redacted], Democratic Staff Director.

Ms. Lyons. Elizabeth Lyons, Republican majority staff.

Mr. Emmer. For the record, can the members please introduce themselves?

Dr. Wenstrup. Fred Wenstrup, chairman of the Select Subcommittee on the coronavirus pandemic.

Ms. Malliotakis. Nicole Malliotakis, member of the Select Committee.

Mr. Langworthy. Nick Langworthy representing the 23rd Congressional District, member of the

House Select Subcommittee.

Ms. Stefanik: Elise Stefanik, New York 21 chairman of the House Republican conference.

Mr. Ruiz. Raul Ruiz, California, 25 District, ranking member of the select subcommittee of the coronavirus pandemic.

BY MR. EMMER.

Q Thank you all.

Mr. Cuomo, before we begin, I'd like to go over the ground rules for this interview. The way this interview will proceed is as follows: The Majority and Minority staff will alternate asking you questions. One hour per side per round until each side is finished with their questioning. The majority staff will begin and proceed for an hour, and then the minority staff will have an hour to ask questions. We will then alternate back and forth in this matter until both sides have no more questions.

If either side is in the middle of a specific line of questions, they may choose to end a few minutes past an hour to ensure completion of that

specific line of questioning, including any pertinent follow-ups.

In this interview, while one member of the staff for each side may lead the questioning, additional staff may ask questions. There is a court reporter taking down everything I say and everything that you say to make a written record of the interview.

For the record to be clear, please wait until the staffer questioning you finishes each question before you begin your answer, and the staffer will wait until you finish your response before proceeding to the next question.

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

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

Exhibits may be entered into the record. Majority exhibits will be identified numerically.

Minority exhibits will be identified alphabetically. Do you understand?

A Yes, sir.

Q We want you to answer questions in the most complete and truthful manner possible. So we'll take our time. If you have any questions or do not fully understand the question, please let us know. We'll attempt to clarify, add context to, or rephrase the questions so that you understand.

A Yes, sir.

Q If we ask about a specific conversation or events in the past and you are unable to recall the exact words or details, you should testify to the substance of those conversations or events to the best of your recollection.

If you recall only a part of the conversation or event, you should give us your best recollection of those events or parts of conversations that you do recall.

Do you understand?

A Yes, sir.

Q Although you are here voluntarily, and we

will not swear you in, you are required pursuant to Title 18, Section 1001 of the United States Code to answer questions from Congress truthfully. This also applies to questions posed by congressional staff in this interview.

Do you understand?

A Yes, sir.

Q If at any time you knowingly make false statements, you could be subject to criminal prosecution.

Do you understand?

A Yes, sir.

Q Is there any reason you are unable to provide truthful testimony in today's interview?

A No, sir.

Q The select subcommittee follows the rules of the Committee on Oversight and Accountability. Please note if you wish to assert a privilege or any statement that day, that assertion must comply with the rules of the Committee on Oversight and Accountability.

Pursuant to that, Committee Rule 16(c)(1)

states for the chair to consider assertions of privilege or testimony or statements, witnesses or entities must clearly state the specific privilege being asserted and the reason for the assertion on or before the scheduled date of testimony or appearance.

Do you understand?

A Yes, sir.

Q Ordinarily, we take a five-minute break at the end of each hour of questioning, but if you need a longer break or a break before that, please let us know and we will be happy to accommodate.

However, to the extent that there is a pending question, we would ask that you finish answering the question before we take the break.

Do you understand?

A Yes, sir.

Q Do you have any other questions before we begin?

A No.

Mr. Benzine. You can give the opening statement now.

The Witness. Thank you. You have an opening statement, I'll just summarize it for the sake of time.

First, thank you very much for the opportunity to be here. I think the work of this committee is tremendously important. I have appeared before many congressional committees. In my twenties, I came down to testify before a committee about homelessness. I could go to that same committee today and probably give the same testimony about homelessness. I was HUD Secretary confirmed by the Senate twice. Dozens and dozens of committees and committee reports that wind up in the dust bin of history. This committee report is important, and I think not just on retrospectively but prospectively.

The United States lost more people to COVID than any country in the globe, which is mind-boggling to me. We have the most sophisticated medical system in the world. People come here all day long for medical procedures, but we lose more people than any other country during

COVID.

There was a movie called Contagion, 2010, that I would recommend that you watch. Good movie, Gwyneth Paltrow, Lawrence Fishburne. 2010, but I brought him in during the Covid. I was doing briefings every day, Steven Soderbergh, the director. 2010, it could have been done about COVID.

And I said to him, How were you so prophetic that you did a movie in 2010, ten years before, that was basically identical to what happened in COVID? And he said, Well, if you look at Ebola and Zika, etc., and you look at the responses, you knew what the response was going to be.

So the challenge is find out what we did, what we did wrong, Monday-morning quarterback, we lost the game, got it. But what do we do going forward? Because it is going to happen again. It is just a matter of time, and there will be a phone call that comes in from an airport that says I have a person here with a virus, what do I do with them? And we need a better answer and a

better procedure than we had last time.

The committee has a lot of topics to review, I understand that. I unfortunately had a first row seat through all of this from even before day one in New York. And there were questions that I still can't answer. How is the virus here in December and nobody noticed? Who was supposed to monitor it?

President Trump made good points about the WHO and the lack of monitoring. He questioned their motivation. I don't know about that, but somebody has to be monitoring these viral transmissions around the world. Who does it, and if WHO can't do it, who does? Is it the CDC, is it Homeland Security, do we need new agency?

We went through a period of denial of how serious this was. And that we hoped that it was going to go away. Viruses don't just go away. And we lost time. Our ability to get up testing was incredibly slow. And testing is the first step in dealing with any virus.

The president though was against

testing because he thought it made it look like the situation was worse. The testing reflects the reality and gives you the scope of what you're actually dealing with.

The president developed a vaccine in record time, which was a great accomplishment, I believe. And the president, President Trump at one time spoke to the great accomplishment of the vaccine and said -- if you look, I think he said the development of the vaccine was one of the greatest inventions of mankind or something. But he said if you look at who gets very sick and goes into the hospital, it's people who didn't get vaccines. And he was right. And somewhere along the way we lost that and developed this anti-vaccine, anti-mask mentality that wound up killing tens of thousands of people.

There was no national policy. It was left to the states. I am a big believer in states rights for obvious reasons. I was also a Federal Cabinet Secretary. And I understand the capacity of the federal government. When you leave the policy to

the states, you wind up with the quilt of 50 different policies. And you would have neighboring states with different policies.

And what that does is it says to people nobody is really sure what the policy is. Because New York says this, but New Jersey says this, but Connecticut says this. I don't have confidence in any of it.

People were actually shopping services going across the border. The restaurants were open next door, I'll go to the state next door. With that, they were bringing the virus.

The states can't handle these situations on their own. A state can't do procurement. We had every state trying to buy N95 masks. I was sending planes to China to buy masks. We wound up bidding against other states because they developed these broker industries where they would broker products from China, vials and N95 masks and etc.

So I would get a call, California is offering six dollars a mask. What do you offer? Okay.

6.50. I get a call, California says 6.75. It was bizarre that we would actually be bidding against each other.

And then obviously, nursing homes were the worst problem. If you're over 65, plus-65 Americans, 23 times more likely to die in a nursing home than if you were not in a nursing home. One time close to 50 percent of the deaths are coming from nursing homes.

What happened there, I know at the time the Republican administration blamed state governments for nursing home mismanagement. Started an investigation against four Democratic states. Twelve states followed the CMC -- CMS/CDC guidance at almost exactly the same time. Only the four Democratic states get investigated.

As it turns out, the investigations say New York did follow the CMS/CDC guidance. It turns out New York was, in the first year, number 39 in terms of pro rata nursing home deaths, and DOJ says -- makes no findings of wrongdoing by New York.

There are two theories of what happened in nursing homes. The theory that has been put forth, it was a readmission policy. I don't believe there's any statistical backup for the readmission policy; states that didn't do readmissions had higher infection rates. Nursing homes that didn't do readmissions had higher infection rates.

New York, we have 613 nursing homes. 365 took readmissions, 98 percent already had someone with COVID. But most importantly, it dismissed the CMS/CDC medical theory. And my health commissioner, Dr. Zucker, who you met, who couldn't be better credentialed for this type of situation. He was NIH, he was HHS, he was WHO, but he agreed with CMS and CDC. And they had a theory. Their theory was you can't leave senior people in hospitals to languish. They can get a secondary infection.

Their theory was they were releasing noninfectious people to the nursing homes. And they were noninfectious either because they took

the test or they were there past the seven-day period. The theory was they are noninfectious, and then they say to the nursing homes, you can only take them if you have transmission-based precautions, and we want them to go back to nursing homes because there were people who were in nursing homes and need that service. They have dementia or whatever the ailment was.

That was a medical theory. My health commissioner agrees with that medical theory. That is now basically dismissed as a medical theory.

But then why wasn't it dismissed at the time? And by the way, I don't even think it's been dismissed since. Nobody ever said CMS/CDC guidance is wrong. That would have been -- that would have stopped states from following it.

We put forth a theory on July 6 that said it basically came from staff. That is basically what the Harvard professor said to you, and when you think about it, the nursing homes, the staff come and go every day. They leave at night. They go

to dinner. They meet with their family. They go to a bar, they socialize. They get infected, they go right back to the nursing home the next morning.

There were no tests January, February, March, April, May in New York. Many states was much longer. 158,000 nursing home workers in New York going out every night, getting infected, coming right back into the facility. Four or five months.

France actually picks up on this. Develops a model that says the nursing home staff has to quarantine in the nursing home so they can't go out and get infected and come back. I don't know how practical that is, I don't know what scale you can do that on, but it points to the problem.

The -- those months, January to May, we didn't have testing and the testing was slow. I dealt with CDC. Initially, CDC in Atlanta wanted all the states to send them samples. And it took days to get them back. They wouldn't authorize state labs to do testing. They wouldn't authorize

private labs. I met with Vice President Pence to get authorization, and we didn't get until April.

So the last point, I'll end where I started. We need to know, and I hope this committee can provide a roadmap of how this should be done. There is no theory here. It's all operational.

That phone call comes, who does what when? Who calls who, what agency responds, what does the state do, what does the federal government do? But it is practical because that phone call can come tomorrow, and I am telling you we're going to be in the same position we were when COVID hit.

Well, we were supposed to have stockpiles, we don't have stockpiles. Well, I thought it was you and you thought it was me. This committee could do a great, great service by laying out the prospective procedure so when it happens again, we can pick up your report and say this is what you do.

If we're not in that situation, then we will repeat the tragedy that we went through. And that will be an even worse tragedy.

Thank you for taking the time.

BY MR. Benzine.

Q Absolutely. Before Jack gets started with the examination, I have a couple of logistical questions for you. We discussed it a little bit already, but are you generally aware that the Select Subcommittee originally subpoenaed you for a deposition to occur on May 24, 2024?

A I am not familiar with any dates. I know you were speaking to my attorney.

Mr. Benzine. Okay. Are you aware that after the subpoena was issued, we engaged in negotiations with your counsel regarding your voluntary appearance at a transcribed interview?

A I know you are speaking with my counsel.

Q Are you aware that on April 24, 2024, we and your counsel agreed to June 11, today, for that transcribed interview?

A I'm aware to the extent that I'm here.

Q Were you made aware by your counsel that at no point during these negotiations did we discuss or agree to limiting the time of your testimony?

A I thought we were done by 4:00 today. And I scheduled a plane.

Q We never agreed to a hard stop at 4:00. We never agree to hard stops. That answers my next question.

It's our understanding via your counsel that you will be leaving this interview at 4:00 today. That remains accurate; correct?

A That is my plan. I want to be cooperative, but that was the plan for the flight.

Q Okay.

Ms. Glavin. Just on this point, we had discussed last week in terms of the timing, I think you had said to me roughly that witnesses would be 10:00 to 4:00, 11:00 to 5:00 as we talked about the start time. That was the discussions that I had about waiving any privileges about this, because I assumed that that would be a reasonable time. And, of course, we want to be cooperative. He wants to answer your questions.

Mr. Benzine. During those discussions, it was a guesstimate. You asked how long do they usually

go.

Ms. Glavin. I agree. I agree. The governor wants to be cooperative. We want to answer questions. I'm hoping that we can do that in a day today so we can all go home.

The Witness. To relieve a little tension, don't talk fast for Barbara, but get it all in by 4:00, so I'll try to do so.

Mr. Benzine. You don't need to get it all in by 4:00.

EXAMINATION BY

BY MR. EMMER.

Q Governor, let's start by discussing your education and experience. Where did you attend undergraduate school?

A Fordham, law Albany -- Fordham undergraduate, Albany Law.

Q Who is your current employer, and what is your current job title?

A I have a JD -- I'm an attorney. I practice law, represent clients. I'm not affiliated with a firm.

Q Can you briefly go through your professional career up until now.

A Manhattan Assistant District Attorney, special assistant to the Governor of the State of New York. Manhattan District Attorney, Attorney General of the State of New York, Assistant Secretary HUD, HUD Secretary, Governor.

Q Thank you.

A Other things in there, but that's the brief one.

Q I want to start by asking you if you communicated with any of the following people regarding COVID-19 and nursing homes between January 1, 2020, and present, and for now you can say yes or no and we will come back and discuss each one.

Do you understand?

A Between January and today?

Q Yes.

Ms. Glavin. January 2020.

The Witness. Oh, January 2020?

BY MR. Benzine.

Q Correct. Specific conversations with COVID-19 and nursing homes. Not COVID-19 generally.

Ms. Glavin. So for the last, any discussions --

A Since January 2020?

Q Yes.

A Since the beginning of COVID-19?

Q Yes.

A Yes. Well, I spoke to everybody about COVID and nursing homes.

Q We're going to run through a list and attempt to refresh your recollection on specific conversations.

BY MR. EMMER.

Q First, Melissa DeRosa.

A Yes.

Q Ms. Linda Lacewell.

A Yes.

Q Mr. Gareth Rhodes?

A Yes.

Q Mr., Dr. Jim Malatras?

A Yes.

Q Mr. Rich Azzopardi?

A Yes.

Q Mr. Peter Ajemian?

A Yes.

Q Ms. Beth Garvey?

A Yes.

Q Ms. Judith Mogul?

A I don't think so.

Q Ms. Megan Baldwin?

A I don't think I had direct conversations. She was involved, but I don't think I had direct conversations.

Q Thank you. Mr. Larry Schwartz?

A Yes.

Q Mr. Robert Mujica?

A Yes.

Q Ms. Jill DesRosiers?

A Not so much. It was not really about nursing homes.

Q Ms. Stefanie Benton?

A Yes.

Q Dr. Howard Zucker?

A Yes.

Q Dr. Eleanor Adams?

A I don't think I know who Dr. Adams is. Who is Dr. Adams?

Mr. Benzine. She worked for Dr. Zucker at the Department of Health.

The Witness. She may have been involved in conversation, but I don't remember directly speaking with her.

BY MR. EMMER.

Q Ms. Sally Dreslin?

A I don't remember who she is. I don't remember who Ms. Sally Dreslin is either, but they may have been in meetings.

Q Mr. Gary Holmes?

A I don't know who he is.

Q Mr. Kenneth Raske?

A I spoke to him about hospitals. Not really nursing homes.

Q Mr. Georgio DeRosa?

A No.

Q Mr. Lee Perlman?

A About hospitals?

Q About nursing homes and COVID-19.

A Hospitals.

Ms. Glavin. Just to clarify the question, because I was a little unclear. The conversations about COVID-19 and nursing homes or COVID? Either/or?

Mr. Benzine. No, together.

Ms. Glavin. You're talking about together, okay.

BY MR. EMMER.

Q Is that how you understood the question, Governor?

A Yes.

Q Continuing, Mr. Michael Dowling?

A No. They are hospital representatives.

Q Correct. President Donald Trump?

A Yes.

Q Mr. Jared Kushner?

A Yes.

Q Dr. Anthony Fauci?

A Let me stop. Jared Kushner. I don't know nursing homes specifically, but COVID response.

Q Dr. Anthony Fauci?

A I don't believe nursing homes specifically.

Q Dr. Francis Collins?

A I don't know who that is.

Q Mr. Alex Azar?

A I don't recall who that is. I don't think I spoke to the Secretary. No, I did speak to the Secretary, but I don't remember what I spoke to him about.

Q Ms. Seema Verma?

A I don't think so. I may have been on calls and we did a lot of joint calls, but I don't recall.

Q Dr. Deborah Birx?

A Again, we may have been on joint calls. The Governor's Association would set up calls, but I don't remember anything specific.

Q Dr. Robert Redfield?

A I don't remember any conversation with him about nursing homes.

Q Dr. Michael Osterholm?

A I probably spoke to him about nursing homes.

Q Finally, David Grabowski?

A I don't -- I don't think I've ever spoken with him that I recall.

Mr. Benzine. You cited him in your opening statement.

The Witness. He gave you testimony from Harvard.

BY MR. EMMER.

Q Let's start with Ms. DeRosa, what do you recall about your conversations with her related to COVID-19 and nursing homes? Did you discuss the March 25 order with her?

A Only after the fact. The March 25 order we were not aware of until it came up at a press conference.

Q Did you have subsequent discussions about where the order originated from with Ms. DeRosa?

A After the press conference, we had an initial conversation. It came up at -- I would do daily briefings, it was a question at the briefing, no

one knew the answer besides the health commissioner, Zucker. He answered the question. After briefing, we went in and we had a conversation about what is the March 25 order.

And he explained what it was, and he explained the medical theory of CMS and CDC that I went through with you and his medical theory on how we agreed with CMS and CDC. And that was a group discussion.

BY MR. Benzine.

Q In that discussion, did you learn where the order originated from?

A It was a Department of Health advisory. I am not even sure that Dr. Zucker saw the advisory before it went out. The way it was portrayed to me was CMS/CDC does guidance. They had done guidance on -- don't hold me to the dates -- 9, 13, 23, and then the state went on the 25th following the CMS/CDC guidance, and this was a state advisory consistent with the CMS/CDC. CMS/CDC normally effectively calls the shots for Medicaid, Medicare. And the state issued an

advisory following those, that series of guidance.

Q And what you said is consistent with Dr. Zucker's testimony, which is that he didn't know where it came from either.

Do you know who drafted the order? Do you know whose idea the order was?

A I think Dr. Zucker says it came from the Department of Health.

Q But he's the commissioner, and he didn't approve it. You're the governor, and you didn't approve it. So like who approved it?

A Who initially approved it?

Q Yes.

A It had to be someone in the Department of Health. It was issued by the Department of Health. Dr. Zucker agreed with the advisory.

Q No, I understand that. I'm trying to figure out who wrote it and who approved it.

A Well, he said to me he didn't see it until a week after. It may have been just a staff-level DOH medical staff following CMS/CDC guidance, and they issued a state advisory pursuant to the

CMS/CDC.

Q Did you ever ask him who drafted it and where the order came from?

A No, it was never an issue because he said it's right.

BY MR. EMMER.

Q What about Mr. Larry Schwartz? What were the nature of your conversations with him related to the March 25 order? Or, excuse me. Did you have conversations with him about the March 25 order?

A He was not really involved in that, the best I know.

BY MS. GLAVIN.

Q Just to make sure temporally here, if you did not know about the March 25 order until after the fact, you would not -- would you have had conversations with Mr. Schwartz before?

A No.

Q I just want to make sure.

A I never heard of the March 25 order or CMS guidance or CDC guidance or any of this until on April 20 when I get asked at a press conference, a

question at the press conference, but I had never heard of any of this until then. After the question, then they briefed me on the topic.

BY MR. EMMER.

Q Just since we're talking about Mr. Schwartz right now, what was his role within your administration?

A He was a former Secretary. He came back to help. I forget exactly what he was working on, but he was working on a discreet project.

BY MR. EMMER.

Q Going back up the list a little bit, do you recall the nature of your conversations with Ms. Lacewell regarding COVID-19 and nursing homes?

A She was not involved. Vis-a-vis the March 25 order?

Q Or did she become involved with the July 6 report?

A She became involved -- I don't know in the July report specifically, but Linda Lacewell was a former assistant U.S. Attorney who worked for me in the Attorney General's office. She's sort of a super

lawyer. And I trust her when we have a problematic situation in the bureaucracy and you really need someone to go in and untie the situation.

There was an issue, ongoing issue about counting at DOH and surveys by DOH, and data from DOH. And I don't think I assigned her, but she was working on trying to figure out the data issues at DOH.

Q She testified to us that she had a conversation with Larry Schwartz regarding the origination of the March 25 order.

Did you ever talk to Ms. Lacewell about that conversation?

A No.

Q Did you ever talk to Larry Schwartz about that conversation?

A No.

BY MR. EMMER.

Q What was the nature of your conversations with Ms. Benton regarding nursing homes and COVID-19?

A Ms. Benton was my executive assistant, so she was in the room with all the conversations so she would hear them.

Q Did you ever discuss the July 6 report with Ms. Benton?

A No.

Q Or to the best of your recollection, do you recall whether she was involved with the July 6 report?

A No. She was my executive assistant. So she would -- literally outside my office is my executive assistant. She wasn't doing anything substantive outside of assisting me in what I was doing.

Q What do you recall of your conversations with Dr. Jim Malatras about COVID-19 and nursing homes?

A He was also involved more on the figuring out the data with the Department of Health, I believe.

Q Did you ever discuss how data was reported publicly with Dr. Malatras?

A Not -- I don't remember -- well, there was an

ongoing discussion about the data, what is collected, how it's collected and problems with collection. That was the ongoing conversation.

Q When asked about Dr. Adams, you said maybe she was in the room, but you didn't recall specifics. Dr. Adams testified that she was on a phone call with you and Dr. Zucker and Ms. Garvey in the fall of 2020 where you ordered Dr. Zucker to fire her.

Do you recall that conversation?

A No. No.

Ms. Glavin. When you were making references to testimony by others, is it possible to get what the actual Q and A was?

Mr. Benzine. Not yet.

The Witness. She said I ordered Dr. Zucker to fire her?

BY MR. Benzine.

Q It was the only conversation she ever remembered having with you.

A Well, it would be a memorable conversation, but no.

BY MR. EMMER.

Q Governor, since January 2023, have you had any conversations with any former members of your administration about our investigation?

A 2023?

Q January 2023; correct.

A Have I had conversations about your conversation?

Q About the Select Subcommittee's investigation into nursing homes.

A I have said that I'm coming here. I know other people appeared here, but besides that, no.

BY MR. Benzine.

Q Any direct conversations with Ms. DeRosa about your substance of the testimony?

A No.

Q Any conversations with Ms. Lacewell about the substance of your testimony?

A No.

Q What about Ms. Garvey?

A No.

Q What about Dr. Malatras.

A No.

By Mr. Emmer:

Q At this time I'd like to introduce what will be marked as Majority Exhibit 1.

(Majority 1 was marked for identification.)

Mr. Benzine. Just so you all are aware, we will be taking all of the exhibits back at the end of the interview.

BY MR. EMMER.

Q Governor, this is a text message that you sent to Dr. Malatras on February 18, 2024, and I'll give you a moment to review.

A Okay.

Q It reads, "Hello, Jim. Now, that the dust has settled and the truth is being revealed, I wanted to check in with you and see how you are doing. I'm sure you will do well, because quality and talent always wins in the best. All the best, Andrew."

A What year is this?

Q This is 2024.

A So this is after everything?

BY MR. Benzine.

Q It's 48 hours after Dr. Malatras received an invitation to testify before us.

A I hadn't spoken to Jim. I don't think I spoke to him since this period of time period. I think this was just saying -- he went through a very tough time and was forced to resign from the state university system, and I think I'm saying to him -- I think that's what this is in reference to.

Ms. Glavin. One second.

(Discussion held off the record.)

A There was also ongoing conversations with Jim and litigation with him and I've known him a long time. He's a great fellow and he was getting beaten up, and I think I was just saying to him, you know, you're a good man.

BY MR. EMMER.

Q To the best of your recollection, when was the last time you contacted Dr. Malatras before

this text?

A I don't think I've spoken to Jim since I left as governor.

BY MR. Benzine.

Q I guess it's just a coincidence that Dr. Malatras got this text message within two days of getting an invitation to testify on nursing homes.

A I didn't know that Jim -- I haven't had -- I haven't had conversations with Jim. Jim never told me he was coming here to testify.

BY MR. EMMER.

Q Were you aware that he received a letter, though?

A No.

Q So this text wasn't -- you weren't trying to influence his testimony in any way by sending this text message?

A No.

Q Have you ever attempted to influence the testimony of any witness providing information concerning your administration's response to this

Select Subcommittee?

A No. By the way, this is just a nice note to a person.

(Discussion held off the record.)

A I don't ask to speak with him. I don't suggest anything. It's just a nice note.

Mr. Benzine. We're just asking, the timing was just interesting. We're just asking questions.

BY MR. EMMER.

Q Now, Governor, I would like to ask you if you had any interactions with any of the following institutions related to COVID-19 and nursing homes between January 1, 2020, and present.

First, U.S. Centers for Medicare and Medicaid Services.

A Did I have interactions with them?

Q Correct.

BY MR. Benzine.

Q Specifically regarding nursing homes.

A Meaning what? We interact with them every

day on nursing homes. "They" regulate nursing homes.

Q Did you have any conversations with CMS regarding the March 25 order?

A Did I -- I may have. I don't remember.

Q Do you recall if anyone on your staff had any conversations with CMS regarding the March 25 order?

A No, but I would -- in the normal course of business, they would.

Ms. Glavin. Just want to make the record clear. At 10:53 a.m., representative Stefanik just left the room. Just want to make sure we have a clear record of who the members are. Thank you.

Dr. Wenstrup. Did you get when Dr. Ruiz left too?

Ms. Glavin. I missed that. He's here.

Dr. Wenstrup. He stepped out.

Ms. Glavin. Thank you.

BY MR. EMMER.

Q Continuing, the Office of the New York State

Attorney General.

A Yes.

BY MR. BENZINE.

Q Were you interviewed in Ms. James' investigation?

Ms. Glavin. Which one?

Mr. Emmer. Related to nursing homes.

Mr. Benzine. Related to nursing homes.

The Witness. No, I don't believe I was.

BY MR. EMMER.

Q The Manhattan District Attorney's office?

A No.

Q The New York State Comptroller?

A No.

Q The New York State Assembly Judiciary Committee?

A No.

Q The U.S. Department of Justice related to nursing homes?

A No.

Q Greater New York Hospital Association?

A Was I interviewed by them?

Q Have you had conversations related to COVID-19 and nursing homes?

A We had -- they run -- they represent -- I think they represent hospitals and nursing homes actually. So I had conversations with them about hospitals.

BY MR. BENZINE.

Q Specifically regarding hospital capacity?

A Yeah.

Q Did you have any conversations with them regarding discharging patients from hospitals?

A No.

BY MR. EMMER.

Q Northwell Health?

A Yes. What about hospitals? They don't run nursing homes.

Mr. Benzine. Same nature of the conversations regarding hospital capacity?

The Witness. We were always keeping an eye on hospital capacity.

Q Finally, McKinsey and Company.

A I don't think I spoke with them. I may have,

but I don't think I spoke with them.

Q Thank you.

Now I'd like to ask you some general operational questions.

Governor, did you ever conduct business via personal email?

A No.

Q Did you ever conduct official business via personal cell phone?

A No.

Q Did you ever conduct official business by an encrypted messaging app like Signal or WhatsApp?

A I am not that sophisticated.

Q Do you recall conducting official business by any other internal messaging app or service?

A No.

Ms. Glavin. Wait a minute. He had a BlackBerry.

Mr. Benzine. That was the next question.

Ms. Glavin. Okay.

By Mr. Emmer:

Q Did you ever use PIN messaging through

BlackBerry to conduct official business?

A Yes.

BY MR. BENZINE.

Q Do you recall who else on your staff used Pin messaging?

A No.

Q Did you ever send a PIN message to Ms. DeRosa?

A I'm sure I did.

Q What about Ms. Lacewell?

A I'm sure I did. Well, she left --

Q August of '21, I believe.

A I don't know if they were using PIN when she was there.

Q What about Ms. Garvey?

A I don't know.

Q How about Dr. Malatras?

A He left also.

Ms. Glavin. Are you guys -- is this limited by a time period here on the PIN messaging? He was governor for a period of time. Some people have BlackBerrys, they got phased out.

Mr. Benzine. We're trying to figure out what records were retained. This is questions for Governor Hochul.

BY MR. EMMER.

Q Finally, did you conduct PIN messaging with Ms. Benton?

A Yes.

Q So how did you typically communicate with members of your administration?

A In person, by telephone.

Q And did you have a state-issued phone?

A I had a -- I believe I had a state-issued phone yes.

Q Did you have a state-issued email?

A No. I may have had a state-issued email, but I didn't use it.

Q Governor, did you ever instruct anyone from your administration to delete emails or other official records?

A Not official records, no.

Q Thank you.

BY MR. BENZINE.

Q Just for clarity on that, we have heard from, I believe it was Ms. Garvey, that sometimes unofficial things, campaigns, political fund-raisers get to your email. Is that what you referenced when you said you never instructed anyone to delete an official record?

A Well, you shouldn't be sending a campaign email on an official --

Q I know. And she just said that it happened by accident sometimes. It will get shifted or to the personal email or deleted. Is that what you were referencing?

A I don't remember that.

Mr. Benzine. Okay.

BY MR. EMMER.

Q Governor, let's talk about the COVID task force for the State of New York in response to the pandemic. Can you briefly describe what role the task force played in the administration's response?

A The COVID task force, it was basically an assemblage of the best people we had to manage

COVID and the projects under COVID.

Q Do you recall who the members of the task force were?

A Main ones were Linda Lacewell, Malatras, obviously Zucker. A lot of logistical work was done by the commissioner, different commissioners.

Q Do you recall whether members of the task force --

A Specific areas? I'm sorry?

Q Do you recall whether members of the task force had specific areas that they were responsible for managing?

A Some did, yes.

Q Do you recall whether there was a member who was responsible for overseeing nursing home response?

A Well, that was in Zucker's shop. You had a second -- there was an issue with data collection in the Department of Health. So Linda went to help on that.

Q And you mentioned before that there were main members of the task force. Would you say that

there were members that have more authority to issue guidance or policy for your administration?

A Nobody issued guidance besides the Department of Health.

Q What was Dr. Zucker's -- you mentioned it before, but what was his role on the task force?

A He was the main person.

Q In December, Dr. Zucker testified that he was the only healthcare professional on the task force and that he didn't have regular meetings with you.

Do you disagree with that characterization?

A Well, you know, it was COVID and nobody was -- it was paranoia about exposure, even though everybody was getting tested, but I spoke to him regularly. Whenever he wanted to talk to me, we talked. When I wanted to talk to him, we talked.

Q So you disagree with his characterization that he didn't have regular meetings with you?

A Well, we met whenever he wanted to meet.

Q Was there anyone outside your administration --

A I'm sorry. Talking on the phone maybe is not

a meeting, but I spoke to him on the phone. No, I'm sorry. I was with him every day in the briefings. Every day I was with him.

Q Did you seek advice outside your administration?

Mr. Benzine. Regarding nursing homes.

A I spoke to everybody who, on the planet, who could offer any advice. Spoke to people who were doing it in Italy, spoke to people from China, spoke to WHO people. Brought in people.

BY MR. BENZINE.

Q Do you recall Ms. Lacewell's title while she was in your administration?

A She was Special Counsel.

Q During COVID?

A During COVID -- she was with me from the Attorney General's office and had a number of positions and titles. She was also the DFS, Department of Financial Services superintendent.

Q Was she in that role during the pandemic?

A I'm sure. But I think she always had a title of Special Counsel also.

Q Did you have a legal retainer agreement Ms. Lacewell?

A A legal --

Ms. Glavin. Legal retainer?

Q Did you have a retainer with Ms. Lacewell for her to provide legal counsel for you?

A I didn't have retainer agreements with my counsel.

Q She was not a special counsel to the governor during the pandemic. She was only DFS superintendent, but she also said that she provided you legal advice, so I'm wondering if you had a retainer through the provision --

A I didn't have any retainer with any of counsels.

Q I'm saying she was not one of your counsels.

A You're a counsel if I say you're a special counsel. That makes you a counsel. When you are appointed special counsel, Beth Garvey is appointed counsel to the governor. There's no retainer agreement with Beth Garvey.

Q I understand. Is there a process of

appointing someone special counsel?

A Yes, I say you're appointed special counsel.

Q Do you have to fill out any paperwork?

A No.

Mr. Emmer. Congressman McCormick has joined the interview. Can you please announce yourself for the record?

Mr. McCormick. Richard McCormick.

Ms. Glavin. I should also just note for the record that Representative Stefanik came in at 10:59 a.m.

Mr. Benzine. Do you want to know when all the other members came in?

Ms. Glavin. I didn't see them.

Ms. Stefanik. I stepped out and came in.

Mr. Benzine. If you're going to pick on one member, we ask that you pick on all of them.

Ms. Glavin. I'm not nitpicking.

The Witness. I'm sure she'll nitpick on all of them.

Ms. Stefanik. I'm sure there will be a time stamp on when I'm coming in and out.

Ms. Glavin. I want to get all the members. But the problem is you're in my line of sight. I did not see Mr. McCormick. Nice to meet you, sir.

BY MR. EMMER.

Q Governor, can you explain how health department guidance was developed and issued during the pandemic?

A Health department guidance was issued and developed by Dr. Zucker's office.

Q Did you ever order the health department to issue guidance?

A No. First they issued advisories. CMS/CDC did guidance. We did advisories off the guidance, but no. There may have been -- when questions would come up or topics would come up, I would talk to him about the issue.

BY MR. BENZINE.

Q "Him" meaning Dr. Zucker?

A Dr. Zucker. But I am a big believer, and I want to be clear with the chairman also. Politicians shouldn't be setting policy, medical policy. I agree. I'm from the school know what

you don't know. I know a lot of things. I know nothing about medicine.

So -- and Dr. Zucker again, he's taken such an unfair beating in this, but his credentials, you couldn't design better credentials for this position at this time. Not just a medical doctor. CDC, NIH, WHO, taught at Yale and Columbia. So I trusted him.

Q Was it odd that the March 25 order was issued without your knowledge?

A I never knew when advisories were going -- I didn't track any of the CMS/CDC. I'm not a medical doctor. I had other responsibilities. I wasn't reading CMS/CDC policy. That was a pure medical science health function.

Q What was the approval process going through the executive chambers?

Ms. Glavin. For what?

Mr. Benzine. For health department guidance.

The Witness. I don't know that there was one. If anything, it may have run through a counsel's office because there was a health department

counsel. But that's it.

BY MR. BENZINE.

Q Ms. DeRosa wouldn't approve the guidances?

A No.

BY MR. EMMER.

Q Following up on that question, it's been reported that agencies, including the health department, needed permission from the executive chambers to issue guidance.

Are you aware such an arrangement?

A There may be -- there are protocols. There may be a counsel signoff. And the executive chamber has counsels for respective areas. And that may be what they're referring to, but they are technical in nature.

Mr. Emmer. We can go off the record.

(Discussion held off the record.)

(Recess taken from 11:09 a.m. to 11:17 a.m.)

Ms. Glavin. So we're back on at 11:17, and Representatives Ruiz, Wenstrup, Stefanik,

McCormick are here. Oh, he's not here. And I made a mistake and will correct the record. The trial that I put off, it was June 12, not May.

BY [redacted]

Q Good morning, Mr. Cuomo. Thank you for your voluntary participation in this interview.

My name is [redacted], counsel for the minority. I'd just like to ask you a few questions about your administration's public reporting of nursing home deaths, and we can limit the time period in question to April 2020 through April 2021.

As an initial matter, it might be helpful if we can just talk in general about your administration's public reporting of COVID-19-related deaths.

So Mr. Cuomo, putting aside the question of whether a death should be classified as a hospital or a nursing home death, is it correct that your administration publicly reported COVID-19 related deaths?

A We reported COVID-19 deaths by the place of

death. Total deaths. You died in the hospital, you died in the nursing home. And that was a number I did every day, and that was the relevant indicator because we were watching a trend. And the trend line, is it going up, is it plateauing, is it going down, the total deaths was a key indicator in that.

Q This may be what you were referring to just now, but is it correct that your administration maintained an overall fatality tracker of COVID-19-related deaths regardless of whether they occurred at a hospital or a nursing home?

A Yes.

Q Why was it important that your administration publicly report COVID-19-related deaths?

A It was important -- I was doing briefings every day. In many ways, they were juxtapositioned with the briefings that President Trump was doing. And my briefings were about here are the facts so you have a sense of where we are today. Your life is out of control, you don't know what's happening, here are facts.

Yes, I'm a Democrat and you're a Republican, so you're skeptical. No politics. Just here are the facts. This is how many people died today, this is the infection rate today, this is the testing rate today. Here are the facts.

And if you plot it, this is what it looks like. And that gave people a sense of control. And my big thing on all of these numbers and my staff was it had to be accurate. It had to be accurate. Because the franchise was trust this information. And that was one of the key indicators were the number of deaths.

Q Okay. Let's talk specifically now about your administration's public reporting of nursing home deaths related to COVID. Why was it important that your administration publicly report COVID-19-related deaths related to nursing homes?

A When it starts, it wasn't except that's the place where they died. There was no special significance to nursing homes versus hospitals. It's just that was the place where they died.

So 14 died here, 27 died here, here is the

total number.

Q Was there any importance to pointing out to the public that someone had died in a nursing home?

A Yes, because it was part of the total number of people who died.

Q But specifically, a nursing home as opposed to a hospital?

A Initially, no.

Q How about after the initial period?

A What happens later on is it becomes a political issue. Because the number of deaths in nursing homes goes up, and now people start to focus on nursing homes as a nursing home phenomenon. The March 25 order comes out and everybody is trying to point fingers at who did what, and they point fingers at the March 25 order.

So to you they say what are the nursing home numbers in New York after the March 25 order that the people died in the nursing homes. And it was politically driven.

Q Is there a public health reason for reporting deaths that occurred in nursing homes?

A Of course there's a public health reason.

Mr. Benzine. I'm sorry to jump in. The woman sitting behind [redacted] you never identified yourself for the record. Could you identify yourself?

Ms. Benton. Stefanie Benton with Governor Cuomo.

Q Could you tell us your understanding of how the administration communicated the number of nursing homes deaths to the public.

A I said every day this is the number of nursing home deaths.

Q And you're referring to at a press conference?

A Yes, I did briefings every day, and I said this is the number of deaths in nursing homes to date.

Q Other than your statements at a press conference, were there any other ways that the administration communicated to the public --

A It was on a website that said these are the number of deaths in nursing homes today. In press releases it said this is the number of deaths in nursing homes today.

Q Did the Department of Health, which I'll call DOH, maintain that website?

A I don't know.

Q Is it your understanding that some of the questions your administration received was because for some time that website did not post out-of-facility deaths in its breakdown of nursing home deaths?

A Yes. That became the political football after March 25, primarily.

Q We've heard elsewhere that there were concerns about potential double counting in the reporting of nursing home deaths. Do you have an understanding of what those concerns were?

A They were more internal. When you're talking about these reporting, what would happen is there's roughly 600 nursing homes and 300 hospitals. The Department of Health would send

them a survey every day asking questions. The press was then changing the information that they wanted, so DOH was changing the surveys. And they were sending surveys to the hospitals and surveys to the nursing homes.

It became clear that at one point, the nursing homes, frankly, I think, what they expressed to me was they were getting deluged with this paperwork. Meanwhile, they're in the middle of this chaos trying to save lives. And we're asking them to fill out a form of 57 different items. They were like this is not the time to do this. And DOH was changing the forms. So there was uncertainty about the data quality.

Q You may have touched on this in the previous round, but within the COVID task force, who were the individuals primarily responsible for overseeing that collection from nursing homes and reporting it to the public?

A It was DOH until they knew there were trouble issues with the data. And then I believe Linda Lacewell went in to try to sort it out.

Q Do you have an understanding of how Ms. Lacewell came into that role?

A No. But it's the kind of thing she did. She was a troubleshooter.

(Minority A was marked for identification.)

Q Minority Exhibit A is a May 19, 2020, email from Megan Baldwin to Linda Lacewell, Jim Malatras and other individuals. You're not on this email. I'll just pass it around.

There's an attached article, but you don't really need to read it.

A Okay, I got the gist of it.

Q First of all, what was Megan Baldwin's title at the time of this May 19 --

A She was some liaison to the Department of Health or worked in the Department of Health. I'm not sure.

Q Did Ms. Baldwin work with Ms. Lacewell on matters related to nursing home data?

A I don't know.

Q Who did Ms. Baldwin report to?

A I don't know. Because I don't know if she worked in the Department of Health. I don't know where she actually worked.

Q Who did Ms. Lacewell report to?

A She would report to Beth Garvey and Melissa DeRosa.

Q I'm going to try to characterize these emails and just let me know if you think it's a fair characterization.

It looks like this chain started when Melissa DeRosa forwarded the Post Standard article about your administration's data collection from nursing homes. Ms. DeRosa asked some individuals, including Ms. Baldwin and Ms. Lacewell, if they can gather the facts about that data collection. Ms. Baldwin provides a timeline for your administration's data collection from nursing homes and how your administration first publicly reported that data. Is that a fair characterization?

Ms. Glavin. I just would --

The Witness. I haven't read it, but I'll

accept your characterization.

Ms. Glavin. The exhibit speaks for itself.

BY [redacted].

Q If we can go to the bottom of the first page, Ms. Baldwin begins a section headed by publicly posted data. If you can turn to the second page, Ms. Baldwin lists three dates and describes the categories of nursing home deaths that your administration was publicly posting as a nursing home death. And by "categories," I mean confirmed and/or presumed, in facility and/or out-of-facility deaths.

Do you see that?

A Yes.

Q If we can just focus on the first date, Ms. Baldwin writes that, “On April 14th, DOH posted the total deaths (included in facility and out-of-facility deaths, confirmed and presumed).”

Mr. Cuomo, is it correct that your administration, through DOH, posted in-facility and out-of-facility deaths when it first began publicly reporting nursing home deaths?

Ms. Glavin. If you know.

The Witness. I don't know.

BY [redacted]

Q Do you believe that it was important for your administration to report in-facility and out-of-facility deaths?

A I think it was important to report accurate information. And what they're saying there is if you read the next line, "retrospectively reconciled," and if you read the first page of the memo, it was clear that there was -- it was confusion in the surveys and the data they were getting.

So accuracy is important. And that was of paramount importance to me. Once they say the -- once they say information they were providing is incorrect, then why would I believe you going forward.

Number 2, which you're leaving out, is President Trump was accusing me of inflating the death numbers. He accused me of inflating the death numbers and overcounting deaths to make him

look bad politically. He did this a number of times.

He criticized me for adding presumed deaths as a way to inflate the number. He believed the higher the death number, the worse for him politically. So he was saying you are inflating numbers to make for political purposes and, it was very important for me to stay away from any political nonsense, especially in the midst of this. That was his accusation.

He's also accusing the entire counting system of being phoney. He said, "If I have COVID and I get hit by a car, and I go into a hospital and I die because I got hit by the car, you count that as a COVID death."

So he was questioning the entire counting methodology, specifically our counting methodology, and accused us of overinflating deaths.

That's why the suggestion of -- that has been made, the newspapers, etc., maybe we were trying to reduce the death count. Take a conspiracy

theory. Pick either one. We were padding and overcounting says President Trump, or we're trying to undercount. Pick one.

President Trump is you're overcounting, you added "presume," which, by the way, only eight states added "presumed." And, by the way, "presumed," I think the president had a point, but what does that mean, "presumed"?

But you're overcounting to make me look bad because the more deaths the worse it looks like for President Trump? That was his operating theory. That's why his operating theory was he was against testing. The more tests, the more infected people, the worse it looks like politically for President Trump.

The more deaths, the worse it looks like for President Trump. That's his words, not mine. We didn't overcount, we didn't undercount. We did the total which we knew was accurate.

Q A couple minutes ago you pointed out the second date and the words "retrospective reconciled." Could you just explain what you

understand those two words to mean?

A They knew there were issues with the data because it was double counting. So they then did a -- attempted a retrospective where they called up nursing homes and said, Please go back and track every person who left the nursing home and tell us what happened to them. Did they go to a hospital did they go home. Did they live? Did they die? Did they die? Was it a presumed COVID death, which we counted as out-of-facility deaths, and do it retrospectively from the start of time in the middle of a pandemic.

Q Is there a sense that because reconciled is in the past tense here in this email, that there is an extent to which this review process which you're talking about has been completed?

A I don't know what you're saying. It says "using retrospective reconciled data."

Q Right. Reconciled is in the past tense.

A Retrospective is also past tense.

Q That's an adjective. Reconciled is used as a verb here.

A Yes, retrospective is referring to the past; right?

Q Right. So this review process that you're talking about --

A Was asking them to go back.

Q What does "reconciled" mean? I can see retrospective looking backward.

A I don't know what they were reconciling it with.

Q A couple of weeks ago, Dr. Malatras testified that in April and May 2020, some combination of Ms. Lacewell and Ms. DeRosa were the individuals who would be determining how DOH publicly reported nursing home deaths.

Is that consistent with your understanding?

A No.

Q Why is it not consistent with your understanding?

A The -- we were reporting nursing home deaths as total deaths, as I said. And that was the main barometer, and that's what we were following.

There is then a political moment where deaths

are increasing in nursing homes, who is to blame for nursing homes. President Trump blames, primarily, Democratic governors for mismanaging nursing homes. Says they should be investigated. And says we're overcounting deaths. And then there's a lot of attention on how are you counting deaths.

And there are issues with the Department of Health data, which is what I referred to in that memo. We did the survey, we changed and we changed and we changed it. So the effort was once the Department of Health says there are issues with this data, then Linda was trying to figure out the issues with the data.

By the way, all along, this is a totally transparent situation. The press is reporting we're not including out-of-facilities. Everybody knows. We're not including out-of-facilities. We made that adjustment where we added presumed, which bumped up the number.

President Trump attacks me, I'm inflating the number. And attacks me that presumed is a bogus

category anyway. And the newspapers are writing we're not doing out-of-facility deaths. And we're saying when we know we have the correct number, we will release it.

Q Let's talk about out-of-facility deaths and return to the second date on May 4. Ms. Baldwin, she writes, "On May 4th, we switched to posting in-facility confirmed deaths only
using the retrospective, reconciled data."

Is it your understanding that in early May 2020, DOH switched to posting in-facility deaths only in its nursing homes reporting?

A I don't know what they did.

Q Do you have some idea of when DOH began reporting only in-facility deaths and excluding out-of-facility deaths in its nursing home reporting?

A I know they had issues with the data. The data was suspect. President Trump was accusing us of inflating numbers and that the numbers were fake news. DOH was saying we have questions about this data. President Trump is saying I have questions about the data. I was saying, Make sure

the data is right. And this is all out in the public.

The back-and-forth with President Trump, I'm not overcounting, he says I am overcounting. I say we're not including out-of-facility deaths in these numbers, but we are including presumed, and when we are sure what the out-of-facility numbers are, we'll release those numbers also.

Q Is it your understanding that Ms. Lacewell and/or Ms. DeRosa would be involved in the decision to report only in-facility deaths?

A No. Ms. Lacewell was there to audit the data. When the data is right, put it out. If you don't know that the data is right, don't put it out.

President Trump is accusing me of inflating numbers. If we put out numbers that are wrong and say the death count goes up another thousand if we had just said the death count of presumed went up another thousand, and then President Trump says, Oh, really? Explain to me the 1,000. And the 1,000 turned out to be false or there's a high

degree of error, that would be a problem.

Q Was it your understanding that Ms. Lacewell or Ms. DeRosa was involved in determining whether, as you said, the numbers were right for release?

A Ms. Lacewell was in charge of going through the audits and trying to make sense of them. But let me cut to the chase with you. What are you trying to get at?

Q I'm not here to answer your questions.

A So to help you, what are you trying to say?

Q We're just interested in decision-making, who was involved in those decisions. That's why we're asking who was involved in the decisions.

A So President Trump is saying Democrats are inflating, Cuomo is inflating. We have issues with the out-of-facility deaths, the press is asking for out-of-facility deaths, everybody knows we're not including out-of-facility deaths. I say when we have the correct numbers, we will add them.

Q In April or May of 2020, was it ever expressed, not necessarily by you, but in a

conversation that you were a part of, that not reporting out-of-facility deaths would be in your political interest?

A On what possible bizarre theory?

Q I don't have a theory. I'm just asking you if that was ever expressed.

A No. There is no theory by which I would have a political interest. Trump is saying I'm padding the numbers; right. I did have a political interest in making sure the numbers were accurate. And I did not want to put out numbers where President Trump could say they're fake, and I couldn't justify the numbers, if you want to call that a political interest. I also call that a governmental interest.

But was there any interest in undercounting?

No. Because New York was first in everything. There was no argument New York had few cases. We didn't have few cases. We had the most in everything. That was the point. We first and worst. Highest infection rate, highest death rate.

Q Okay. Do you recall that on January 28, 2021, the Attorney General released a report finding that more nursing home residents died from COVID-19 than DOH's nursing home data reflected?

A I did not read her report. I know that report said that our March 25 guidance was consistent with the CMS/CDC guidance, which was the most important question in my mind.

Q Okay. I'm just asking to place a time stamp on that date, January 28, 2021. My next question is between May 2020 and January 28, 2021, were you involved in discussions about whether DOH could report in-facility deaths in its nursing homes reporting?

A No. What happened during that period is in August, we get a request from the Department of Justice, Mr. Jeffrey Clark, who winds up getting indicted on January 6, and Mr. Michael Caputo, who winds up -- good New Yorker, who winds up leaving the government under questionable circumstances, we get a letter requesting the nursing home data. And this is right after President Trump says we

should be investigated by the Department of Justice.

And these are two political operatives. This is about August. At that point, the lawyers say be very careful.

Ms. Glavin. Be careful on privilege discussions, Governor.

The Witness. Yes.

Ms. Glavin. Not waiving any privileges here.

The Witness. Generically, lawyers say this appears to be a politically-motivated investigation. You provide numbers that are false, that is a Federal False Statement Act, which is the easiest federal case to bring. Make sure everything is correct. And you're dealing with this very nebulous, imprecise, presumed death.

Who presumed the death? The wife believed he died of COVID. By the way, Richard Brodsky dies. Everybody says -- he was an assemblyman from New York. He died from COVID. Headlines, Richard Brodsky dies from COVID. The family calls and

says we don't believe he died from COVID. Well, we want an autopsy. We want a test. Test him, he didn't die from COVID.

Okay. So now I would have been technically wrong on that as a presumed death; right. So this happens in August, that doubles the scrutiny on the numbers. We had said -- the assembly and the senate meanwhile requests the number, state assembly and the senate requests the numbers. We had said we would present them the numbers in January because we were dealing with the Department of Justice. The Attorney General, just before we're about to announce the numbers, puts out a quick report on the numbers, which I believe was done politically just to get ahead of our announcing the numbers. Which report turns out to be incorrect and that she had to correct.

But I think it was just a political move by the Attorney General to get out ahead because she knew we were about to announce the full numbers.

Q The DOJ inquiry you're talking about, that was sent to you or noticed to you in August 2020.

And the state legislature questions the nursing home deaths - was that also received by the administration in August 2020?

A Around the same time, maybe earlier. But we contacted the assembly and the senate and said we have a DOJ request. It's a political investigation. It's a weaponized justice system. We have to be very careful. Let us deal with this DOJ request, and then we'll respond to the assembly and the senate when we know we are a hundred percent right.

We then have a date set for the assembly and senate, so now everybody knows we're going to present to the assembly and senate. The Attorney General jumps ahead of us on that day.

Q I'm just curious about the deadline of January 2021 when you gave the senate the numbers. If you were aware of the request in August 2020, I'm just curious why you set the deadline for January 2021.

A It was a new legislature. January 2021 the year starts again. Legislature comes back into

session, etc.

Q Who was involved in those discussions around setting a deadline for the release of the numbers to the legislature?

A I don't know who. It would have been the governmental department, but they would have spoken to the -- I know they spoke to the two staff leaders of the assembly and the senate and explained the situation and said, We'll give you the numbers in January.

They were both Democrats. Frankly, they understood, they had been watching the news and Trump directing investigations. So they understood the situation.

Q Were members of the executive chamber or COVID-19 task force involved in those discussions?

A I don't know, but it was a simple discussion. We have to make sure the numbers are right. We have to provide them to the Department of Justice. This is a politically motivated investigation. The lawyers wanted to double-check everything. We'll have it ready January, 2021, because the

legislature basically disappears at the end of the year anyway.

Q What was your understanding of the concerns about the numbers in August 2020?

A That they weren't correct.

Q Do you have an understanding of the specific ways in which they were not correct?

A They were just imprecise. Look, I still -- I believe if you went back and audited any out-of-facility number, you would come up with a different number. It took the CDC two years to determine the 2020 out-of-facility number. Two years.

It took the New York State Comptroller one year to audit the out-of-facility numbers. You have states two years later changing the out-of-facility number. Why? Because it's almost impossible. Recreate nursing home, go back and track every patient who you sent from your facility, find out where they went, find out what happened to them. Did they live or did they die? If they died, ask if it's a presumed COVID death,

and then deduct that number from the hospital death number. Because if you don't deduct that, if you add a nursing home number, you have to deduct the hospital number; right. There are three categories. Hospital death, nursing home death or a home-home, you're at home when you die.

If you change the classification, you have to reduce the classification of the previous category; right. So if I had you as a hospital death and now we're going to call you a presumed out-of-facility nursing home death, you have to reduce the hospital death total.

So it was a very complicated equation to complete if you wanted to be accurate. I would question the accuracy of most of these numbers. That's why you see states still changing them. That's why you see the CDC taking two years to do it.

The New York State comptroller one year because it's a very, very complicated mechanism. Now you can say okay, do the best you can and then says plus or minus. You can do that unless the

Department of Justice is asking you for the numbers. Because they don't do plus or minus.

Q This concept of hospital versus nursing home. You have to report a death at a hospital - by ascribing it to a nursing home, you have to subtract that death in the hospital category. Is that referring to double counting, the concern about double counting?

A Yes. It's either a nursing home death or a hospital death. Let me also make it simple for you this way. If there's a suggestion that maybe we were trying to reduce the fatality number in nursing homes, if that's a possible conspiracy theory, don't count the presumed deaths. Just don't.

Only eight states counted presumed deaths. Trump was saying the presumed deaths are made up as well as this is all made up to make him look bad.

Just eliminate the presumed deaths, which only eight states are doing, which is truly a very questionable category. Or don't have included

them in the first place. Because you didn't have to, only eight states were doing it. If that was the motivation, that's what you would have done. Very simple. By the way, I'll bet you the words "many presumed deaths" is out-of-facility deaths ultimately or thereabouts.

Q Do you know if DOH maintained a tracker specific to hospital deaths?

A I don't know. Wait, sorry. A tracker, the two numbers you used or you had the most certainty in, every night the hospitals reported how many people died in the hospital. Every night the nursing homes reported how many people died in the nursing home.

Those were probably the two most trusted numbers, because they knew how many people died that day. No reconstruction, no go back and figure it out, no presumed no, I have to go check with the sister-in-law. Those numbers we had the most confidence in.

Ms. Glavin. So just back to the question, I think you had asked whether the DOH maintained a

tracker on hospital deaths. I think your answer is that you knew they did track the hospital deaths, but if they have a tracker --

The Witness. I don't know what you mean by "tracker." Did we keep track of, yes.

BY [redacted].

Q And the same way that DOH maintained a count of deaths specific to nursing homes?

A Yes, which we used. We used the nursing home death number per in-facility deaths every day.

Q According to reporting from the New York Times, you convened a call on Columbus Day 2020 in response to requests from the public and state legislature for full accounting of nursing home deaths inclusive of out-of-facility dates.

Did you convene such a call?

A I don't remember.

Q Do you remember a call in October 2020 about out-of-facility deaths?

A No. But it was a -- it was a very public ongoing topic. And many newspapers were saying when the nursing home numbers went up, four

Democratic states are under investigation for mismanagement of nursing homes. The press said what's the nursing home number, what's the nursing home number, what's the out-of-facility number.

So it was very clear we were not releasing the out-of-facility number because they asked me every day what is the out-of-facility number? I said, When I know, I will tell you what it is. Trump is saying you're lying about the numbers. You're inflating them. Then when we added presumed, he said, Here is the proof that you're inflating them because presumed means nothing.

So that was an ongoing discussion.

Q Was Dr. Zucker involved in those discussions with you?

A Yes.

Q Did he express to you or tell you that the reliability concerns about the data were credible?

A Yes. Now I don't think he appreciated, frankly, what it means to have a Department of Justice investigation that is politically motivated looking at every submission. You know,

I don't think he appreciated that aspect. But he wanted reliable data.

Q What informed your impression that he did not appreciate the DOJ aspect?

A Well, he's a doctor and not a lawyer. We would say there are issues with the data and we have to audit the data. He never mentioned the DOJ part of the equation.

Q Referring back to the January 28, 2021, AG report, are you aware or do you recall that shortly after that report was released DOH reported out-of-facility deaths in its nursing homes reporting?

A We were going to. That's what I just told you. That was the plan. Congressman Malliotakis can give you a little sense of the interplay between the AG and the governor's office, but we had told the legislature we were going to do it. And then mysteriously the Attorney General did it like a week before.

Q Do you recall if you told the legislature that you were going to give them the numbers in

January --

A No, it was like -- it was like August or something, the year before.

BY MR. RUIZ.

Q Mr. Cuomo, I represent the 25th District of California, ranking member of this committee. As a physician and public health expert, I know that firsthand that testing plays an essential role in mitigating the spread of infection, particularly in the early stages of an outbreak, and this was exactly the case when it came to COVID-19 testing during the early days of the pandemic.

Is it true that the federal government played an important role as partner for state government, particularly during the early days of the pandemic?

A They did not play an important role. They were entirely controlling of the testing process and very slow in the testing process. They wanted all the states to send them the samples in Atlanta, which was the protocol in the beginning.

It would then take days for them to send back the samples. They became quickly overloaded in their lab because they had 50 states sending it to Atlanta. We were saying there are major state labs, California has a major state lab, New York has a major state lab, use the state labs.

They refused to use the state labs. I called Vice President Pence, and I said, This makes no sense. It's months of delay. Simultaneously, the president is saying I don't believe in testing and slowed down the testing, because the higher the testing number, the higher infection rate, the worse it looked for him politically, which was the analog to the higher the death rate, the worse it looks for him politically.

And I raised that issue with the White House. I said, I know the president doesn't want testing. But if you have no testing, you can't take the first step. You know better than I, but that went on from January through March in New York was when we got authority to start to use the private labs.

Q Okay. So I'm understanding that the federal government played a role in whether it was a positive or a negative or coordinated or disorganized, but they did play a role.

A Yes.

Q And my understanding is that the centralized nature of conducting the test hindered how efficient the process was in order to make decisions because it took a long time to get the results.

Could you explain in more detail what this working relationship should look like when it is operating successfully? You mentioned decentralized labs. Do you have any other suggestions? How would a federal-state partnership in testing look like?

A I think -- it's a very good question, Doctor, and I can only tell you what went wrong, which may suggest by inverse what should be done.

The private labs were not organized. Even within a state, you don't know how many labs you have. You don't know what the -- technically you

know how many labs you have because you regulate them, but you don't know what their capacity is, you don't know what their capacity could be increased to. You need to know that for every state. They should be -- immediately, there should be an emergency lab response mechanism. And the federal government has to be able to provide the supplies. Because even once we opened the private labs, then there weren't vials. Then there weren't swabs. There weren't Q-tips, which slowed it down. There weren't the reagents. That had to come from the federal government.

Q So you touched on this a little, so I'm going to ask, again, in a different way so that perhaps we can come up with other ideas. In the early weeks of the COVID-19 crisis, did the federal government have difficulty fulfilling its responsibilities as partner to state governments?

A They didn't recognize the responsibility. President Trump said I have no responsibility. That's what he said. I have no responsibility. He in essence abdicated to the states.

Now, I believe in federalism and I believe in states rights, but this was a national problem. COVID doesn't stop at the state border; right. So if you don't have a national policy, you leave it to 50 states. You're hearing 50 different opinions.

You're going to invite skepticism by the public because it was, is New Jersey right or is Connecticut right or is California right? You literally have people jumping over state lines to shop different services, spreading the virus.

So, no. It wasn't a partnership. It was it's up to you, states. Even in terms of purchasing equipment, every state was on their own. In finding testing, every state was on their own.

Q So early in the pandemic response, the federal government opted to create its own COVID-19 test instead of using the testing model developed in other parts of the world that were also responding to early COVID-19 outbreaks. Ultimately, the testing assays the CDC developed

and put out were contaminated and contained design flaws that rendered them ineffective.

How did the federal government's early failures to deploy effective testing hamper state-level responses to the pandemic?

A I think because the testing was slow, you had coincidental situations going on. Very slow CDC rollout, almost irrational, their position. Send all samples to Atlanta, don't use state labs? On what theory? You have the President of the United States saying I don't believe in testing because the more we test, the higher the number; right.

Those two things are going on at the same time. Are they coincidental or are they connected? I don't know. But testing is slow. What happened in the nursing homes? Readmission policy. Oh, really? Readmission policy? Then how come states without the readmission policy actually have higher nursing home death rates? You are not testing nursing home staff. January, February, March, April, May, why? Because you didn't have the test.

They were walking out, socializing, getting an infection rate, some parts of the state 25, 30 percent, my state, and walking it back into the nursing home because you didn't have tests.

Testing is step one. You can't do anything before you have the test. Giving me the results of the test 10 days later doesn't help. We had the first hot spot in the United States in New Rochelle. One man in New Rochelle in one weekend infected hundreds and hundreds of people. So you need that testing result to come back quickly to tell that person you have to quarantine.

Q You mentioned earlier, and I'll ask this again here, even once the CDC corrected its assay and deployed effective tests, I recall there being significant issues with supply; is that correct?

A Yes, we did not have the materials.

Q And how did the federal government's missteps at ensuring an adequate supply of COVID-19 testing hamper state-level responses to the pandemic?

A It hampered everything because you can't do anything without a test.

Q And so still on the topic of testing, I'd like to turn to your administration's handling of COVID-19 testing. There have been allegations that in the early days of the pandemic, those close to you received preferential access to the limited supply of COVID-19 tests available at that point. Several well-respected media outlets reported that DOH employees administered a number of these prioritized COVID-19 tests. While I can appreciate the importance of ensuring that individuals close to you as the governor and other key government officials have access to tests in order to minimize disruption to continuity of government operations, particularly during a crisis, there's a distinction between prioritizing tests for this reason and the allegation that people close to you personally were given preferential access to tests when they were in limited supply.

In the spring of 2020, how did New York determine how to allocate the limited supply of COVID-19 tests?

A There was -- to the best of my information, there was no priority testing, preferential testing program. What happened was two people who worked for me, my press secretary and another press aide got COVID. And I had been working with them for days, and it was just by good fortune that I didn't get COVID.

That was an alarm bell for the health department, and they set up a protocol, anyone who is going to be in contact with the governor has to be tested and you have to have quarantine. If I was going to visit a family member, they had to be tested.

Coincidentally, I went to the White House at the same time. They had a really elaborate testing mechanism for obvious reasons. You don't want the president to get sick, which he wound up getting sick.

They didn't want me to get sick at that time, because I was important to the state.

Ms. Glavin. Just on that point, did you play a role in sort of telling DOH or anyone who got

tested?

The Witness. No, I had no idea.

Q So let me ask you this question. I think it follows up with that. Did you direct government employees to administer COVID-19 tests to people with whom you had purely personal relationships?

A No. I didn't -- I didn't -- didn't ask them to do anything. They saw my schedule. They knew who was coming in and out. They handled it.

Q Did anyone on your staff direct that there should be such a priority testing program?

A No, it was not a priority testing program. It was all ad hoc.

Q In terms of personal relationships, did any one of your staff arrange any testing?

A No. Unless --

Ms. Glavin. Do you know?

The Witness. Well, to the best of my knowledge, no. But if I was going to meet with my mother, would they test my mother? Yes. It's not because it was a personal relationship, but because it was a person I was meeting with. If I

was meeting with you, they would test you.

Q Okay. I'd like to introduce Minority Exhibit B. Exhibit B. This is an article from the Washington Post published on March 29, 2021, regarding how a priority testing program worked. This issue was also covered by local New York media outlets such as the Times Union and other national outlets like the New York Times and NPR. I'll give you a moment to quickly review it.

(Pause)

[redacted] Just to confirm, I believe the majority has agreed to give the Ranking Member a few minutes to finish his questions.

The Witness. Cuomo's family received attention. To the extent the family received attention, it was because I was seeing the family. It was contact with me.

Ms. Glavin. That's your understanding?

The Witness. Yes.

BY DR. RUIZ.

Q This question alleges that a top state physician, quote/unquote, was sent to the Hamptons

home of your brother, Chris Cuomo, that is at the top of the second page.

Do you have any knowledge of this happening?

A No.

Q There is the allegation that your brother-in-law, Kenneth Cole, benefited from priority testing. That is at the bottom of the first page.

Do you have any knowledge of that happening?

A I don't have knowledge of it, Congressman. But if I was going to see him, they would have tested him. If he was coming to me, they would have tested him.

Q So --

A But they tested the barber.

Q So earlier you said that there was no official priority program. There was any way of determining who got tested first versus second with limited supplies in the State of New York? And you had limited supplies. Who are you going to test first? Who are those limited supplies going to go to?

A I don't know how that was done. I think the Department of Health had healthcare workers, first responders. There was a protocol that was established.

Q So this protocol set priorities?

A Yes.

Q So in essence, there was a priority system for the State of New York?

A Well, not priority system. It was as we got vaccines, it was basically the first responders and healthcare people.

Q For vaccines. How about testing?

A I don't know. I don't know.

[redacted]. So just to be clear, is it your position, Governor, that to the extent that your brother or Kenneth Cole received a COVID-19 test in terms of engaging with your administration, it was pursuant to the fact that you were going to be seeing these individuals?

Ms. Glavin. Do you know anything about how Chris Cuomo got a COVID test if he, indeed, got a COVID test? Do you know any of the details?

The Witness. No, I don't.

Ms. Glavin. With respect to Kenneth Cole, assuming he got a COVID test, do you know anything about the details about how that happened?

The Witness. No.

Ms. Glavin. So you're making assumptions.

The Witness. I'm extrapolating. I know anyone who I was I have going to be in contact that they would test. I know that I was in contact with family members.

BY DR. RUIZ.

Q Let me get to the point, Governor Cuomo. In the state of emergency, you have to make tough decisions. I'm an emergency medicine doctor. I have to make tough decisions as to if there is a multi-trauma casualty, who am I going to treat, etc. And in the pandemic there's limited tests, and so you have to be strategic in how you're going to use that test.

This article alleges that you were giving out personal favors to individuals appointed to -- who had personal relationships above and beyond what

your -- by your prioritization strategy that the Department of Health had set to better able -- better handle the pandemic.

So did this article when it came out, did it concern you?

Ms. Glavin. Did you ever see this article?

The Witness. No.

Q And were you made aware of those allegations? Did you know about those allegations?

A I may have known about them, but Congressman, if I was worried about every article that was in the newspaper during that period of time, I wouldn't have gotten out of bed.

Q Let me just reiterate here, in general, you had mentioned that people that got tested got tested because they were going to be in contact with you, and that was the precautionary manner, whether they were going to be in contact with you in your official business or whether they were going to be in contact with you in your personal business?

A Yes.

Ms. Glavin. That actually was not his testimony.

Q So let me ask you then, were people tested if they were going to be in contact with you even in your personal business?

A I did not administer this. I didn't talk to them about it. I believe anyone who was going to be exposed to me or I'm exposed to them was -- the thought was they should be tested.

Q So whether that was on your schedule in your official capacity or whether that was in your private capacity; is that true?

A Yeah. It was not a heck of a lot of private capacity during this time, but yeah.

Q So that includes family, friends, etc.?

A I believe that's what they did.

Q Okay. Well, I want to just reiterate that resource allocation, especially during the public health crisis, should be based on medical need or the need to continue government functioning and other vital resources and services for society. And I just simply -- because of favors which in

this case you're saying that did not happen -- so I want to really close by just taking a step back and putting ourselves in that situation that it was very difficult, a lot of people were dying, thousands daily. Hospitals in your state throughout the country were at overcapacity. People were very afraid, people were very concerned. And this was a very chaotic time, and your testimony revealed that a lot of that chaos initiated from the difficulties with the federal and state partners. So with that I'm going to close and appreciate your testimony.

A I agree with you 100 percent. I thought about it when I went to the White House and how elaborate their testing mechanism was there. They had a separate wing or separate room that you had to go to, and I thought to myself there's so many, many ambulance drivers and police and firefighters who can't get a test, but here we have this whole mechanism for the hundreds of people who were walking in and out.

So I agree, I agree 100 percent with the

sentiment.

Let me ask you a question. Different question, and if you don't want to answer -- do you believe the CMS and CDC guidance that they put out was right?

Q I'm not going to answer that question.

A Okay.

Q Because it would take a lot more time for me to review and assess data and to give you the -- an evidence-based approach to that.

A Yeah. I'm just saying because California, your state, New York, my state, followed the CMS/CDC. And we were criticized for it. So if it was wrong, then we should say it's wrong. Otherwise, we'll do it next time.

Q What -- I think that would be a topic we can discuss further including in the hearing.

A Okay.

Dr. Wenstrup. We can go off the record.

Ms. Glavin. It's 12:28 p.m. as we finish this round. I just want to note that at 11:44, Congresswoman Stefanik left, 11:45 Congressman

McCormick left. At 11:47 Congresswoman Miller-Meeks entered at 11:57. Ms. Miller-Meeks or Meeks-Miller. You got it. And that at 11:54, I think it's Congressman Molinaro. I see your signs all over Greene County. All right.

(Recess taken from 12:28 p.m. to 1:03 p.m.)

Ms. Glavin. So 1:03.

Mr. Benzine. Before Jack starts asking some questions, I want to state for the record that the Subcommittee was never informed of the appearance of Ms. Benton today. Ms. Benton is a fact witness in this inquiry, and we think it's inappropriate that she's here listening to his testimony today. I also want to ask of Mr. Cuomo's counsel, can you state for the record that Ms. Benton is not recording this interview.

Ms. Glavin. She's not recording. No one is recording this other than the reporter.

The Witness. I apologize. I didn't know that she was a witness.

Ms. Glavin. I did not know that either.

The Witness. Or had been called at all.

Mr. Benzine. There will be questions about some of her emails later.

Ms. Glavin. No. I didn't -- I don't think we ever gave you a list.

The Witness. Do you mean she's been separately called?

Mr. Benzine. No. I'm saying that she has witnessed events that are of inquiry here.

The Witness. Okay.

Ms. Glavin. Do you have an issue with her if she's coming because I think she might be getting --

Mr. Benzine. It's fine.

The Witness. I apologize for that. I didn't know.

Ms. Glavin. So we're at 1:04 p.m. And Congressman Wenstrup, Melliotakis and Stefanik are here as well as we reconvene.

BY MR. EMMER.

Q At this time, I'd like to introduce Majority Exhibit 2. This is the nursing home guidance

entitled Advisory Hospital Discharges and Admissions to Nursing Homes issued by the New York State Department of Health on March 25, 2020.

(Majority 2 was marked for identification.)

Q Mr. Cuomo, do you recognize this document?

A Yes, sir.

BY DR. WENSTRUP.

Q Before I get into the document, I just want to say a few things. The Select Subcommittee was formed in an effort to perform an after-action review and have lessons learned, what worked, what didn't work, so that we can in the future be able to possibly predict and prepare ourselves for and protect ourself from and maybe prevent a pandemic. That's the goal.

We all recognize that this virus was novel. We've been through very tough times and very tough decisions have to be made. I do appreciate the line of questioning coming from Dr. Ruiz today, and I do want to say talking about testing, even early on there were some tests that couldn't be

done even before the PCR test. You can make a diagnosis based on the symptoms being associated with COVID. There were tests such as an increase in Aisle 6, you can do the CTs of the lungs and you can also check hemoglobin levels. Some of those things were available.

But one of the things I do want to comment on, and it's come up in a lot of things associated with government, government response, whether federal or state, it doesn't really matter, but going forward the recommendations is that we have a manufacturing ready reserve, a lab-ready reserve, basically a public health-ready reserve. So that when the calls goes out, we can spin these things up in large numbers quickly. I just want you to know that's where we are going to, comments in that line.

But I want to go to this document and, you know, I don't claim I'm a public health expert by any means, but I did serve on the Cincinnati Board of Health. I have some experience with population medicine. Nothing compared to this by any means

whatsoever.

So when it comes to guidance, we're looking into what CMS and CDC were recommending, what the various guidance measures were. But the document in question involves hospital discharges and admissions to nursing homes for New York State. A document is issued for immediate distribution to nursing home administrators, directors of nursing, directors of social work, hospital discharge plans. The document is headed under New York State Department of Health as well as in the heading, Andrew Cuomo, Governor, Howard Zucker, M.D., Sally Breslin, M.S., R.N., executive deputy commissioner. The document is dated March 25, 2020. At the top of the document it's deemed to be an advisory.

Governor Cuomo, could you define "advisory," the term "advisory"?

A A common definition.

Q The common --

A Advice.

Q The common definition says an official

announcement consisting in the power to make recommendations but not to take action enforcing. But within the body of the document, however, the word "directive" is used. Directive, definition of directive, an official or authoritative instructive. I'm going to quote from that in the directive.

"This directive is being used to clarify expectations for nursing homes receiving residents returning from hospitalization and for nursing homes accepting new admissions."

As well, the document uses the term "must comply." Other parts of it. "All nursing homes must comply with the expected receipt of residents returning from hospitals to nursing homes."

Four days after this "must comply" directive was issued, you spoke at a press conference, Governor Cuomo, and you said, "Coronavirus in a nursing home is a toxic mix. We've said that from day one, COVID in a nursing home can be like fire through grass." Those are your words.

In spite of your thoughts and your public

statement, the order was amended or rescinded, and that wasn't until May 10 of 2020, six weeks later.

Even though you knew it was a toxic mix, I would agree with you on that, and you signed the amendment or executive order for that; right?

A If it's an executive order, I signed it.

Q So you call it a toxic mix. Actually, it was a deadly mix. The directive states that hospitals' discharge planning staff and nursing homes should carefully review this guidance with all staff directly involved in resident admission, transfer and discharges.

Governor, did you review this directive carefully as it was required by those taking care of patients?

A No.

Q The directive also states --

Ms. Glavin. Just to clarify temporally, you did not review this before it was issued?

The Witness. Yeah. I didn't see it before it was issued. I saw it after I was asked about it about a month later.

Q The directive also states, "During this global health emergency, all nursing homes must comply with the expedited receipt of residents returning from hospitals to nursing homes. Residents are deemed appropriate for return to a nursing home upon a determination by the hospital physician or designee that the resident is medically stable for return."

Governor, who would qualify as a designee in this situation?

A Where are we?

Q Well, it's --

Mr. Benzine. Third paragraph.

Q Third paragraph. Residents are deemed appropriate for return to a nursing home upon a determination by the hospital physician or designee that the resident is medically stable for return.

A Designee of a hospital physician.

Q Just anybody, they said you can decide?

A Well, the hospital physician would have to designate the person. They're not a designee of

the hospital physician unless the hospital person designates you.

Q Is that standard? I'm just curious how you would know.

A I'm just using the language. Hospital physician or designee.

Q Okay.

A Congressman Wenstrup or his designee.

Q Or his designee. So a designee of the hospital physician?

A Yes, that's how I read it.

Q That's not clear. Thank you.

So what would be the parameters for a patient soon to be a nursing home resident to be considered medically stable for return?

A What the CMS said and what the CDC said. This is March 25.

Q Which is what?

A Which is, if you read the March 25 guidance, it says a person is clinically stable when a doctor determines that they have -- it's been seven days since their diagnosis, they have been

asymptomatic for three days, and without fever, and the fever was alleviated without fever-reducing medicine.

There is nothing in this document that does not refer back to the CMS and the CDC.

Q So it would maybe mean things like breathing on their own without assistance, being afebrile without fever, adequate blood oxygen levels, normal imflammatory markers, not exhibiting any cough or even more important, a negative COVID test.

A That's one of the options the CDC offers. It's either a negative test or a doctor says seven days, three days. That is specific in their guidance.

Q The directive also states that, "hospital discharge planners must confirm to the nursing home by telephone that the resident is medically stable for discharge. Comprehensive discharge instructions must be provided by the hospital prior to the transport of a resident to the nursing home."

I'm good with that. That sounds like a reasonable action before transferring the patient. But I hope they do more than just say that the resident is medically stable for discharge, but that they can also give a full description of the patient's condition and the follow-up needs that the patient has as they get ready to move.

I would think that if the nursing home cannot meet the needs of the patient, then they could deny -- they should be able to deny the admission or readmission to the nursing home. If the discharge instructions can't be met, then the transport of the resident should be withheld, that's my opinion.

However, the directive says -- and this is underlined -- "No resident shall be denied readmission or admission to the nursing home solely based on a confirmed or suspected diagnosis of COVID-19."

I can't figure that one out. Why not? Because if they have --

A Because the --

Q Hold on.

A I'm sorry.

Q If they have a confirmed or suspected diagnosis of COVID-19, there are certain criteria that have to be met. And if the nursing home can't provide that, that's a problem because the directive then goes on to say, "Nursing homes are prohibited from requiring a hospitalized resident who is determined medically stable to even be tested for COVID-19 prior to admission or readmission."

So a hospital physician or designee can determine that a COVID-19 positive patient can be medically stable, whatever that may mean, although highly contagious, and the nursing home cannot deny their readmission or admission even though those in nursing homes are the most vulnerable to die from COVID-19.

And, in fact, while the COVID-19 virus was able to reside in a stable patient, it's clearly deadly to others. Others more vulnerable, and we knew who the vulnerable were. The directive also

states, "As always, standard proceed cautions must be maintained during the public health emergency."

Governor Cuomo, I've treated a lot of serious infections for many years both here and in war. I have a pretty good idea as to what standard precautions consist of. Standard precautions would include testing patients for COVID-19, which was prohibited for the actual admission or readmission. Even confirmed COVID-19 positive patients could not be denied admission or readmission to the nursing home. Even if the nursing home wasn't prepared for that, for that patient.

Standard precautions would require isolation for COVID-19-positive patients. And standard precautions would include protecting the vulnerable from the highly contagious. Those are standard precautions. So while a patient may be considered medically stable for a COVID-19-positive patient, isolation is required, especially under the same roof as those so easily susceptible to COVID-19. What if they don't have

enough isolation beds?

So here is my question, Governor: Why did you or why did New York State not use the Javits Center or the hospital shift where patients could be isolated away from highly vulnerable American seniors when both were available to them?

A Let's take a step back. First, 12 states followed CMS and CDC and issued similar --

Q I'm talking about this directive right now and the wording of the directive.

A All right.

Q Okay.

A It was written from CMS and CDC. And it refers to -- it is referring to the guidance they received two days before, which says, "When should a nursing home accept a resident who is diagnosed with COVID-19 from a hospital? A nursing home can accept a resident diagnosed with COVID-19 and still under transmission-based protocol."

So still infectious, as long as the facility can follow CDC guidance for transmission-based precautions. If they can't, they can't take the

person.

Q Okay.

A When should a nursing home consider transferring a resident with suspected or confirmed? Nursing homes with residents suspected of having COVID-19 should contact their local. Residents infected with COVID-19 may vary. Mild cases, keep in the nursing home.

March 23, they are discharged from a healthcare facility whenever clinically indicated. Clinically indicated gets back to the call the doctor. And they can be discharged if there is either a negative test or the seven days in three. If they require transmission-based precautions, the nursing home has to have that. If they don't require transmission-based precautions, then the nursing home doesn't have to have it.

Q So if I may --

Ms. Glavin. Did you finish your answer?

Q If I may?

A My point is this: This is read -- you're reading this as if this is all the guidance. This

follows 12 pages of CMS/CDC guidance being very specific, which says -- would you look at what CMS/CDC said at the time. We believe there are old people that shouldn't be in the hospital longer than necessary. We believe they're noninfectious because they either test negative or seven in three. We believe they're only going to a nursing home that can take them with transmission-based precautions. And the advisory is relating back to all that CMS/CDC guidance.

Q Okay. This was the problem. This is the problem with what you just read compared to what's in this directive. And this is me as a physician not understanding this underlined statement, and I don't know why it was underlined. "No resident shall be denied readmission or admission to the nursing home solely based on a confirmed or suspected diagnosis of COVID-19."

Nothing in here saying they can be denied if they can't adhere to the guidelines. Nothing in here. If that nursing home cannot adhere to the guidelines, it doesn't say in this directive that

they have the ability to turn that patient away.

Dr. Wenstrup. Mitch, did you have a question?

A Can I just address the next point? CMS/CDC says we are releasing without a test, and we are releasing COVID-positive people from the nursing home.

Q No resident shall be denied readmission, but what it says in here, they have to be able to provide what is necessary?

A Yes.

Q To be the standard, standard procedure?

A Yes.

Q Isolation, etc.

A Which is the law.

Q This is where -- it's not in this directive, Governor. It's not in there. It may be in there, but you don't put it in here.

A There is a law, forget all this advisory guideline stuff. I prosecuted Medicaid fraud as Attorney General. NYC 10RR. You cannot accept a patient that you cannot provide proper care within the context of their facility. That's the law.

That comes first. This you can throw out of the window. You violated the law if you violate that.

So this whole well, they were forced, nobody was forced. The nursing homes in New York have total discretion to say I can't take care of the person. I then say 11 times in the press conferences, if you say you can't take care of a person for any reason, I don't have the quarantine, I don't have the PPE, I'm too tired, I said. I'm too tired. Don't take them. It's totally up to you.

Q Governor, would you agree that there is an extreme lack of clarity in this directive to that point? You can say yes or no. If you don't agree with me, that's fine.

A If you read the CMS/CDC as they all do --

Q I'm talking about there, because CMS and CDC probably have it appropriately. That directive does not, and if I'm seeing something coming from the governor and the Department of Health that says I must do this this way, I have a real concern, because who is violating the law, this

directive or them?

Dr. Wenstrup. Mitch, you have a question?

BY MR. BENZINE.

Q Yes. The portion you read out of the CMS guidance, a nursing home can accept a resident diagnosed with COVID-19, what's the verb in that sentence?

A Why don't you read it? I don't see it anymore.

Q It's on page "A nursing home can accept a resident diagnosed with COVID-19 and still under transmission-based precautions for COVID-19 as long as the facility can follow CDC guidance for transmission-based precautions."

A Yes.

Q The verb being "can"?

A Yes.

Q Is "can" voluntary?

A No, they have to have transmission based --

Q No, no. "Can accept a resident." "Can" in that situation is voluntary.

A Yes, they can.

Q Yes. Yours is no resident shall be denied. You're a lawyer, is "shall" voluntary language?

A Yeah, I got that, but I have to find the other places because there was four CMS and CDC guidances.

Q This is the one most recent before the order of March 13.

A Yeah, but the fourth, 9th, 13th, and 23rd. Remember, we had our first case on the 1st so we got deluged with all this guidance.

Q All I'm asking is, as a lawyer, when you read "can," is it read as voluntary, and when you read "shall," is that read as an order?

A Yes. Yes.

Q Okay.

A But this is all subject, again, Mitch, to the nursing home's discretion. A nursing home can say no.

Q And I'm just saying like if it's following CMS guidance, it's probably the CMS guidance. This is a different bird. It's an order instead of a voluntary action.

A Look, it doesn't reiterate all of the CMS guidance, I agree with you.

Q The CDC transmission-based precautions that you read from both from the test-based strategy and the nontest-based strategy, does that prohibit testing?

A It says it can release without a test.

Q But does it prohibit testing?

A No. But if they released without a test, Mitch, you can't then take a test and say I'm sending you back. Because they talk about sending COVID-positive people, but what they believed was you can test COVID-positive, but your viral load is so low that you're not infectious. That was the medical theory behind CMS and CDC.

Q Did you ever talk to CMS and CDC about the theory?

A No, but Zucker did.

BY DR. WENSTRUP.

Q We're going to move on. I'm saying -- I understand that there is something different than the CMS guideline, but I asked you a question that

I didn't get an answer to.

Ms. Glavin. He wasn't allowed to. Do you mean the Comfort and the Javits Center?

Q Yes. You were allowed to?

Ms. Glavin. You moved on to the next question. I thought he was going to answer. The question is why didn't you use the Javits Center.

A I'm sorry if I interrupted you, Doctor, but I would just suggest you guys read all of this guidance. I agree with the doctor that this does not reiterate. They believed it was read in continuation, because remember, the first case March 1, CMS/CDC March 4, 9, 13, 23. This comes two days later. And they believed it is written as a continuation of all the CMS/CDC.

Q Now, back to the question.

A Okay. The Javits, there was a fear that we would overwhelm the hospital capacity. We have 50,000 hospital beds. IHME, other organizations said you could need 150,000 if you don't get the viral rate down low. We're working very hard to get the viral rate down low.

Plan B, let's develop emergency capacity. And we start building emergency hospitals, God forbid we go over capacity.

The Javits is an emergency facility, 2,000 beds. We never exceeded hospital capacity. So we never used Javits. A few people went to Javits, but not really. Back up to Javits would have been the Comfort, but we never really used Javits. The Comfort, I never asked for the Comfort.

President calls me up one day and says, I'm sending you a military hospital ship, I'm sending one to Los Angeles, big white ship, big red cross. Great.

Ship comes, docks in Manhattan, whoever is in charge of the ship says, "We don't take any COVID-positive people." I said you don't take any COVID-positive people? That's why you're here.

"No, we can't take COVID-positive people because it will take too long to disinfect the ship."

Q Can I -- I thought that the idea of this ship was to put hospitalized patients, non-COVID

hospitalized patients somewhere else to open up more beds in the hospital.

A That was plan C.

Q Okay.

A Plan A was COVID-positive. We go back and forth, back and forth, and they say, Okay, we'll take the COVID-positive. I talked to the president, I talked to the vice president, said okay, we'll take the COVID positive. Then the crew gets sick with COVID who were operating the ship. So they say we can't take anyone because we're COVID positive.

And that was basically the end of this story, because we had gotten to the end.

Q Now, I appreciate that. I think if we look forward, we have to look at all possibilities in the community, not just New York, but any community what are your options going to be and are they going to be available and should we have a facility for non-COVID patients or non-pandemic-related patients no matter what --

A Give me one second, Doctor. Just FYI. We

had already ended all elective surgery. It was basically nobody going into a hospital.

Q That's another problem too that had long-term consequences for a lot of people that we need to address from the health side, because it's very unfortunate circumstances that happened to a lot of people. I won't going to into that all that right now. People taking their own lives because they didn't get their surgery. It might have been considered elective, but they were in a lot of pain and all those types of things happening. That's another story not related to you today.

I will state to you that the JAMA study came out that correlated each COVID-positive admission to a nursing home with six excess cases and 1.5 excess deaths. JAMA is the Journal of American Medical Association. Applying that to a low estimate of 6,000 admissions while the New York directive was in place was 36,000 patients, 9,000 deaths.

I just have to know what medical professional put this directive together and what were their

qualifications. Dr. Zucker denied involvement, which seems to me somebody who should be -- he did agree with it, but this is very concerning because it's very confusing and the average person isn't going to know whether that's the law, the other law exists. This is just very poor communication at least.

And I'm also curious who in that vein in the directive at the end it says -- it talks about opportunity for people to respond with general questions or comments about this advisory. We have requested, though, we hope we get them because I'm curious about what people that were asked to follow this directive actually thought. And with that, I yield.

A A response. I understand your questions and concerns. DOH was on the phone with nursing homes virtually all day long. I would do calls. I would do calls with nursing homes, collective group calls. I had not heard anyone mention any problem with this until a month later. I believe they knew -- CMS and CDC are the big dogs. They

run the show. There are federal regulations, they are all Medicaid facilities, Medicare facilities. I think they were following the CMS/CDC. This was an exclamation point on CMS/CDC, and that's what they were doing. That's why they didn't ask any questions.

I'm talking to nursing home people all day long. Nobody says Boo. It's not like they were reading this in a vacuum. This was after all the CMS/CDC, which is very explicit.

Q I can only hope that they weren't just reading that. I can only hope. I would like to see their questions they may have submitted, and --

A But, Doctor, do you know how you know? If they only read this, they would have raised questions.

Q Any other questions? You're in charge of all the state departments. Who puts something like this out that you don't know about?

A I do not -- look, I'm not a medical doctor. You said politicians should not be making these

decisions. I don't make the decisions.

Q The difference between decisions and situational awareness.

A All right. And then when I do become aware, I sit with Dr. Zucker, and you know his credentials. He 100 percent believes in the science of the CMS and CDC and the advisory in that context. He -- to this day he 100 percent believes it.

Q Check the words "advisory difference" from the guidelines.

Ms. Glavin. Can I just, one thing -- I want to make a record here. You talked about the negotiations and discussions we had coming into this.

Mr. Benzine. Yes.

Ms. Glavin. There have now been members of Congress who have appeared here that you did not tell me about, and I asked you for a list of who would be appearing. And that would include Mr. Molinaro.

Mr. Benzine. I believe that's the only one.

Ms. Glavin. I was also told that at this interview that 98 percent of the questioning would be done by the staffers. We've now had one series of questions from Congressman Ruiz. We had questions and some speeches from Chair Wenstrup. Now Ms. Stefanik, who is not a member of this committee or I think is not even a member of the Oversight Committee is here and going to ask questions.

You weren't even able to tell me as of yesterday if she would be here. And now we're going to get a series of questions. I asked the staff has Ms. Stefanik asked any questions of any witness in these subcommittee interviews, has that happened before.

Mr. Benzine. No, but there have been medical examiner that have asked questions.

Ms. Glavin. I'm curious today, Ms. Stefanik, why are you here today?

Mr. Benzine. You can pose questions to me.

Ms. Stefanik. I don't mean to answer your questions, but I will answer because I represent

constituents who have lost loved ones who died in nursing homes as a result of this directive. Because many of the official work that I have done with my colleagues in New York State delegation are related to accountability and oversight of how New York handled COVID. And I'm chair of the House Republicans. We work with every committee, and we are able to waive off committees to ask questions.

Ms. Glavin. So Ms. Stefanik, all I ask is why was notice not given to me? You've raised today, no one told us this. 98 percent.

Mr. Benzine. I told you in our phone call, I told you 98 percent and at the end of however long this takes, if you want to go back and count every single question and run a percentage, I'm happy to listen.

The Witness. I got it. Congresswoman, nice to see you.

BY MS. STEFANIK.

Q Governor Cuomo, do you think that it's important that members of the New York delegation

should be able to ask questions on behalf of our constituents?

A Yes.

Q I wanted to follow up, earlier you testified that you had not heard of the directive until you were asked in the press conference. Is that correct?

A Yes.

Q And then you also testified that, "They debriefed me."

A Yes.

Q Outside of the press conference?

A Yes.

Q Who debriefed you on the directive?

A I would do daily briefings. No one at the briefing had heard -- when the question came, no one knew the answer except Dr. Zucker. After the briefing, we went inside.

Q Who is "we" just so we know?

A Everyone that was on the dais, basically Robert and me, DeRosa, probably Beth Garvey, whoever was on the dais that day and asked

Dr. Zucker can you explain this and he explained it.

Q And what did Dr. Zucker say? How did he explain it?

A He explained it as I explained it to you. It's the CMS/CDC guidance. And that's what they were following. This was a mere referral back to the CMS/CDC guidance, and he believes in the CMS/CDC guidance. He believed it was correct as a matter of science. He believed that it was saying elderly people shouldn't languish in the hospital to get a secondary infection.

Two, if you are noninfectious, get out of the hospital after 7 to 10 days. Go to a facility that can handle your underlying problem because you were in a nursing home, dementia, etc. And if the nursing home doesn't want to take you, they say, "no, I don't want to take you." Period. Total discretion for the nursing home.

Q You have the directive in front of you as well as the CMS guidance which you've referred to. Isn't that correct that the following statement --

this is on your directive -- "No resident shall be denied readmission or admission to a nursing home solely based on a suspected diagnosis of COVID-19."

Is that language anywhere in the CMS guidance?

A The CMS guidance says they are referring COVID-positive people.

Q That's very different than "shall." No less than shall be denied. So my question is that language does not exist in the CMS guidance. Is that correct?

A I would have to look at the CMS guidance. But remember, there's an escape valve for all of this, which a nursing home can say no for any reason.

Q Except on April 23 you stated publicly that nursing homes "don't have the right to object to the state directive."

A You can object to the directive, but you have by law the right to say I can't care for a person.

Q Is it a fact that you stated that nursing

homes "don't have the right to object to the state directive"?

A You cannot object to the state directive, but you have a legal right just to say I can't accept the person, period, for any reason. I literally said if they can't provide adequate care, they tell us we'll find a different facility.

I said -- now you can say well, look, I can't provide care because of the pandemic, because my staff is out, because I can't get supplies, because I don't have masks. Because I can't quarantine. Whatever reason. You have to readmit COVID-positive residents but only if they have the ability to provide the adequate level of care under the Department of Health and CDC guidance.

Q But again, going back to the directive itself, that language does not exist in any of the CMS guidance. Is that correct?

A The law --

Q I'm asking about the language. It's just a yes or no and the answer is no, it does not exist in the CMS guidance?

A Yes, except in a book this thick on laws governing nursing homes. I prosecuted them for years. The number one rule, the number one law, you shall not accept a patient who you cannot provide adequate care for. Period. That's that. Congresswoman, they just say I can't take the person, which they do all the time.

Q But that does not coincide with you saying publicly, and you know you had many people viewing those press conferences and press statements, that the nursing homes don't have the right to object to the state directive. Did you state that?

A I don't know if I stated that. But if you -- I'll take your word for it, but you can't object to the advice. Semantics. You can object to the advisory, but you can't say, fine, I'll follow the advisory. I can't care for the person. I then say 11 times -- you have one sentence -- I have 11 times where I said for a week that you can say no to anybody for any reason.

Q And did the state Department of Health provide any mechanism for a nursing home to

contact the state or transfer residents to another facility?

A No. You just wouldn't accept, first of all. You wouldn't accept. You say the hospital calls you and says will you take the Congresswoman. You say I can't take her.

Q Even though the directive says no resident shall be denied readmission or admission?

A Solely, solely based on the case. Solely. You can't say I'm not taking them back because she has COVID. You say I'm not taking her back because I don't have a ventilator. I don't have quarantine. I don't have PPE. I don't have the time of day, but you can't say solely because she has a test.

Q Sure. Again, this language is nowhere in CMS; correct?

A CMS is even more explicit about sending COVID-positive people back.

Q It doesn't require "shall." This language does not --

A If you go through the CMS guidance, there's

more pages of it than I can go through it for you right now. If you go through CMS guidance, you will clearly see that they are saying we are sending you back, COVID-positive people, if you can provide transmission-based precautions. Which was their out, if you will. Which is the analog to the New York State law saying if you can provide appropriate care. They said if you can provide transmission-based precautions. Their out would be you say I can't provide transmission-based precautions, fine. End of discussion.

Q Going back to when you were first made aware and debriefed and Dr. Zucker you said answered questions. What questions did you ask? Did you have --

A Well, all the questions you're asking.

Q So you did have concerns about the directive?

A I didn't understand it.

Q So what questions did you ask?

A I said, "What does it mean," and he went through this discussion. He said we're going

to -- CMS/CDC, March 4, March 9, March 13, everybody has been talking about it, it's laid out the whole framework of how to do this. We only have the first case March 1.

So everything lights up March 1. CMS comes up three days later, March 4. And they are talking about this and they're going through it, blah, blah, blah. And, it makes sense because if you're not infectious, then you should go back if they have transmission-based precautions, which is their big "if."

On the state side, they should take them back, if they can, under an NYCRR, which is just a carte blanche, carte blanche. I can't care for the person under any reason I pick. That's the two total outs. If you did not want the patient, you didn't take the patient.

Q Were you concerned about the language of the directive when it was first brought to your attention?

A When he explained it to me, no. Because he explained it to me in the context of the CMS/CDC.

Also, Congresswoman, nursing homes are a chatty group. I had not heard a peep, a peep about any of them. I was on the phone with them. There was no one calling saying we are -- we don't understand if this trumps our NYCRR law. No one said it to me.

Q So you did not hear -- your testimony is you did not hear concerns related to the directive for the nursing homes or from families who had loved ones in nursing homes?

Ms. Glavin. Temporally. Timewise.

A Up until April 20. This comes out March 25. April 20 I hear it at a press conference. Prior to April 20, I hear nothing. April 20, headlines, dead patients sent to nursing homes, everyone is going to die. Yeah. Then I hear from everyone.

Q Let me ask prior to April 20, because some of the testimony we've received from other witnesses in front of this committee state, and I want to give you the opportunity to respond, that you were concerned about nursing homes and you used the term "like fire through grass."

So Jared Kushner, who helped lead the early White House pandemic response, as you're aware, provided testimony that you said in a phone call on March 15, so that would have been 10 days prior to the directive, the nursing homes, "this could be like fire new dry grass," end quote.

Did you say that?

A Not this. Oh, you mean COVID in general?

Q Yes. Concerns about nursing homes. Did you say that to Jared Kushner?

A COVID in nursing homes. It was not New York. It was 50 percent of the country. 50 percent of the deaths.

Q So you were concerned --

A At one point.

Q And additionally, this is also prior to April 20, on March 29 you stated during a press conference, "The virus preys on the vulnerable, it preys on seniors, it preys on people with compromised immune systems and underlying illnesses, and coronavirus in the nursing home could be like fire through dry grass."

You said that; correct?

A Yes, but Congresswoman --

Q I'm just --

Ms. Glavin. Finish your answer.

The Witness. These people were noninfectious. That was the premise. They were noninfectious because they tested negative or they had this seven-day, three-day and a doctor or designee of a doctor said they're not infectious. And you agree as a nursing home that you have these transmission-based precautions.

There was never a point --

Q I was asking if you made those statements, and I have one more on that statement.

On April 19, you also said, "Vulnerable people in a congregate facility, in a congregate setting where it can just spread like fire through dry grass. We have had newly disturbing situations in nursing homes, and we're still most concerned about the nursing homes."

A Yes.

Q Then on April 22, after April 20 when you

were first informed at a press conference, you said, "We've tried everything to keep COVID-19 out of the nursing home, but it's virtually impossible. Now, is not the best time to put your mother in a nursing home."

Did you say that?

A You have the transcript, I said it.

Q The reason why I'm asking those questions is those are clearly concerns for most vulnerable in nursing homes. Why was there not -- did you get any guidance to Dr. Zucker to look at the directive to update the directive that had a negative impact on so many vulnerable seniors in these nursing homes?

A He would dispute that this had anything to do with that. You're drawing a causal connection. Ninety-eight percent of the nursing homes that had a readmission already had a COVID-positive person. And he believes these people were noninfectious, and he believes the virus was walking into the facilities every day with the staff just like Harvard and the 18 peer-reviewed studies. It

didn't come from this handful of people.

States that didn't do readmissions have a higher death rate. Nursing homes that didn't do readmissions have a higher death rate. It was not coming from these noninfectious people.

Q But yet you rescinded the order on May 10. Talking about the decision-making process --

A Because the public relations after April 20 had made the public so nervous and so concerned, anyone who had family in a nursing home was agitated and frightened.

Q Did you discuss those public relations in these articles with your team?

A I spoke to Dr. Zucker about it.

Q Who else?

A Basically Dr. Zucker. And I said, "Look, it may be false, but we have a lot of concerned people out there now." And it was coincident with we have ramped up our testing capacity. So we could now actually test nursing home staff, which was what he believed and I believed it was really all about.

Q I have a follow-up question on testing. Do you regret the directive? Knowing what you know now today, would you have shared concerns and rescinded this directive earlier?

A If nursing homes were confused by it, then I regret it. Yes, but I don't accept the premise that they were actually confused by it, because they all had -- Congresswoman, I investigated the nursing homes for four years. They picked who they wanted to take in. And they had 10 NYCRR where they could say no to you for any reason. They had total discretion. And that's what they could have used here.

Now, the AG's report says -- the Attorney General's report says the nursing homes didn't -- nursing homes accepted people they shouldn't.

Q So you're blaming the nursing homes for this directive?

A No. I'm just saying what the AG's report said. But that's a factor also. But the nursing homes had the ability to say no. Period.

Q But again, it says, "no residents shall be

denied," and this is all compulsory language.

A Solely, solely, solely, solely.

Q Language that's not in the CMS report; correct?

A Solely, solely.

Q I understand that language that's not a CMS report?

A I'll go through the CMS report for you.

Q That's not necessary?

A Are you sure?

Q That language is not identical to the CMS.

A What language is it?

Q Much of the language.

A What language?

Q The underlined --

A Are you saying CMS/CDC doesn't say --

Q I'm saying that language is not in the CMS language.

A The CMS/CDC guidance say they can send back a COVID-positive patient.

Q I'm not answering questions. You're answering questions as a former governor of a

directive with your name.

A Yes. But you're a Congresswoman.

Q Correct. And I'm asking questions.

A During this CMS/CDC guidance.

Q Concerns from my office.

A For the CMS/CDC.

Q We raised concerns. In fact, we verified that this is not according to CMS guidance, but this was specific New York guidance, and the language is different. Unless you can point out where this language is in the CMS guidance, the answer is yes.

Ms. Glavin. Are you testifying? You're stating facts and you don't want him to answer questions.

Ms. Stefanik. I'm asking questions.

The Witness. You're -- you were a sitting congressperson.

BY MS. STEFANIK.

Q Correct.

A When the CMS/CDC guidance was out and was promulgated and was being followed all across the

United States, twelve states did this. Twelve states did it. It's not just new York. It was 12 states. All 12 states got it wrong? All 12.

Q Governor, the directive that went out in your name was not according to CMS guidance. Do you think it's important to know who in the Department of Health wrote this if it's not Dr. Zucker? Would you like to know the answer to that question? I think that's important for the people of New York.

A I don't find -- you want to read the advisory in a vacuum when that's not the way it was issued. It was issued in the context.

Now, if you want to say CMS/CDC was wrong -- and I'll go through it and pull the language of them saying they're sending back COVID-positive people, that's what they said. If you want to say CMS/CDC guidance was wrong, fine.

Q I'm not saying that. I'm saying this directive was wrong, and it was not according to CMS guidance, and my question that you didn't answer was, do you think it's important to know

who in the Department of Health wrote this directive?

A It was done by a member of professional staff.

Q Who?

A I don't know.

Q Does -- you know it was done by a member of the professional staff. How do you know that?

A Well, because it was -- there are no political people in the Department of Health.

Q Did you ask Dr. Zucker who wrote the guidance?

A No. He said he hadn't seen it, but he was totally comfortable with the science.

Q Are you comfortable with this directive upon reflection?

A If the directive was read as in context of CMS/CDC guidance?

Q No. I'm asking years looking back, are you comfortable with this directive as it was written? Would you have issued this directive again?

A In retrospect, I would have spent more time

explaining and communicating it.

Q You stand by the language in the directive?

A I would have explained the directive, you know. And which I did as soon as it became public. And I said multiple times, you only take a person who you are prepared to take. Period. That I said for literally a week, Congresswoman. If they can't care for a person in the facility, they have to transfer the person to another facility.

The nursing home is responsible for appropriate care. If they can't provide it, they have to transfer the person to another facility. They can take a person but only if they have the ability to provide. You can say I can't do this, I can't do this, you can decline for any reason, but it starts with the nursing home, that's the primary care provider saying I can't provide for the person.

So that could not be clearer.

BY MS. MALLIOTAKIS.

Q I have a hard time believing that you did not

know -- that Zucker did not know about the executive order. We all know about it, Elise said -- I remember exactly it was March 25 because it was the week of Easter, so I remember the date and I remember exactly because on the 24th you said my mother is not expendable, your mother is not expendable, it was a very beautiful speech and I remember when the order came out.

How is it that all of us know about it and we did communicate it? We were hearing from the nursing homes and we were relaying that concern to executive chambers. How is it possible that the governor of the state did not know about this order? And -- answer that question first.

A Congresswoman, I was talking to everyone during that period of time. There was no nursing home person who said to me, lobbyist, owner, whatever, we don't understand this order. And that's why it rang true when Dr. Zucker said this is read as a continuation of the CMS/CDC. And I know their mentality, the nursing homes. They follow CMS/CDC because they regulate the money.

So him -- when Dr. Zucker said "and when you look at the extensive CMS/CDC guidelines, it is rational." But no, I didn't hear it from anyone.

Q That's odd because I mean, I can speak for myself dealing with the local nursing homes they were extremely concerned. Their impression was they did not have the ability to deny a patient. They thought this was very clear, and there's nothing in the language that says -- although you cited this other law -- there's nothing in here that says that they could reject it if they didn't have the capacity, and that was the concern of the nursing home.

They didn't have the PPE, they didn't have the staff, they didn't have the ability to separate positive from not positive.

So you're saying that you didn't hear from nursing homes?

A No, and I think, Congresswoman, they know NYCRR, because this is all bloated. This advisory, they do multiple advisories a day some days. Multiple advisories a day. Certainly

multiple a week.

Q The --

A The Department of Health. They get these all the time. The law they know. It's enforced by the Attorney General. They know the law and they follow the law.

Q How come when -- you said that the U.S. Navy Comfort ship would not take COVID-positive patients, but there was a New York Times article as well as the Department of Defense website that stated they were open for COVID-positive patients. There seems to be a discrepancy there.

A No. Step one was we won't take COVID-positive people. Step two is I go to the president and vice president and said this is an embarrassment, you send a ship here, they won't take COVID-positive people.

They talk to whoever they talked to, reversed the policy. Okay, we'll take COVID-positive people.

Step three, the staff comes down with COVID. So they are basically not operational.

Q Okay.

A It actually wound up treating some small number of people.

Q And the U.S. Navy -- I'm sorry, the Javits Center which had the 2500 beds, that was open on April 2. Staten Island, we had the Southeast Psychiatric Center which had about 250 beds and sort of recreating the makeshift hospitals. How come, even after these facilities were set up, these patients, it would have made more sense for those patients to then be discharged from hospitals to these makeshift facilities as opposed to nursing homes?

A The theory was these were noninfectious people who needed the services of a nursing home. If your premise was right or if that was the operating principle, these people are still infectious, then I can see your argument.

But the point was they were noninfectious.

Q They were not tested.

A Some were tested, or some were past quarantine seven days asymptomatic for three days,

and a doctor said they're not infectious.

Q So were there any that were tested that were positive that were placed, as far as you know?

A You would have to have -- the nursing home would have to accept them and have what they call TBP, transmission-based precautions, quarantine facility, etc.

Q Were there positive patients that were submitted or placed in a nursing home, as far as you know?

A I do not know.

Q I just have one other question.

A Excuse me. Can I make one other point? We know each other enough to know that we tend to operate logically on most days. These were noninfectious patients. That was the operating premise. That's why you send it back to a nursing home, because they need the nursing home because they have dementia, they have this, they have that, that's why they are in the nursing home in the first place.

Second, people have said, Oh, you sent them

out because you needed the hospital beds. I never needed the hospital beds. We were afraid we might, but we never did. The capacity in this room, fire capacity is 40 people. It's not a problem until 41 shows up. 41 never showed up.

So I never had a problem of getting them out of a hospital, get them out of a hospital.

Q Was there -- and this is a question I'm trying to find the answer to. In terms of reimbursements for a patient who is either COVID-positive or not COVID-positive or COVID-negative at a hospital versus a nursing home or versus a makeshift facility, was there any monetary incentive for hospitals to want to discharge these patients out of their facilities into nursing homes? Were they being reimbursed differently if someone was a COVID-positive patient versus a negative patient?

A No, they get paid by the bed. Nursing homes also. Makeshift, I don't know how we did that.

Q And --

A Excuse me. We did that very -- there were

not many people in makeshift. Javits had maybe a couple of hundred, but we didn't use the makeshift as much.

Q Is the reimbursement different for hospital setting versus nursing home setting?

A I don't know. I think this was all paid by the federal government.

Q Now, I'm just trying to figure was there a monetary incentive to either the state or to, perhaps, the facility itself. Like maybe hospitals were like let's get these COVID patients out so we can get, you know, actual patients who maybe we'll get reimbursed differently.

I'm just trying to see if there's an incentive for this policy that you pushed, because this doesn't make sense to me.

A I don't think there was except you don't get paid for an empty bed is the expression.

Q Okay.

Mr. Benzine. We're at an hour. We can go off the record.

Ms. Glavin. 2:07 p.m.

Mr. Benzine. The record says when it happens.

(Recess taken from 2:07 p.m. to 2:16 p.m.)

BY [redacted]

Q Good afternoon, Governor Cuomo. My name is [redacted] I'm senior counsel for the Democratic staff. I just want to echo everyone's thanks for you being here today.

I do want to get into some questions with you on a different topic than what we were covering in the last hour.

As you know and as we have spoken about a little bit today, the New York Department of Health released a public report on July 6, 2020, titled "Factors Associated with Nursing Home Infections and Fatalities in New York State during the COVID-19 Global Health Crisis."

Are you familiar with this report?

A Yes.

Q I'm going to introduce it as Minority Exhibit C.

(Minority C was marked for

identification.)

Q This was the first in-depth analysis of nursing home data publicly released by DOH. So I assume multiple people at DOH were involved with pulling this report together. Do you know specifically who at DOH was involved with this report?

A No.

Q Do you know if people outside of DOH were involved with drafting or editing this report?

A No.

Q Do you know if anyone on your staff, either the executive chamber staff or the COVID task force, was involved in this report?

A No.

Q Were you involved in the drafting of this report in any capacity?

A No.

Q Dr. Eleanor Adams, who we spoke about earlier, was an employee of the Department of Health at the time that this report was drafted, and she told us that there were two versions of

the report: One that she and others at DOH worked on that was data-driven, academic, they were planning to publish it in a journal, and then this one that was published that she claims she did not work on and it was not representative of the work of the DOH employees.

Dr. Zucker in his testimony spoke similarly saying DOH employees had put together data, graphs for a report, and then ultimately this really came out of the executive chamber.

Are you aware there being two versions of this report?

A No.

Q Dr. Jim Malatras told us in his interview that there was a call on June 27, 2020, where Ms. Melissa DeRosa instructed the people on the call about what numbers should and should not be included in this report.

Are you aware of that call?

A No.

Q Were you aware that Ms. DeRosa was making decisions on what numbers to include in the DOH

report?

A I don't believe that's true.

Q Was she authorized to make such decisions?

A Well, no. This was the Department of Health report. Only Dr. Zucker would make decisions in this report.

Q Are you aware that Ms. DeRosa was involved in conversations about the report?

A Well, she may be involved in the conversations about the report, but Dr. Zucker decided what was in the report. I spoke about this report with Dr. Zucker many, many, many times.

This report came out in July, and I was talking about it for another 10 months because we were still dealing with the out-of-facility back and forth. This report was basically to answer the question how did COVID get into nursing homes.

Because by the way, New York is still number 39, according to the CDC; right. So only 11 states had a lower rate. So all this discussion about readmission, how were we number 39. And the

report basically said it came from staff, which was a very important discovery and a very important finding, which would advise not just New York but other states going forward.

Dr. Zucker said that there were -- we had the verified numbers, and we had the numbers that were still being audited. And he used the verified numbers because the numbers were actually irrelevant to the conclusion of the report, but he used the verified numbers, and the other numbers were still going to be audited and were audited for months.

Q Was there a reason that the report needed to be released on July 6, 2020, and that it couldn't wait for numbers to be verified?

A After the March 25th order, as the conversation with Congresswoman Stefanik, there was a lot of public interest in nursing homes in general all across the country. And what happened in nursing homes and why is the death rate so high in nursing homes, it was a topic every day of the press conference. So yes, it was time-sensitive.

Also you want to know how people in the nursing homes are getting infected so you can stop it.

Q Dr. Malatras also told us in his testimony that you did review a draft of this report prior to its release. Is that true?

A I did not. Maybe it was in the inbox, but I did not.

Q And does it seem -- or was it something you were aware of that people on your staff in the executive chamber or the COVID task force who were not Department of Health employees, were they speaking to Dr. Zucker and his team about the numbers that were going into the report?

A I don't know if they were talking about the numbers. I'm sure they were talking about the report, because this was going to be a big deal. He was going to -- he was going to release this at a press conference. He was going to brief the assembly and senate with this. He had to be 100 percent sure and comfortable of everything that was in this report.

Q Okay. I do want to take a look at the numbers that were included in this report.

So if we can turn to page 7. There is one full paragraph on page 7. In the middle of the paragraph there's a line that begins with "Further examination of fatalities."

A Yes.

Q And at the end of that sentence it mentioned the New York fatality rate for nursing homes being 6,432.

Do you see that?

A Yes.

Q So this is the number that this report was stating was the number of nursing home deaths that had occurred by this point in time; correct?

A In facilities it says.

Q Okay. Thank you.

A Which is what we were saying every day to the press and the website and every press release. These are in-facilities. And they were saying where are the out-of-facilities, and we said we're auditing them and you'll have them when they are

audited.

But we're not putting out false numbers. On the conspiracy theory, like here is the Jim Malatras note, conspiracy you wanted to undercount fatalities. There is absolutely no reason why we would want to do that since New York was number one in everything to begin with.

If you wanted to do that, just remove the presumed number, which only eight states did and Trump was beating the heck out of me saying I was making it up anyway, and presumed is a kind of sketchy category.

So if you wanted to reduce the number, that's what you would have done, but there was no desire to reduce the number, because every number was the highest in New York.

Q And does this report state that there were other fatalities that could be connected to nursing homes that were out-of-facility?

A It was, as I said, in-facility you would have to be deaf, dumb, and blind to have existed in the State of New York at that time and not realize

that there were out-of-facility deaths.

Q Okay. I'm going to introduce Minority Exhibit D. This is a New York Times article.

(Minority D was marked for identification.)

Q This is a New York Times article originally from March 4, 2021. I can give you a minute to review the article, but I am going to draw your attention to some specific paragraphs in it.

A Go ahead.

Q Okay. So we're going to start with the very top of the article. The article reads, "Top aides to Governor Andrew M. Cuomo were alarmed. A report written by state health officials had just landed, and it included a count of how many nursing home residents in New York had died in the pandemic. The number, more than 9,000 by that point in June, was not public. The governor's most senior aides wanted to keep it that way. They rewrote the report to take it out, according to interviews and documents reviewed by the New York Times."

So my question to you, sir, is are you aware -- were you aware at the time of the report of the 9,000 number included in this report?

A What they're saying here is the number they released was 6500?

Q 6,500 --

A This number is 9,000.

Q It's more than 9,000.

A So they're saying 2500, the number could have been 2500 higher?

Q Correct.

A So what?

Q The question is were you aware of those two different numbers for ways of counting nursing home-related deaths?

A All they're saying is they didn't include the out-of-facility deaths, which according to this were 2500, but still had to be audited.

You're looking for some surreptitious motivation that we wanted to lower the number. What is the difference between 6500 and 9,000?

Q The question is, was this a number that you

wanted to keep out of public reporting?

A No. What difference does it make? 6 million New York, reported 6500. New York reported 9,000. What was the difference? There was no difference. Well, maybe you like the lower number. Every other number was the highest number in the country. Why do you want a lower number?

Then if for some bizarre reason you want a lower number, just take out the presumed deaths. Which, by the way, I don't think should have been included in the first place. Because I think the president had a point, how do you prove a presumed death? Just look at the word. We presume you died of COVID. Who is "we"? The deceased's wife, the deceased's husband? No. So there is no desire.

The only desire is don't put out a number that the New York Times is then going to write a story that says Cuomo's number, incorrect. That's a problem.

Q I'd like to turn our attention to the next page of the article. The paragraph right above

the picture box on the second page. This reads, "The changes sought by the governors' aides fueled bitter exchanges with health officials working on the report. The conflict punctuated an already tense and devolving relationship between Mr. Cuomo and his health department, one that would fuel an exodus of the state's top public health officials."

Is it accurate that you were in conflict with public health officials at the Department of Health?

Ms. Glavin. This isn't what the article says.

Q Is it true that there was a tense and devolving relationship between you and your health department?

A Where are you?

Q The sentence right above the picture block.

A "Conflict punctuated an already tense and devolving relationship with Mr. Cuomo's health department that would fuel an exodus of state's top officials."

The entire situation was tense. I dealt

basically just with the commissioner.

But the entire situation was tense. This is not really what the Department of Health did. They are a regulatory agency. Now they are being asked to be an operational agency.

As I told you and as you read to me in an article, there were many issues with the survey data and inconsistencies and mistakes and rewriting of surveys and writing of another survey, and there was a lot of tension in the Department of Health because they were right in the middle of the crisis.

And these were people who this is not what they did. They did not do crisis management. They did health regulations. They did academic long-term studies. They did not do set up a testing facility in Staten Island for a thousand cars and work with the military National Guard.

So that created a dynamic, because many of them, they were long timers. That's just not what they did.

Q You're saying they were well versed in

working with data?

A They were well versed in working with academic data, data for academic purposes.

Q Okay. And we'll leave that there for right now.

One more paragraph I want to draw your attention to on the next page. The third full paragraph down reads, "The aides who were involved in changing the report included Melissa DeRosa, the governor's top aide, Linda Lacewell, the head of the state's Department of Financial Services, and Jim Malatras, a former top advisor to Mr. Cuomo, brought back to work on the pandemic. None had public health expertise."

A Yes, but all could count, all right, you know, and Linda Lacewell was put in charge of the numbers because the numbers didn't add up.

Q Thank you. And none of them were Department of Health employees. Correct?

A No, but all could count, and counting is important.

Q Okay. It is.

Dr. Malatras told us in his interview that he was involved in editing of the report and working with the Department of Health staff on the numbers that were going into it. And he also said that he was directed on what numbers to include from Ms. DeRosa.

Ms. Lacewell confirmed that she also did work on the report or worked on what would become the report. And she said in her interview to us, "The DOH report wouldn't exist without me." And that's a quote.

At the time the report was released, were you aware of the level of involvement of your staff in the report?

A I knew Linda was working on the numbers, because this was an ongoing problem. We brought in McKinsey to try to figure out the numbers. They didn't figure out the numbers. And Linda was trying to sort that out.

Ms. Glavin. Do you have any exhibit that you can give us telling us exactly what the questions were and what they testified to, because everyone

is making representations about what people said. The characterization.

[redacted] As we mentioned earlier, the prior testimony is likely to be released later. That is the purview of the Majority, but they have been making a habit of releasing all transcripts.

BY [redacted]

Q Were you aware that Dr. Malatras was also involved in editing the report?

A No, but it doesn't surprise me.

Q Were you aware that those working on the report felt Ms. DeRosa was directing what numbers to include in the report?

A The -- Howard Zucker decided what numbers to use in the report. I know that because he told me that. Because he said there were two sets of numbers. One set still had to be audited. One set was verified.

The out-of-facility deaths were, frankly, a different issue, not to be resolved in this report. It was everyday where are the out-of-facility numbers, it did not have to be

settled here. This had a different purpose.

And he said there was no questions on the unverified numbers. That audit would continue. He included the verified numbers because the numbers were irrelevant to the conclusion in any case.

BY [redacted].

Q You referred a couple times now to an audit of unverified numbers. Is that correct? What unverified numbers are you exactly referring to?

A DOJ.

Q Do you know when this audit was initiated?

A This had been ongoing, I don't know when it started. We had spoken to the legislative houses who had requested the numbers. We said first they were going to be ready at some point towards the end of the year. The Department of Justice then started their investigation, and the submission became more important when you're facing a political witch hunt.

We then went to the houses and said, We'll give it to you in January, because they want to

double-check and triple-check.

Q Do you know when the audit was completed?

A It was completed in time for January.

Q Do you have like a general month estimate?

A Well, they had to complete it for January. My guess is they completed it just before January, if that was the deadline. They then said -- they set a date for the presentation to the assembly and the senate with the audited out-of-facility number. That's when the Attorney General jumped the gun and issued her report in the immediate preceding time.

Q And prior to the AG report, do you recall being told the audit has been completed?

A I don't remember being told the audit has been completed. They would have completed it in the time frame that they had to complete it.

Q Was the first time that you heard the audit was completed after the release of the AG report, if you can recall?

A I can't recall.

Q Okay.

BY [redacted]

Q I'm going to introduce Minority Exhibit E. This is an email chain from around July 9 and 10, 2020. You're welcome to take a moment to review it. As we know, you do not use email so you are not part of this email chain.

(Minority E was marked for identification.)

A What are you interested in about this?

Q Okay. Just for clarity of the record, this is an email chain regarding the response to ProPublica's questions about the DOH nursing home report. In fact, the subject line changes slightly throughout, but includes "flag ProPublica deep dive into DOH, NIH study."

Looking at the very top, that last email in the chain chronologically, is a reference to Dr. Malatras, I believe. It says, "Jim said he is reviewing the written answers."

If you turn to the third page, there is an email from Friday, July 10, 2020, at 12:06 p.m. that says, "Hold on, I want Jim to review before

you send."

A Who is saying that?

Q That was an email from Peter Ajemian. The first one was also from him, and then on the bottom of the next page an email from Jonah Bruno on Thursday, July 9, 2020. It says, "Malatras recommendations are highlighted."

Again, I just want to confirm, Dr. Malatras was not a DOH employee in July of 2020; correct?

A Right.

Q He was a member of your COVID task force; correct?

A Which was working closely with DOH, yes.

Q Okay. The language in these emails seems to be deferring to Dr. Malatras for answers about a DOH report. If this was truly a DOH report, it would seem that they would be best equipped to answer the questions on their own report. Is that right?

A Unless it was a piece that Jim had worked with them on.

Q Okay. There seems to be several chamber

employees included on this email chain or not DOH employees. This includes Gareth Rhodes, Kyle Kotary, Peter Ajemian.

Were they trying to control the message about the DOH report that was going out to the public?

A Peter Ajemian is the first person, so the request would have come to him so he would have forwarded it. Gareth Rhodes was working on the audit of the numbers. I don't know who Kyle Kotary.

Q Okay. According to Mr. Rhodes, his work on the audit didn't begin until August of 2020. Is that your understanding?

A I don't know.

Q Did the executive chamber have an interest in a specific narrative going out to the public about the DOH report?

A No. The only narrative in the report was Zucker's conclusion that the infection came from the staff; right. That's all the report -- that's the basic point of the report. Do we agree with that?

Q Uh-huh.

A You are still going back to the difference between the 9,000 and the 6,500; right?

Q That is a question of concern, yes.

A Okay. Then just remove the presumed deaths. Why wouldn't you do that? Why isn't that the logical answer to your conspiracy?

Q There is no conspiracy that I'm alleging here, just fact finding.

A You wanted to reduce the number. Just eliminate the presumed deaths.

Q The other testimony that we've received in this version has said the difference in numbers was not the presumed death numbers, but the numbers between in and out-of-facility deaths?

A Yes. So if you want to reduce the number, add in out-of-facilities, answer that question, and remove the presumed number, which you're getting blasted for for including in the first place as an attempt to artificially inflate the number, and you're getting criticized because only eight states did it because it has no meaning.

So if that's what you want to accomplish, reduce the net number in-facility, out-of-facility. You want to reduce the net number. Just add in facility and eliminate the presumed.

Q Okay. I'm going to move on to a different question.

This is not the first investigation into the New York numbers involving the nursing homes in the COVID-19 pandemic, is it?

A Who --

Q Are you aware of other investigations that have looked at these issues?

A The Department of Justice.

Q The New York Attorney General also conducted an investigation; correct?

A Yes.

Q And she issued a report on January 28, 2021, that we've spoken about previously. I just want to be clear, the Attorney General in New York does not report to the governor; correct?

A Does not.

Q The AG's report released on January 28, 2021, did find that, "Discrepancies remain over the number of New York nursing home residents who died of COVID-19. Data obtained by OAG shows that DOH publicized data vastly undercounted those deaths." And the report recommended that DOH "ensure public reporting by each nursing home as the number of COVID-19 deaths of residents occurring at the facility and those that occurred during or after hospitalization of the residents in a manner that avoids creating a doubling-counting of resident deaths at hospitals in reported state COVID-19 death statistics."

We did hear about this concern about double counting from other witnesses in this investigation. Was that a concern you were aware of?

A Yes. That is the report that the AG did just before we were about to announce the numbers. Which she had to correct because it was a very sloppily done report.

Q Okay. Are you referring to the February 11,

2021, New York Department of Health updated version of the July 6, 2020, report?

A Did it include the out-of-facility numbers?

Q There was -- that would be my question to you. There was a report released by the New York Department of Health on February 11, 2021. Was that released in response to the AG's report?

A No. I just said we had the numbers. We were -- told both houses you'll get them in January when you come back after break. Somehow the AG must have found out. The AG is no political friend of mine. Nor the president's. She releases this report just before we're going to release the numbers.

Q Do you agree that it is important to report accurate public health data to the public, especially during a public health crisis?

A Yes. Did you agree that you shouldn't release inaccurate information?

Q When releasing reports, is it important to fully explain how the data and the numbers were arrived upon and decided?

A It was abundantly clear newspapers wrote it every day. They haven't released the out-of-facility numbers, and they asked me every day, and I said when they are audited and accurate, we will release them.

I did not want to release inaccurate numbers, which would destroy the credibility of what I was saying and then later on open me up to political charge from Jeff Clark and Michael Caputo, both of whom were political operatives for Trump, and it's abundantly clear, to a federal charge.

That was said daily, daily. This is saying here are the in-facility numbers. The out-of-facility numbers weren't done. I still believe all these out-of-facility numbers, that's why it took the New York State Comptroller one year, it took the CDC two years to come up with the out-of-out-of-facility numbers. CDC.

You want to call in the middle of a pandemic these nursing homes and ask them these tedious forensic auditing questions and you really think you're going to get the right numbers?

So -- and the numbers kept changing. Every time somebody comes back with a number, it was a different number. That was the concern.

Q So now looking back on the July 6, 2020, Department of Health report, do you believe that it included the most accurate numbers it could have included?

A On the July 6?

Q Yes.

A Yes. Because they did not have the other number audited.

Q And while you were saying daily in your briefings that the numbers for out-of-facilities were not audited at that point in time, was it clear in the July 6, 2020, DOH report that there were other numbers that had not been included in that report?

A It had to be clear because it was the entire discussion of every day.

Q Okay. Thank you so much, Governor Cuomo. We will go off the record.

BY [redacted]

Q This January 2021 deadline for submitting the numbers to the legislature, were you involved in setting that deadline?

A No.

Q And could you just explain again the rationale for you, which you requested writing to the new legislature in 2021 to release the numbers?

A Because they needed time to complete them. And then in August, the DOJ starts their investigation. So they needed time to triple-check them.

But your obsession on the difference between 6500 and 9,000 is bizarre, because it makes no difference for any purpose. You wanted to have lower numbers, no. Every number we had was the highest number. Because we were first, highest infection, highest death rate.

So there was no reason, especially such an insignificant difference from 6500 to 9,000. And if you did have some obsessive-compulsive disorder

to reduce the number, just eliminate the presumed, which, frankly, probably should have been eliminated anyway.

Just a matter of good government, because nobody knew what it meant.

Q Did DOH represent to you that presumed was an unreliable category?

A Well, by definition, not only was it President Trump, but by definition. It's a presumption.

Q What was the definition that DOH used in counting the presumed deaths?

A Presumption.

Q Simply just presumption?

A Yes.

Q It --

A A presumption of whoever they got on the phone. So God forbid you had a relative who passed away in your house. Who was in the nursing home? The nursing home would call you up and say, "Your aunt was in our nursing home." You would say yes. How would she doing? You would say she

died. Oh, how did she die? Not really sure. What do you think? We presume it was COVID. Okay. Presumed COVID death.

Q So presumed does not contemplate a physician who would make that --

A No, no. That's why only eight states did it, and that's why President Trump had such a field day with this is all a fabrication.

[redacted] We can go off the record. Thank you.

Ms. Glavin. Just so I can make my record, for this session the questioning by the Democrats, Ms. Stefanik, Malliotakis that were present, Mr. Molinaro was here, but he stepped out and Mr. Wenstrup is still here.

(Recess taken from 2:54 p.m. to 3:00 p.m.)

BY MR. EMMER.

Q We can go back on the record.

Mr. Cuomo, we're going to jump around a little bit to make sure the record is clear. So I want to reverse all the way back to pre-issuance

of the March 25 order.

You testified in a previous hour that you were not involved whatsoever prior to the order; correct? And your answer verbally.

A Yes.

Q In December, Dr. Zucker testified to the Select Subcommittee that he recalled being in a meeting with you members of the task force in which you received a call from the Greater New York Hospital Association asking you to do something about nursing home residents that the hospitals wanted to discharge back to the nursing homes.

Do you recall such a phone call taking place?

A No.

Q Regardless of the phone call, do you recall the Greater New York Hospital Association asking you to do something related to that issue?

A No. The discussion with the Greater New York Hospital Association was always about the hospital capacity and they were tracking the capacity, which never actually happened.

Q As far as hospital capacity is concerned, would it be possible that they would have proposed something similar to the March 25 order in order to increase hospital capacity?

A No. I'll use the analogy I used before. Fire capacity is 41 in this room. It's not a problem until the 42nd person shows up. Then it will be a discussion, but we never -- that never happened.

BY MR. BENZINE.

Q I have a couple follow-ups from the last hour, specifically on the Attorney General report that came out in January of 2021.

You said a couple times, but why do you think the AG report was political?

A Is that the report where the AG says the March 25 order was consistent with CMS guidance?

Q I believe that was part of the report, yes.

A But you rejected that part of the report.

Q I'm not saying that. To avoid getting yelled at, I'm not testifying today.

A I believe she is a politically oriented

official.

Q Is that solely the basis that the report is political? Was there anything in the report that was political?

A No, I also believed that the timing of it was political to just get ahead of our announcement.

Q How did Ms. James know that you were about to announce the numbers?

A When you tell the legislature something, you may as well shout it from the mountaintop. I know that doesn't happen with the Congress.

Q And then the morning the report was issued, Ms. DeRosa --

A Give me one second.

Mr. Emmer. For the record, we have another member join. Could the member please identify themselves from the record.

Ms. Dingell: Debbie Dingell.

BY MR. BENZINE.

Q The morning the AG report was issued, right before it was issued, there was a phone call between Ms. DeRosa and Ms. Garvey and the Attorney

General and some staff and some executive chambers officials.

Were you aware of that phone call?

A After the fact.

Q And then in Ms. DeRosa's book, she wrote that the report was coming out without the executive chamber's ability to review it. She left out quite a bit of the transcript where she used a lot of the colorful language with the Attorney General.

Were you aware of the language Ms. DeRosa used?

A I don't know that she uses colorful language.

Q I think the record should reflect that that was facetious.

Ms. Glavin. There was a big smile, the record should reflect. And the record should reflect I think I saw a smile from Ms. Stefanik, but it went away.

Ms. Stefanik. Is that appropriate representation of your --

The Witness. These are colleagues who she was

talking to. Staff people in the Attorney General's office. It wasn't the Attorney General. It was staff people. And they know -- Melissa used to work in the Attorney General's office so they know each other. And I understand it was a heated conversation.

But was it appropriate on your behalf for colleagues to have heated conversations? No, it would be better if everyone kept their calm always.

Q Do you recall the language that she used.

A No.

Q Would like "what the fuck are you doing about this" ring a bell?

A No.

Q Does that sound out of character for Ms. DeRosa?

A Yes.

Ms. Stefanik. Is that appropriate?

The Witness. Is it appropriate to curse?

Ms. Stefanik. To staff, to anyone.

The Witness. No staff person should ever

curse to another staff person. No person should curse.

BY MR. BENZINE.

Q Did Ms. DeRosa ever explain to you why she had this phone call with the Attorney General staff?

The Witness. Yes. They thought it was bad faith. It was unethical, opportunistic, and the report was flawed.

Q You were -- I think you might have been asked this last hour. You were Attorney General. Is that an independently elected position in New York?

A Yes.

Q Is it common for the Attorney General to run products through the executive chambers prior to release?

A My guess is she wasn't saying run it through the executive chamber, but give us a heads-up. Yes, it is very common as an Attorney General for the governor to say you should give me a heads-up.

Q The timeline implies that she got a heads-up

prior to the issuance of the report.

A Imminent.

Q And I can, at the next break, pull up the transcript. My recollection of it is that Ms. DeRosa and other witnesses have talked about that the executive chamber wanted the ability to verify the numbers that were in the report.

Would that be common?

A If it's an executive agency?

Q No, this is the Attorney General.

A Yes, about an executive agency? Yes. You want to make sure you're not wrong. When I was Attorney General, the governor's office -- you're also the Governor's attorney as Attorney General. You're independently elected, but you represent the governor and the state, and you represent the executive.

So to do a report on an executive agency without notifying the chamber is highly, highly unusual.

Q While you were Attorney General, did you ever investigate the executive chambers or executive

agency?

A Only under separate investigatory authority referred by the governor of the state.

Q Not under an individual Attorney General?

A You do not have the ability to investigate the state without a direct referral from the Governor.

Q Did you refer the Attorney General to investigate this matter?

A No.

Q How was she able to do it then?

A Got me.

BY MR. EMMER.

Q Really quick, I want to return to when you got the order on April 20, 2020, did your staff brief you on the 12 other states that implemented similar orders?

A I don't know if it was that day.

Q When were you briefed on the other states?

A I was told, but later on.

Q Did they brief you on whether those states restricted passing of discharged patients back

into the nursing homes?

A I don't know that we had that level of discussion.

Q Did they brief you on when those states rescinded their orders that were similar?

A At different times. I don't know when all of them did, no.

Q Did you talk to Governor Murphy of New Jersey about their order?

A Not that I remember.

Q At this time I'd like to introduce what will be marked as Majority Exhibit 3. This is the impeachment investigation report through Judiciary, the Judiciary Committee, published on November 22, 2021.

First, Governor, do you recognize this report?

A I never read the report.

Q I'd like to direct your attention to page 41, and we are looking at subsection G, the second paragraph, and I'll give you a moment to read it.

A By the way, there's the answer to the

previous question. August, there was a question from the Department of Justice and from the legislature.

Q I'll read it into the record. It says, "During testimony before the New York State Senate in August of 2020, a senior executive chamber official who was in the room where a senior DOH official was remotely testifying, wrote a message on the white board suggesting that the senior DOH official testify in fact that the March 25 directive was authored by DOH and that the executive chamber was not involved. The statement was not true, and the senior DOH official did not make such a statement in the testimony."

In December, Dr. Zucker testified that he was the senior DOH official referenced here. Do you know who the senior executive chamber official that wrote the message on the white board is referring to?

A No. Why was this statement not true? Did Dr. Zucker say the statement was not true?

Mr. Benzine. Dr. Zucker said the statement

was not true, and that's why he didn't testify to it.

The Witness. On the March 25 order?

Mr. Benzine. Yes, sir.

The Witness. Well, he's technically right because it goes through Counsel's office.

BY MR. EMMER.

Q Dr. Zucker testified that the senior executive chamber official was Ms. DeRosa. Ms. DeRosa never discussed this incident with you?

A No. She would not have thought of -- I'm speculating. The Counsel's office approval is almost perfunctory, procedural. It's not thought of as executive.

I wouldn't review it. Melissa wouldn't review it, my press people wouldn't review it. It just go through the Counsel's office for technical legal review.

Q I want to focus just on the white board incident right now. Just so the record is clear, you don't -- Melissa DeRosa never discussed this incident with you?

A No.

Q And -- but if she did, would it concern you that she was instructing a witness testifying to the state assembly how to testify?

Ms. Glavin. That's not what it says here, that she suggested, not instructed.

BY MR. BENZINE.

Q Would Ms. DeRosa have the authority to instruct a witness how to testify?

A No.

Q Would DOH testimony go through the executive chamber for approval?

A I don't know. It may go through legal.

Q And then regardless of the characterization in the impeachment report, is instructing a witness to commit perjury a crime?

A Well --

Q Just yes or no.

A The -- making a mistake is not a crime. And I would have said the executive chamber was not involved in the March 25 order. I would have said that.

If you said technically was it involved, technically it probably went through the Counsel's office. But that is not thought of as the executive chamber reviewed it, even though Counsel's office is part of the executive chamber. But she was saying "suggesting." This says "suggesting." Where did you get instructed?

Q I don't know if suggested or instructed. We'll be speaking to Ms. DeRosa soon.

A It says "suggested" here. Where do you get "instructed"?

Q Dr. Zucker took it as instructed.

A Not suggested? He told them suggested.

Q I don't know what he told them.

A Well, wait, did they make it up?

Q I have no idea.

Ms. Glavin. We can agree we won't know because the assembly will not release any of the underlying evidence for the report.

A Just to put this in context, this may be a little -- I have testified many times before many bodies with a person next to me who is a lawyer,

whatever they are, will hand me a note that says, You just made a mistake, you said this. Or, You don't understand what the Congresswoman is asking. She's really asking this.

They hand me the note. I read the note. Sometimes I use it, sometimes I don't use it. That's what this is in effect, right. Someone behind you hands you a note. Hands a congressperson a note, ask him this. Oh, you're asking the person to commit perjury. No, these are suggestions from the staff person.

Q Well, it goes a little bit further than as to what -- and we'll find out -- to what Ms. DeRosa knew. If she knew it was the opposite of what she was suggesting, then it is suggesting a lie.

A Suggesting. Suggesting a lie, by the way, is not perjury.

Q It's suborning perjury.

Ms. Glavin. No. I'm going to actually cut down this line of questioning. It requires a legal conclusion. I spent many years as a defense lawyer. I also spent 12 years as a prosecutor.

You guys are getting into minutia here.

Mr. Benzine. That's fine. We have more witnesses that we can ask.

Ms. Glavin. You can ask.

BY MR. EMMER.

Q When you learned about the March 25 order, did you ask how many admissions and readmissions had occurred at that time?

A No.

Q Did you subsequently learn how many admissions and readmissions had occurred?

A Probably at some point in the future, but I don't recall.

Q Are you aware of whether the administration was collecting data related to admissions and readmissions?

A No. Because I know it's hard for you to appreciate now. The way it was explained to me, there was no issue. It was -- these were noninfectious people going back, CMS/CDC. So there was no red flags.

Q Who facilitated new admissions into the

nursing homes?

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

Q As far as readmission versus admission pursuant to the March 25 order, new admissions are individuals who were previously not at that nursing home but were admitted into the nursing home. I was just asking if you know who would have facilitated that.

A I don't know.

Q Do you know who from your administration would have overseen the enforcement of the March 25 order?

A No.

(Discussion held off the record.)

A That's right. The -- only the executive order has an enforcement mechanism. There was no enforcement mechanism for an advisory.

Q Do you recall County Executive Steve McLaughlin refusing to abide by the March 25 order?

A No, but it wouldn't surprise me.

Q So you would have no --

BY MS. STEFANIK.

Q Why wouldn't it surprise you?

A Because he is a contrarian who opposed everything the state did. With zeal.

Q He made the right decision not abiding by this directive.

Do you agree with that statement.

A No. And --

Q Why not?

A First of all, I don't remember him doing it. I remember there was a time when there were complaints from people in his county nursing home, and he was refusing to let inspectors go into the nursing home.

Q When was that?

A It was pre COVID.

Ms. Malliotakis. Not COVID-related.

The Witness. Not COVID-related.

Mr. Benzine. Do you recall any allegations of your administration withholding vaccines to more Republican county executives?

The Witness. No.

BY MR. EMMER.

Q I want to return to something that you were talking about in the previous hour.

Do you recall you and your administration arguing that nursing homes always have the option or obligation under preexisting state law and regulations to deny patients that they could not handle?

A Can you explain that again.

Q I believe in the previous hour, you were referring to Section 415.26?

A Yes.

Q You're familiar with 415.26?

A Yes.

Q Can you briefly describe what your understanding of 415.26 is.

A The nursing home can only accept a person for whom they can provide appropriate care.

Q Was Section 415.26 in effect on March 25, 2020?

A I believe it was.

Q At this time, I would like to introduce what will being marked as Majority Exhibit 4.

(Majority 4 was marked for identification.)

Q This is Executive Order Number 202.5 issued by you on March 18, 2020. And I'll give you a moment to look it over.

A Why don't you go because I can't find my glasses. Okay.

Q Are you familiar with Executive Order 202.5?

A Not really, but I see it.

Q I want to direct your attention to the first bullet point on the top of the second page.

Ms. Glavin. Referring to subdivision II?

Q Yes. And this appears to suspend or at the very least limit Section 415.26. Were you aware of this?

A Read the first line.

Q Of the section? Oh.

A No, of subsection I.

BY MR. BENZINE.

Q The executive order reads, "Subdivision i at

Section 415.26 of Title 10 of the NYCRR, to the extent necessary to permit nursing homes receiving individuals affected by the disaster emergency to comply with admission procedures as soon as practicable following admission our to forego such procedures for individuals returned to facilities from which they were evacuated."

A What does Subsection I say?

Q I believe it's admission protocol.

Ms. Glavin. I think the word was Subdivision II? Do you have that as well?

Mr. Benzine. He can tell us about it.

The Witness. I don't believe I. I believe I is the administrative procedure. Paperwork. Not the actual right.

BY MS. STEFANIK.

Q I just want to follow-up on some of the questions.

Did the Department of Health conduct inspections on nursing homes after the March 25 directive regarding about whether they were complying with the March 25 directive, do you

recall?

A I do. I would have no idea if they did, but I don't believe they were doing it anyway.

Q So the Department of Health had no inspections of nursing homes regarding the compliance with the directive?

Ms. Glavin. If you know.

A I don't believe they did. Not that I know.

Q And then you said it was up to the discretion of the nursing homes. Do you believe that county executives had the discretion to not allow Covid-positive patients in his nursing home, to defy the directive?

A Well, you wouldn't be defying the directive. You can't do it en blanc, but for an individual, for -- you might be able to. If you said I have no PPE to do this, yeah.

Q Do you agree with the decision to not allow COVID patients in Renneslaer County?

A I don't know if he had a good reason, but if he had a reason, yes. First of all, I don't know if -- is he the administrator of the nursing home?

Q Yes, a county-run nursing home.

A Does he run it?

Q He's the county executive.

A Yeah, but there's a difference between being an elected official and being the person who runs the nursing home.

Q He's a medical executive and in Renneslaer County, they are very focused on ensuring safety and security for the nursing home. That's why it's part of his budget. Yes.

A Well, yeah. If the nursing home made a finding that they could not care for such a person, any person because they didn't have PPE, etc., then, yes.

Counsel, not to suggest that --

Mr. Emmer. We're just asking questions, Governor.

The Witness. This is misleading; right. Subsection I says --

Ms. Glavin. Subsection II, which was not --

Mr. Benzine. I would prefer him to testify, not you.

Ms. Glavin. Agreed.

The Witness. Subsection II is the relevant section. Accept and retain only those nursing home residents for whom it could provide adequate care. This is just Subsection I.

Mr. Benzine. Thank you. That's why we were asking the question.

BY MR. EMMER.

Q In the previous -- in one of the previous hours, we talked about the executive order that modified or rescinded the March 25 order. Can you define whether -- was it a modification or a recision, a clarification?

A I don't remember. It was -- it also had an additional purpose where it mandated testing, which was the substantive purpose of the new order.

Q At this time, I'd like to introduce what we marked as Majority Exhibit 5.

(Majority 5 was marked for identification.)

Q This is an email thread that you're not a

part of between Department of Health staffers, and I'll give you a moment to read through.

A What was the relevant portion in it?

Q The first page. The subsequent pages are just repeats.

A Okay.

Q The email says that the Department of Health was instructed or removed the guidance by the executive chamber.

Do you know who would have instructed them to remove it?

A The March 25?

Q Correct.

A No. I don't know who it was, and I don't know who would.

Q To be clear, it was not you who instructed them to remove it?

A No.

Q Would it concern you that they would have removed it if the administration was arguing that the order was never rescinded at that time?

A May 27. What did we say the date of recision

was?

Mr. Benzine. Witnesses have said very clear that it was not rescinded. It was clarified or amended. And if it was still operative, I guess we're wondering why the executive chamber wanted it removed from the website.

The Witness. I don't know as a matter of fact, but my supposition would be the amendment basically terminated.

Mr. Emmer. Thank you.

Ms. Glavin. Did you mark the exhibit as an exhibit? Did I miss that?

Mr. Benzine. Yes, it was 4.

(Discussion held off the record.)

BY MR. BENZINE.

Q I want to fast-forward to June.

A It was no longer in effect at that point, May.

Q Just parts of it still were, and we can go back and we'll go back and review other witness testimony.

BY MR. EMMER.

Q I want to fast forward to June after the order was rescinded, and at this time I'd like to introduce what will be marked as Majority Exhibit 6.

(Majority 6 was marked for identification.)

A Okay. What do we have here?

Q This is an email thread started by Miss Stefanie Benton to Dr. Malatras, Gareth Rhodes, Melissa DeRosa and Dr. Zucker on June 7, 2020. Ms. Benton attaches an article seemingly critical of the March 25 order and writes, "This going to be the great debacle in the history books. The longer it lasts, the harder to correct. We have a better argument than we made. Get a report on the facts because this legacy will overwhelm any positive accomplishment. Also, how many COVID people were returned to nursing homes in that period? How many nursing homes? Don't you see how bad this is, or do we admit error and give up?"

A I don't remember this specifically, but it's probably a -- I was unhappy with the article. And I asked Stefanie to send them an email to let them know that I was not happy with the way they handled the argument.

And then a little tongue in cheek that we admit error and give up, do we take our ball and go home. That's what that is.

Ms. Glavin. So you think this email came from you even though it was Stefanie's?

The Witness. Yeah, I think I probably said to Stefanie say -- not dictated but say this was a really lousy job of handling this article and how about this and how about this and how about this.

Ms. Stefanik. Is that the normal protocol that you don't have the email to communicate through Stefanie?

The Witness. No, I would normally call them up.

BY MR. EMMER.

Q Governor, you never used any email of any type as governor or texting or just --

A No. Not since HUD when I got into trouble for emails that were sent to me that I never saw, but then was charged with knowledge of because they had been sent to me.

BY MR. BENZINE.

Q Not since HUD is just referencing use of email, not to do with the topic?

A Yes.

Q I just wanted to make sure.

Mr. Langworthy. There was no personal email?

BY MR. EMMER.

Q Where the email says "Get a report on the facts," were you referring to the July 6 report?

A Whatever that article was. They did a lousy job of explaining in the article. So it was get a report on the facts from the article. Get a -- correct the article or just explain the facts.

Mr. Benzine. At this point did you know the Department of Health was working on a report regarding the March 25 order?

The Witness. I wouldn't know.

Q Melissa DeRosa responds and writes, "Tracy,

please set a call with this group for today after the press conference to go through."

Did you participate in this phone call?

A No. It was a fairly common occurrence that there would be a lousy article and I would say, What the heck.

Q And you already said tongue and cheek, but the last part of that email, "do we admit error and give up," were there discussions about admitting that the March 25 order --

A No, that's the expression I would use.

BY MR. LATIMER:

Q Governor, did they print it out and give them to you?

A Yeah. They would print out the relevant articles.

BY MR. EMMER.

Q Let's move on to talking about how your administration reported nursing home data. And I just have --

Ms. Stefanik. Mr. Langworthy wants to jump in.

BY MR. LANGWORTHY.

Q A line of questioning about the immunity provisions that were in the state budget. In the 2020 budget, I believe it was where the legislature, under your edict, approved drug protection immunity for the health care facility handling COVID, protocols and patients.

What was the rationale behind granting immunity to hospital executives for COVID-related lawsuits and who were the key advisers involved in that decision?

A Congressman, I don't have a specific recollection, but it was a bill that was passed. I don't think it was just hospital executives. I think it was all healthcare professionals, doctors nurses, etc.

The concern was everybody was afraid of this COVID-19, if I'm going to have liability, why would I even go near it. I won't have any -- I won't see a COVID-19 patient, I won't let anyone in.

It was not just New York, it was a national

problem. Don't hold me to the number, but I think something like 35 states passed a similar law, because you had a lot of people in the healthcare community saying I won't go near this.

Q I mean, like a lot of the concern about the vaccine, the immunity given to the vaccine development. There was a lot of distrust at this point, given the fact that the government granted so much immunity preemptively for any of these patients' recovery so there's no malpractice, ability to go back and have any recourse, especially if we're talking about the nursing home families.

They want some closure. They have a lot of deep pain. They didn't see their loved ones in the final hours, and it's just helpful to tell this story as to how did you come to these conclusions as leaders. Who brought the idea forward I think is really relevant.

A I believe it came from the legislature. But it was a national problem at the time. I remember speaking about -- I think we did it on a

governor's call. The White House may have even been on that call. That hospitals and healthcare professionals were saying I won't treat COVID-19 people.

Q Did someone from the Greater New York Hospital Association say to you, We will not admit COVID patients?

A It wasn't just about New York. It was a nationwide -- whatever it was was nationwide.

Q In the New York healthcare community, we have the most unique facilities on planet earth. We are the capital of the world, and you are the governor of this great state, the most powerful governor in the country. You have a very strong relationship with this organization. They are one of our greatest special interests. Certainly very, you know, generous with you and every other governor's campaign. These were not people that were strangers.

So I think it's important for us to know were there conversations about this immunity in solving them before a COVID-19 patient ever walks in the

door and the legislature with all due respect trumps at this time, and you have all the power. Just a cold hard reality of you had extraordinary powers at this time.

The executive order essentially took this to a -- and many other governors, I'm not just singling you out. Governors became, you know, dictators for a while, and I'm not saying that in a nefarious way. Just the way that the laws were changed for the extraordinary measures that we're dealing with.

I just think it's a relationship that preexisted the COVID-19 pandemic. Certainly would have played into this in any conversation with, you know, the key leaders or particularly the Greater New York hospital Association or any of the other big hospital chains in our state. Those conversations either with your senior staff or you I think are very relevant.

A Congressman, I don't remember having any conversation about this. But it's not just hospitals. It's doctors, it's nurses, it was a

blanket immunity for basically the healthcare industry. Nursing homes.

Q The nursing home chains, it is also very big business. Medicaid is -- you know better than anyone in this room what that means to the New York City budget, and nursing homes are the key drivers. And did they have any discussion with you about this?

A Yeah, but this was not an executive order. This was legislation is my recollection. This went through the assembly and the senate. They had to pass this.

Q They were in and out of there pretty quick. They were passing anything they got put in front of them.

A Yeah, well, I wish, but they praised this. I don't remember any conversation. I think it was sort of other states were doing it. It was a national issue, and I don't remember any opposition to it or anything.

Q Zucker is kind of the center of the storm on a lot of these discussions today? Was he the one

driving this discussion on why --

A I don't think it was Zucker. I think it came from the legislature, that we were afraid of a crisis, that people would stop treating COVID-19 people. It is similar to the vaccine. If you're a private doctor, are you going to see COVID-19 patients? You know.

Q I mean, I think that many of us have deep regrets that the protections weren't put in place. We've seen some of the side effects and probably a lot of premature deaths that happened in this country and probably a lot of buyers' remorse in this country, even after your time serving as governor.

But before granting immunity to the hospital executives, did you or your administration consult with representatives from long-term care facilities in nursing homes before issuing this?

A I think -- I thought long-term nursing home facilities were in this.

Q Did you consult with any of them?

A I don't remember consulting with anyone about

this.

Q I mean, obviously you hire people to be the experts in the field of healthcare. The health department. No subject matter experts were consulted before coming up with this?

A What this says is Secretary of Health and Human Services Alex Azar encouraged governors to develop a list of liability protection for in-state and out-of-state physicians, including volunteers, re-licensed, recently re-licensed.

Q So you believe the genesis of this came from the federal government?

A I know it was a national problem. I know we talked about it on national governors calls. Secretary Azar's involvement would suggest that it was a national problem.

Q How did the decision to grant immunity in the hospital impact the operational and legal responsibilities of the long-term care facilities in the nursing homes, in your opinion?

A Congressman, I think they also had immunity.

Q So the immunity granted really prevents any

families from having any sort of recourse in this terrible situation. The figures, I don't know if we'll ever know how many we lost because of COVID.

No recollection whatsoever as to what brought this forward other than it was a discussion, it might have been the state legislature, you know, I have my serious doubts with the state legislature, you know, for bringing up this investigation on the fly.

A No, I think it was a national issue. And it was national legislation.

BY MS. STEFANIK.

Q To follow up with you on that topic. Can you describe the professional relationship with the Greater New York Hospital Association and your executive chamber?

A We work with them. We work with nursing homes. Healthcare is one of the biggest parts of the budget. Medicaid, Medicare is one of the biggest parts of the budget. That sustains the -- basically the nursing homes as well as the hospitals.

Q Did you have any conversations, conference calls, events, with the Greater New York Hospital Association members or representatives of that association prior to the March 25 directive of January 1 to March 25?

Ms. Glavin. Related to what?

Ms. Stefanik. Related to the directive itself.

The Witness. No.

BY MS. STEFANIK.

Q Did you have any conversations prior to the budget when the immunity language was included with the Greater Hospital Association of New York?

A Not that I remember.

Q Your office --

A Nor nursing home people.

Q Are you aware that the Greater New York Hospital Association has claimed great success for, quote, "aggressive lobbying for this immunity provision once it became public"?

A I'm sure they did. But I'm sure the nursing homes did and the doctors' lobbyists did and the

nurses' lobbyist did.

Mr. Langworthy. Specifically, who in your shop were they specifically lobbying? Was it Melissa DeRosa, was it Howard Zucker, was it -- who was having a meeting that led to this?

The Witness. I don't think -- I don't think this came through the chamber. I think it came through the legislature. Those groups are much stronger with the legislature than they are with me.

BY MS. STEFANIK.

Q Your office put out a statement saying that the secretary governor is the proverbial right-hand to the governor, overseeing the monumental task of coordinating the, state's COVID response, including help craft emergency executive orders, coordinating with elected officials and strategizing with leadership and business executives across the state.

What does hospital leadership mean in that case, and does it apply to Greater New York Hospital Association?

A The hospital association is just a trade group.

Q Correct.

A We were working with the hospitals.

Q Correct.

A We had, literally, I want to say three times a week of calls with all the hospitals on the phone.

Q And were there any calls with the Greater New York Hospital Association?

A Not really at that point, because we went directly to the hospitals.

Q So not really or no, they weren't?

A Not that I recall, because we had an open call with all the hospitals, what do you need, what do you hear, what is the problem?

Q Do you believe it's appropriate for direct family members to lobby on an issue where your chief aide, the secretary to the governor has huge authority over and is overseeing the state's COVID response?

A I know Melissa was very careful on recusals

on anything having to do with her father.

Q Did she recuse on anything to do with the Greater New York hospital Association?

A I know -- I don't know the specific clients of the father, but I know she was -- had an elaborate recusal policy.

Q What was that policy?

A That she wouldn't have anything to do essentially with clients of her father.

Q How can that be the case, though, that she's overseeing hospital leadership and the Greater New York Hospital Association is the biggest advocacy arm for New York hospital leadership? How can you have both recusal and yet overseeing the hospital leadership outreach?

A Who are you saying represented Greater New York?

Q Multiple direct family members of the secretary for the governor.

A I don't -- I don't know how that works. I don't know how that would work with the recusal. You know, her father is a member of a firm, so the

firm can represent -- there are other partners in the firm.

Q The individuals directing the direct family members representing New York Greater Hospital Association.

A Then she would not have been involved.

Q Was it okay for her to be involved on the perspective from hospital leadership, strategizing with hospital leadership?

A Hospital leadership is different. Hospital leadership --

Q Are members of the association; correct?

A No. They are heads of the hospitals. They are the heads of the hospitals. We had the actual head of the hospital. The trade group is just a trade group.

Q Representing the hospitals?

A Yes.

Q Correct.

A But we're talking to the hospitals. Catholic Hospital.

Q Of the trade group?

A But everybody is a member of something. But Catholic Hospital, you can deal with Catholic Hospital or Downstate Hospital, which has nothing to do with the trade group.

Q So that would not concern you?

A No, dealing with a hospital, no.

BY MS. MALLIOTAKIS.

Q Pointing to the May, New York Times article, it says the Greater New York Hospital Association and the lobbying group for the hospitals, some of which are nursing homes, drafted legislation calling for civil and penalty liability during the pandemic.

Isn't New York one of several nursing home lobbyist groups receiving nursing homes immunity protection, and then it says it's included in the omnibus, the big -- on April 2 the legislature approved the budget which includes the provision the hospitals and nursing homes from lawsuits over COVID-19 care.

A Congresswoman, that's a good point. There was a carve-out for sort of willful misconduct or

something.

BY MR. EMMER.

Q We're going to focus on nursing home data. Just a couple quick questions off the top.

Do you think your administration was fully transparent regarding the data throughout the pandemic?

A We could not have been more transparent.

Q Do you think your administration was fully transparent regarding the amount of nursing home residents who died of COVID-19 during the pandemic?

A It could not have been more transparent. There was nothing more transparent than total deaths. Then we got into this political discussion of deaths at home, presumed deaths, out-of-facility deaths, President Trump saying I'm inflating the number.

Also, to recount the irregularities. Double counting, because if you're counted as an out-of-facility death you're not deducted from the hospital death.

And this was very public every day. They said "And how about the out-of-facility deaths?" I said, "As soon as we have an accurate number, I will give it to you."

But the difference between -- I'll say to you what I said to your Democratic colleagues. 6500 in facility, 2500 out of facility. So what? Well, you were trying to make the number look lower so you didn't add the out-of-facility. There is no difference between 6500 or 6500 plus 2500. We had the highest numbers in everything.

Well, maybe you wanted a lower number. For what possible reason? I had the highest number in everything. Well, maybe you just want low numbers. Okay. Then remove the presumed deaths, which is what Trump was yelling about was BS anyway.

Only eight states were doing it, and, frankly, he had a point. How do you define a presumed death? And that would have lowered the number.

Q Can you explain how your administration

collected nursing home-related data throughout the pandemic?

A They had a number, Department of Health issued a number of surveys which they changed. It was a difficult operation on both ends. It's not really what the Department of Health did, and it's not really what the nursing homes were interested in doing at the time. They did not want to do forensic audits for some political relations operation when they had people dying everywhere.

So to call them up and say, Go track patients and find out where they actually went and what actually happened, this was not at the top of their list. So the data was very sloppy.

BY MR. BENZINE.

Q You gave daily press briefings for a decent amount of time. I forget exactly when they existed.

A Yes.

Q How did you prepare for those press releases?

A I would get the numbers in the morning. I would think of something, hopefully encouraging to

say and confidence-building to say and do my best to appear at ease. And that was it.

Q Were you like the night before, because they were in the morning most of the time, I think. I don't remember exactly, the night before were you given a briefing book?

A No, the numbers came that morning.

Q They came that morning? How would they send it to you?

A Somebody would give them to me on a piece of paper.

Q And then during the press briefings, there were PowerPoint slides?

A Yes.

Q Did you approve the PowerPoint slides prior to the briefing?

A Mostly.

Q Would you edit them?

A Sometimes.

Q How did you edit them?

A Graphically I would edit them.

Q So they would hand you a physical copy of the

slide deck, you would go through and make edits and hand it back to them. Is that fair?

A The numbers were always the numbers, but I would try to add some graphic novelty or some message.

Q So you wouldn't edit numbers on the PowerPoint slides?

A No.

Q It was more stylistic?

A Yes.

Q Okay. Do you recall -- while reviewing the slides, do you recall any conversations regarding the categorization of the nursing home deaths?

A No. Just that they were very clear, total deaths, hospital, nursing home. The out-of-facility did not develop until the politics of nursing homes. That's when they then, with all this political intensity, how many, what's the real nursing home number.

And whenever you came up with a definition, they added to the definition. Well, it should be people who were at the hospitals. It should be

people who were in nursing homes who went to a hospital and died should be added to the nursing home count.

But they then didn't reduce the hospital count. So now you would you were double counting, as President Trump pointed out. Then if it's a nursing home person who goes to a hospital to die, how about a hospital person who goes to a nursing home to die? Shouldn't that be counted as a hospital death?

No, we don't do that. Well, then it's incongruous. What sense does that make? So we went through that bizarre argument, which was logical.

My point, Mr. Chairman, you're in a nursing home, you get sent to a hospital, you die. We're going to charge that to the nursing home. Okay. How about I was in the hospital, I went to the nursing home, why don't you charge that to the hospital? That was a whole political kerfuffle.

Then they came up with presumed. What does that mean? There's no presumed. Who presumed in

a home death? Who presumed, and President Trump said this is all BS, basically. That wasn't his word, but basically. And you're just trying to increase the number to make me look bad. Because the higher the death number, the worse for me.

The higher the testing number, the worse for me politically, and you -- you said Democrats are inflating the numbers. Cuomo is inflating the numbers.

BY MR. BENZINE.

Q I think one of the concerns of not counting certain hospital deaths -- and I grant you and we agree that each death should only be counted once. If it's a hospital death category, nursing home death category, at-home death category, don't want to count it three times if they were in three different places.

I think the concern is that if it was a nursing home resident, that was a nursing home resident for the entirety of the pandemic, caught COVID in the nursing home and then spent 12 hours in the hospital and died, that that is a nursing

home death versus someone who broke a leg, went into the hospital, caught COVID in the hospital, then got sent to a nursing home to rehab the leg and then died, that's a different situation.

A But that was President Trump's point. That you should distinguish between all these situations. His literal point was I have COVID, I get hit by a car, I go to the hospital and I die, you count that as a COVID death. And he had points in this. So he's accusing me of inflating. This whole conversation this afternoon is you didn't count out-of-facility deaths, 2,000. You were trying to deflate.

Dr. Wenstrup. And this goes across many of the things we talked about since this committee got together when it comes to data. What are you trying to learn from the data is really the bottom line. And I don't know if what I would say we're putting it in one category or another when there could be three or four or five different categories describing the situation around a certain death. That's how we can learn and maybe

draw some conclusion.

And, you know, again, what do we want to do with this? We want to learn how to do things better the next time. I think we've heard the points being made associated with this at this point enough to help drive us into the future in a better way.

BY MR. BENZINE.

Q And we're a little bit over my hour. My last question is just that where the individual -- to the best ability of us being able to figure this out obviously, but where the individual contracted COVID-19 would make a difference if the individual contracted COVID in the nursing home and then died elsewhere.

A If you ever knew, yes.

Q If you ever knew. That's all I'm asking.

A Yes, but what Congressman Langworthy said I think is exactly right. All these numbers, I would take them all with a grain of salt. Because I think they are all sloppy and retrospective. CDC just does a two-year audit to get the 2020

numbers out. I didn't even believe them.

Q We've heard that from outside of this investigation, but Dr. Fauci, Dr. Collins said who knows how many people had COVID-19, who knows how many people died from it. It's hard to figure out. I do appreciate that, and we are at our hour.

Dr. Wenstrup. I'll make one other point. I hear a lot of things still coming out with government agencies, but they can never account for -- when you're talking about statistics and numbers, they never account for those that got COVID and didn't even know it. Because it's never reported.

So, I mean, early on, as I said back in Ohio, he said, "This is extremely lethal." I said I agree because people are dying, but we don't know the statistics of fatality, because we know people that got COVID and never got sick.

The Witness. Yes.

Dr. Wenstrup. That's my point.

Ms. Glavin. We're going off now for this

session at 4:03.

Mr. Benzine. I need to say off the record.

Ms. Glavin. I want to say something before we go. Just to -- for our records is that the members that were present through, for this portion of the session was Langworthy and Malliotakis, Stefanik, Wenstrup, and Representative Dingall came in and left from Michigan.

(Recess taken from 4:04 p.m. to 4:10 p.m.)

BY [redacted]

Q Governor Cuomo, earlier today you spoke with Ranking Member Ruiz about some of the failures of the federal government in the initial COVID response. So I just want to delve back into that with you.

Our examination of the successes and failures during the COVID-19 pandemic, we've come to understand the aspect of the federal government's initial response caused issues downstream for the states. We spoke earlier with Ranking Member Ruiz

about the testing issues, but in the early days of the pandemic, was the federal government successful in providing states with an adequate amount of PPE to help reduce the threat of COVID-19 spread and infection?

A The short answer is no. You can start December-January with no detection system. President Trump pointed to the WHO, which is supposed to be the international monitor. He talked about their motivation, but that didn't work. Where was the CDC, where was DHS?

We then went into three months of denial basically where the president took the tack that if you deny reality, it won't happen. It's a flu, it's going to be miracle, it's going to go away when it's warm, it's going to be gone when it's Easter.

Meanwhile, he had the Peter Navarro memo in late January saying it's going to affect 1 to 2 million Americans. The president admitted to this when he said to Woodward, I always want to do play it down. I still do. That is

contemporaneous with us not developing any testing capacity.

You almost had the same conspiracy theory as Mitch and you guys. Is that a coincidence that the president is saying this doesn't really exist, I don't believe in testing. And the nation isn't developing testing. Is that a coincidence? GAO says there was political interference at the highest level of the federal health agencies.

Redfield says COVID was a political football. Is that a coincidence? Then all the states, you're on your own. Fifty different policies, neighboring states have different policies.

You have to find your own supplies, 50 different states, which had to be obtained internationally or competed for domestically. If you had the testing capacity, you don't have the supplies to let the labs work.

FEMA, which is supposed to be the supply agency. We need ventilators, ventilators normally cost $15,000 each. They found these ventilators at $59,000 each. We put in the order, turns out

to be a scam. We have to sue them to get our money back.

So no, I think everything or most things were counter-productive.

Q Thinking specifically about PPE, this was a relatively inexpensive infection spread control measure; correct?

A Yes.

Q Since the start of the COVID-19 pandemic, scientific and -- scientific and medical researchers have been working to uncover how this disease was able to spread. There was -- there has been a specific focus on nursing homes as we all know they were greatly impacted across the country, not just in New York.

An article published in the Journal of American Geriatrics Society found the most significant and consistent predictors of skilled nursing facilities outbreak case count and case fatality rate was larger bed size and higher SARS CO-V-2 prevalence in the county where the skilled nursing facility is located.

One of the authors of the article, Vincent Moore of Brown University, has said, "Presumably staff were vectors early in the pandemic too, but there was more trouble getting tested then. Bigger facilities and facilities in areas with high community prevalence are at a greatest risk for COVID-19. It's about the staff coming and going every day."

Is that consistent with your understanding of spread within nursing homes?

A That was our July 6 report.

Q And when examining --

A That was exactly our July 6 report. That this whole readmission-admission is statistically unsustainable. We are number 39 in the United States. How can that be if all this readmission-admission is how COVID came into the nursing homes? It is a statistical impossibility.

Q When examining the phenomenon of community spread, particularly in settings where there are medically vulnerable individuals such as nursing homes, what would the role of tools like PPE be in

protecting the patients?

A They are essential. It's PPE and testing. Those are the only two weapons.

Q And I think we all remember doctors, nurses, medical professionals having to resort to trash bags and things like that to substitute for PPE. Is that right?

A Yes. And also the public message we sent. The president would not wear a mask until mid-July. IHME, which is the organization he uses for statistics, estimates that if he had just sent the masking message, he could have saved 67,000 lives.

Q And how did the federal government's failure to ensure an adequate supply of PPE in the states contribute to the threat of community spread in nursing homes?

A There was no, no -- not only not enough PPE for nursing homes, there was no testing for five, six, seven months. So you have exactly what that report said, 150,000 nursing home employees in the State of New York going to dinner, going to a bar,

going to a movie, getting infected, going back to work the next day.

Q In addition to these issues, you may be aware that in 2019, the Trump administration proposed to relax federal requirements that nursing homes employ on-site infection prevention specialists. According to public reporting, Trump's proposal led some facilities to cut corners in their infection control.

Is the maintenance of firm infection control standards and compliance of these standards important to preventing viral infection and spread in nursing homes?

A 100 percent because it was the basis for the CMS/CDC and states that followed that guidance, that they had to have transmission-based precautions.

Q Thank you.

BY [redacted]

Q I'd just like to revisit the issue of presumed deaths and whether they should have been reported.

(Minority F was marked for identification.)

Q Minority Exhibit F is a DOH newstracker for May 22, 2020. There's just one USA Today item that I'd like to direct your attention to. And that USA Today item is at Bates -14477.

A Can you point me to it?

Q Yes, Bates -14477.

[redacted] The number is on the very bottom right corner.

Q 14477. That is where the USA Today item begins and continues on to the very next page. I'll just give you a -- the time you need to read it.

A Okay. What is it saying here?

Q It looks like the general structure of this news tracker is that an outlet's story or inquiry is described, and then a response from DOH is also then described.

From your reading, is that a fair characterization?

A I don't know if this is an actual quote. I

don't know who, what this publication is.

Q Do you mean you don't know what these emails are? What do you mean, "publication"?

A Who is publishing this?

Q These emails are part of a DOH news tracker. You can see that from the subject line on the first page.

A But what's the city?

Q It's USA Today. It's at the bottom of 14477.

Ms. Glavin. Patricia Nadolny, is that what you're looking at?

[redacted] Yes.

The Witness. Okay.

BY [redacted]

Q And if you could go to 14478, and the section that begins with “response” in bolded.

A Yes.

Q And then the second sentence in that section beginning with "the current daily tracker."

A Yes.

Q I'll just read that sentence for the record. "The current daily tracker includes confirmed and

presumed (as determined by a physician) COVID-19 deaths that occurred within nursing homes and adult care facilities and currently does not include out-of-facility deaths in order to maintain consistency and reliability in the data as presented, and to avoid any potential for double counting."

Now, if we can go to the section below that that's headed by “Additional Information” and underlined.

Do you see that?

A Yes.

Q I'll just read that section, sentence for the record.

"Nursing home operators are required to provide COVID -- provide confirmed positive COVID-19 deaths and presumed positive COVID-19 deaths (as determined by a physician) that occurred inside the facility as well as at a hospital or other healthcare settings."

A Okay.

Q My reading of this is that it suggests that from DOH's perspective, the publicly reported

presumed deaths were determined to be presumed by physicians. So my question is have you ever heard that a publicly reported COVID presumed death meant that the death was COVID-19 presumed as determined by a physician?

A They had a number of varieties of surveys. What they're referring here is the HERDS data system changed multiple times and the definitions changed multiple times. For example, we're at home deaths here.

Q We're just talking about nursing homes specifically.

A It says "homes," it doesn't mention people released to a home.

Q You mentioned HERDS in that sentence I just most recently read. The sentence following it is, "This information was reported to the Department of Health through the health" --

A That's the HERDS system.

Q HERDS?

A Yeah, which changed multiple times, the survey give or take, and what they were asking

for, which contributed to the inconsistency.

Q Do you know if the definition for presumed as identified in the HERDS survey changed over time?

A Presumed had to be added to the home deaths.

Q "Home" meaning nursing homes?

A No, home. You leave the nursing home, you go to your home and you die at home. Those deaths, in another iteration, had to be counted. So it wasn't just nursing homes/hospitals. It was you were released from the nursing home to go to your home. And what happened to you in the home.

So this was an iterative process, which changed multiple times because this was a very politically fraught topic. Somebody wanted to increase the numbers, some people wanted to decrease the number. So you had all these different arguments about how to count it.

Q If presumed meant as determined by a physician, would that be relevant to your view of whether presumed deaths should be reported?

A How would you do presumed deaths at home?

Q I'm asking about the context of this, which

is specific to nursing homes, but I can frame it for you for now --

A If a physician said "presumed," it would have more credibility than a lay person saying presumed.

Q Okay.

A But, again, only eight states did it.

Q Understood. We can go off the record.

Ms. Glavin. For this last section, which was Democratic questioning, Ms. Stefanik and the chairman, Mr. Wenstrup, left and Ms. Malliotakis and Mr. Langworthy remain.

(Recess taken from 4:27 p.m. to 4:31 p.m.)

Mr. Emmer. We'll go back on the record.

BY MR. EMMER.

Q Governor, in the previous hour we discussed how nursing home deaths were reported publically. It's been characterized and reported on that during the pandemic, the administration used alternating methodologies to account for nursing home deaths.

Do you know who would have been involved in the decisions to change the methodology in which the nursing home was publicly disclosing nursing home deaths?

A No. The Department of Health was struggling with the best way to compile the data, and doing electronic surveys, doing follow-up phone calls to 600 nursing homes. The only element that was uncertain was the out-of-facility/presumed, which was a relatively small number in the context of things.

Q And we'll focus on specific decisions as far as that methodology, but just from a general standpoint, would Ms. DeRosa be involved in decisions as to what methodology?

A No.

Q Okay.

A No. That was Department of Health, and then we called in Linda to try to figure it out.

Q So from April 15 to May 2, it's been in comptroller's report noted that nursing home deaths at facilities with less than five deaths

were not included in the nursing home fatality number.

Were you aware of this occurring?

A No.

Q Did you subsequently learn of that occurring?

A No. Not until very recently.

Q Do you know why deaths --

A No.

Q You don't know why that would have --

A No.

Q Thank you. From May 3 to February 3 --

Ms. Glavin. May 3, 2020, to February 3, 2021?

Mr. Emmer. Correct.

BY MR. EMMER.

Q And you touched on this with the Minority staff, but I just want to make sure the record is clear. You do not know who was involved in the decision to exclude nursing home deaths that occurred out of the facility?

A In what report?

Q Just publicly, what you were publicly reporting from May 3 to February 2021, the

administration was not including out-of-facility deaths in its nursing home death total.

A May 3 until February?

Mr. Benzine. May 3, 2020, until February 3, 2021.

Ms. Glavin. Are you using this February 3, 2021, when the DOH report came out?

Mr. Benzine. I believe that's what corrected it, yes.

The Witness. Yes, because we were calculating the number. We were uncertain as to the accuracy of the number.

BY MR. BENZINE.

Q Do you recall who you had conversations with regarding that uncertainty?

A They were ongoing conversations, as you pointed out. The DOH was changing its survey multiple times to try to find the right number. A consulting company was brought in to try to find the right number. And Linda Lacewell was then sent in to find the right number. A fellow named Gareth was then sent in to do an audit, but I know

you're obsessed about this.

Here is my position: I'm with President Trump. New York overstated the death number.

Q Because of the presumed category?

A Just in general. I say tongue in cheek. I say that tongue in cheek because I can't believe you're arguing against President Trump's theory.

Q None of us have ever worked for President Trump.

A Just I find it interesting that you totally differ from President Trump who said repeatedly, New York Times, multiple interviews, Cuomo is inflating the numbers to make me look bad. I have multiple news articles where he said it.

These are fake news numbers and that you are diametrically opposed to President Trump and calling him, what, in essence he made it up? Which is wrong.

Q I don't think we've ever said that today. I don't think we've ever said that ever. I worked for Mr. Scalise back in 2022, and I can go through how your administration reacted to some of his

letters as well.

A What I'm saying is you have a totally different position than President Trump.

Q I've never spoken to President Trump about his position on this. I don't know what you're referencing.

A Read the articles. I'll send you the articles where Trump says Cuomo is inflating the numbers to make me look bad. Democrats are inflating the numbers to make me look bad, including presumed is a bogus attempt to make me look bad. This is fake news, fake reports.

Q And we're happy to read the articles. All Jack is asking about is how things were counted and when.

A I know, but we spent five hours talking about this theory of trying to eliminate 2,000 deaths on this out-of-facilities, which would have, as I said 10 times, just if that's your focus, just eliminate presumed, which would have been the obvious answer.

Meanwhile, President Trump has the exact

opposite theory that he's arguing publicly vehemently directly towards me.

BY MR. EMMER.

Q But for the record, our minority staffers were asking this question too. This isn't just a Republican --

A The minority staffers should be asking for, in my opinion, an investigation as to whether or not there was political interference with the CDC in stopping testing.

Why did it take five months to develop a test? At the exact same time that President Trump was saying I'm anti-testing and CDC was totally controlling the testing methodology.

BY MR. BENZINE.

Q And before we get back to the substance of the questions, I'll state for the record that the Democrats controlled Congress in 2020. They had a select subcommittee on the coronavirus crisis is what it was called at that time and issued a report on that. I don't know if it ever flowed up to you.

A No, I didn't see it.

Q They did issue a report. It wasn't these staffers, it wasn't Dr. Ruiz.

A That would have been my advice to him also.

BY MR. EMMER.

Q Governor, were you aware that for approximately two weeks in April and May 2020 certain fatalities that occurred after 5 p.m. were not reported?

A No.

Ms. Glavin. Didn't he ask that?

A You said under five and after 5 p.m., for two weeks?

Q Do you recall any conversations regarding that?

A No. Are you sure they weren't included the next day?

Q According to Dr. Malatras, they were not included in the next day. There was a dead period between like 5 p.m. and 8 a.m.

A Dead?

Q That's a poor turn of phrase. A period

between 5 p.m. and 8 a.m. where deaths were not reported.

A I have no idea.

Q Okay.

A I'm sure it was just a mistake, but as I said numerous times, there were a lot of issues with DOH data collection, which gave me pause.

BY MR. EMMER.

Q You mentioned in a previous hour that Mr. Rhodes conducted an audit of the Department of Health's nursing home fatality data. Is that a fair characterization?

A He's not really an auditor, but he reviewed it.

Q Did you discuss the findings of his audit with you?

A No.

Q He told or he testified to us that his audit found maybe 600 entries that had some sort of inconsistency that warranted further follow-up. That message, was that relayed to you?

A No, out of how many?

Q It would have been whatever the number at the time was, the 9,000 and some change.

A No. He was just looking at the out-of-facility deaths. So it would have been 600 of 2,000.

Q Did --

A That is a big variable.

Q Do you recall Mr. Rhodes advising for the release of the full nursing home fatality, give or take, in August of 2020?

A I don't believe he would have said if there was 600 that he identified as incorrect on 2,000, that's what, a 30 percent rate of error.

Q Inconsistency, not incorrect?

A Inconsistency, meaning there's an issue.

BY MR. BENZINE.

Q He flagged them for follow-up for Department of Health. We're not sure if the Department of Health ever followed up.

A But that's the 30 percent error rate. And then you would have included -- you would have put out, what, 1400? But not the 600?

Q Depending on the follow-up. I don't know.

A Yeah, but you would have had -- you can't put out 1400, asterisk, there may be another 600. You can't do that and retain credibility, in my opinion. When I added the presumed, people were like I can't believe any of this now.

All of a sudden you add presumed. You can't say, okay, I'm adding 1400, but I may add another 600 if I find out that the 600 are wrong. Where did the 600 come from when we looked at them in 2000?

A third of them were wrong? Yeah, but you believe 2,000 is right. You know, none of this would be defensible. Flip the table and try to explain this to the general public.

Q And I understand the need to check and make sure everything is -- and Jack's question was just if after Mr. Rhodes conducted his audit, if he ever advised releasing more numbers.

A No. But it doesn't even make sense to me that he would.

Q Do you recall Dr. Malatras ever advising

releasing the out-of-facility numbers?

A No. Because Gareth did it after Malatros. Malatros would not recommend an error rate of 30 percent that you release the data. And by the way, Gareth is not an audit firm. He was a guy making phone calls.

So all that really says is take those 2,000, give it to a real audit firm, because it's highly problematic. That's what it says to me.

Q Is that what you ended up doing?

A I don't know what they wound up doing, but if I had heard that, one person comes in and says I found 600 errors out of 2,000, I would have said give all 2,000 to an accounting firm, let them audit them, get me a signed letter that says I audited these 2,000, because now you have to submit that to the Department of Justice. Under false statement, 1001.

BY MR. EMMER.

Q Who ordered Gareth to conduct this audit?

A Probably Linda. Linda was working on the numbers. I don't know, but I would guess.

Q Dr. Zucker testified to us that in August of 2020 he prepared a letter that reported the fall of nursing home death totals.

Do you recall reviewing this letter?

A No, but that would have been reviewed by the attorneys, who is now your post-DOJ.

Q Just as a follow-up, he also testified that there was a letter that he prepared in October reporting the fall of number of nursing home deaths, death totals.

Do you have the same response to that, that you never reviewed that one either?

A I never saw it, never reviewed it, but common sense, you have your client, your Congressman has a subpoena from the Department of Justice for this information. You're going to be very careful what you submit, and we had told the houses, senate and at assembly, we have to deal with the Department of Justice on this and a legal review to make sure everything is right, and we'll give it to you in January.

Q The Department of Justice inquiry, that

involved 30 nursing homes, is that a fair characterization?

A No. They first asked for public nursing homes, they then asked for private nursing homes. This was done by Jeffrey Clark. Jeffrey Clark was the political operative who worked with Trump and schemed to take over for Rosen. He is then indicted in the January 6 insurrection as a pure Trump confidante/operative.

Not to make my friend Congressman Langworthy crazy, but Michael Caputo is a pure political operative, ran Palladino's campaign against me, is brought in as the spokesperson for HHS.

Department of Justice issues a press release. There are 12 states that follow the guidance. They say the four states are going to be investigated in the press release. And praises some of the Republican states that followed the same guidance in the press release.

No notice to us, just a press release. Caputo and Clark. You know, we talk about weaponizing the justice system. This was a

nuclearized justice system. When President Trump says, Oh, they are playing politics with the justice system, where did they learn it?

Q Do you recall any conversations regarding Dr. Zucker's August or October letter?

A No.

BY MR. EMMER.

Q And to be clear, the second DOJ inquiry, when did you receive that?

A I don't remember, but it went from public to public and private. Which is all of them.

Mr. Langworthy. Governor, did you ever have any discussion with President Biden or Vice President Harris?

The Witness. No. President Trump I spoke to, but no.

BY MR. BENZINE.

Q The situation you're referring to that you got a request from DOJ, you had to be very careful, obviously, in responses back to DOJ. They carry certain truth requirements and accuracy requirements.

It's been widely reported that on a phone call with the legislature, Ms. DeRosa said the state froze in response to the DOJ's request. Is that the situation you're referencing?

A Froze meaning we had to make sure everything was careful. We had to be careful and make sure everything was right.

That's what she was referring to. They both made the request at about the same time. The legislature made a request about August, the DOJ letter comes in about August. We called the legislative leaders and say, Can we do it in January because we have to be very careful because we have this purely political witch hunt going on at the Department of Justice run by two really very bad guys. And that's what she's referring to.

Q Did you ever respond to the Department of Justice? Was it in January of --

A Yes. And in July, the Department of Justice -- there are actually three Department of Justices investigations. There was the first

request, the second request, and then the Eastern District opened a third investigation. And it wasn't until July of the following year that the Department of Justice closed it with no finding.

BY MR. EMMER.

Q You mention that you asked the legislature if you could pause responding. And I believe you that have touched on this during one of the Minority's hours, but who specifically spoke to the legislature from your office?

A It would have been the governmental person, it could have been Beth or if it was the counsel or it could have been Melissa.

Q You're saying that in August of 2020, you asked to wait until January 2021?

A Somewhere around there, yeah.

Q Mitch brought up that it's been widely reported that Secretary DeRosa admitted on a phone call that the state froze in response.

Do you recall the articles that came out in response to that phone call?

A Oh, yeah. They were horrendous because they

wanted to give the worst connotation to the word "froze." And then false and misleading and just nasty.

Q Do you recall calling assembly member Ron Kim in response to one of those articles?

A Yes.

Q Can you generally describe the substance of the conversation that you had with him?

A It was very, very cheap shot, because you knew, first, she was doing a courtesy to the legislature. And being candid. And it was just a very cheap shot. Froze, he knew very well what she meant by "froze." It wasn't the best choice of words, but the concept is totally understandable.

Q Did you demand that he retract and modify the statement that he had made?

A I said, "If you had any class about you or fairness, you would say" -- I understood what she was saying.

Q Did you threaten him politically?

A No. I didn't threaten him politically. I

was unhappy with him because it was a cheap, nasty move. The legislative leaders had approved the delay. She had told the legislative, someone in the legislative staff leaders we need time to respond because we had the DOJ request.

Froze isn't the best word, but what word do you want to use? We were slowed, we were delayed. We, you know...

Q At this time I would like to return back to what has been previously marked as Minority Exhibit C. This is the July 6 report.

Ms. Glavin. Majority Exhibit 3?

Mr. Emmer. Minority.

Q And because they had spent a significant amount of time on it, I just want to be able to make sure the record is clear, and I'll ask you, I'll probably ask you to repeat yourself, but not too many times.

In the minority hour, did you testify that you had no role in the July 6 report?

A I do not recall seeing the July 6 report prior its issuance. It was Howard Zucker's

report. He then presented it numerous times. I then spoke to it numerous times, because it came up at every press briefing afterwards.

Q And to just clarify your testimony, you did not recall reviewing the report?

A I do not recall reviewing.

Q Did you edit the report?

A I don't recall seeing it.

Q Were you a part of any conversations involving the report?

Mr. Benzine. Prior to its issuance.

The Witness. Not that I recall. I may have been, because it's a very interesting finding. They probably came to me and said do you want to hear something interesting.

BY MR. BENZINE.

Q Were you aware of the executive chamber's involvement in the report?

A When an agency does a report, there are operations that they deal with. They deal with my press office. Sometimes they deal with the executive chamber press office. Sometimes they

deal with the executive chamber's speech writing office; right. Sometimes they deal with the executive chamber counsel. They often deal with the counsel.

So I'm sure that kind of interaction went on.

Q Do you recall anyone outside of the New York government being involved in the report?

A No.

Q Do you recall the executive chamber Department of Health sharing the report with Dr. Grabowski at Harvard?

A No.

Q Do you recall Mr. Azzopardi saying the report was peer reviewed?

A No.

Q Did you have any discussions regarding the report being peer reviewed?

A No.

Q When we interviewed Dr. Adams and asked her if she would consider herself an author of the report, she said no. We asked her if she would consider the Department of Health an author of the

report, and she said no. And we asked her if she would consider it a peer-reviewed paper, and she said no.

You don't recall any conversations regarding any executive chamber involvement or claiming that it was peer reviewed?

A No. But you have Eleanor Adams, I'm sure she had a different version of what you want her to do in her head, which is nice. Go do it, God bless you. This was to answer a question, which was predominant, what -- how did COVID get into nursing homes.

And Howard Zucker, this was his opinion, his conclusion, and he said that any number of times before any number of bodies.

Q I know we've talked a lot about the nursing home fatality numbers, including outside of facility or inside of facility. It was both Ms. Lacewell and Ms. Garvey and Dr. Malatras's testimony that there was a call on -- it was June 26 or 27, whichever one was that Saturday in 2020, where the decision was made to exclude

out-of-facility deaths, and that decision was made by Ms. DeRosa.

Do you recall hearing about that phone call at all?

A I don't believe Ms. DeRosa made the decision. I believe she have relayed it, but Dr. Zucker told me there were two sets of numbers: One was unverified, one was verified. They didn't make a difference to the paper. So he used the verified numbers.

Q Do you -- and Ms. Lacewell confirmed this as well, that drafts of the report facilitator phone call had the 9,844 number in it, and drafts of the report after the phone call had 6,432.

Do you recall any conversations about that?

A No, but I don't know how to express -- let's say there's a 3,000 differential, 2500. Who cares? What difference does it make in any dimension to anyone about anything? Do you know what I'm saying?

Q And all I would say is -- and the Minority said this too -- is we're just trying to figure

out when decisions were made and by who. We have a conflicting amount of testimony on who made what and when, and we're just trying to figure out the timeline.

A Maybe speculating, you're having a discussion, he says, I could save 3,000 people more. You say, Except we're not really sure that 3,000 is true. I say, Well, why run the risk? You know, I'm sure it was a collective discussion among people. That's just the way things work. And this was a partially -- a public relations issue because you're dealing with credibility and you're dealing with follow-up questions.

We're going to put out Gareth's suggestion, if that was his suggestion. 1400, but hold back 600. How do I get up and say that? How do I get up and say that? 1400 asterisk, we're not really sure if it's 1400. Maybe 2,000. Figure out what it is first and then put it out. Because it doesn't make a difference anyway in the scheme of things.

The only thing that makes a difference is

pure credibility. That makes a difference. That's everything. I was the juxtaposition to Trump. You watched Trump in the evening, not to be offensive. He tells to you drink Clorox. He tells you bathe in Clorox. He tells you to take hydroxychloroquine that killed 16,000 people. He tells you the Easter bunny is going to take COVID away. You say I'm not so sure this guy is telling me the truth.

In the morning you watch Governor Cuomo and his briefing. I say total death, infection, babip, babip, babip. I have credibility. I can say any number. The number doesn't matter. The accuracy of the number matters.

Q And you said -- I think you might have had some supposition here, but the person who would have been making decisions on the numbers would have been Dr. Zucker, the Department of Health report.

In the impeachment report, it says, "Witnesses have stated that the same senior executive chamber official who served as the key

point person for the book made the decision that only in-facility deaths would be included in the DOH report."

Was Dr. Zucker your key point person for your book?

A No. Dr. Zucker would not issue a report and go off with the senate and the assembly and the press if he did not believe what he was saying.

Q I know. We're just trying to figure out who is the final arbiter decision-maker.

A It was Dr. Zucker. Now, your congressman makes a decision. Might you say to your congressman, Do you want to think about this, because you go out there and say 2,000 with 600 is an exception, they're going to say you have an option, you can just say we're auditing that number. I'm sure he would have gotten advice from people.

He would be foolish not to get advice, let me talk to the press person, let me talk to the political people. What's the response going to be? He's just a doctor, a great doctor, but he

has no press public relations savvy.

You have a DOJ investigation out there, you want to be careful about what you say, a lawyer would say. I hope he got that advice. I'm sure he did, otherwise you would have done a disservice, but he made the decision. Because -- and especially at this time.

It was about his reputation; right. March 25 said he signed the bad order; right. It was about his personal reputation. So he took this very seriously.

Mr. Benzine. And the Minority staff in the room has been in the room for all other interviews too, so they can correct me if I'm mischaracterizing testimony, but we've heard from multiple witnesses that very few, if not any, decisions got made without Ms. DeRosa's approval, regardless of what Dr. Zucker thought, he would still need to get Ms. DeRosa's approval.

Is that consistent with your understanding?

A No. He often disagreed with Ms. DeRosa's opinion. Often. And he would come to me often

and say, They, say this, I understand. It's going to look like this, but I think this. And then we would discuss it.

So he reported to me ultimately, especially at this time. And on that meeting thing, as I mentioned before, I'm with him every day; right. Every day. And then we would walk out of the briefing and we would be in the office, and many times he would stay behind. And his reputation was on the line, and this was the greatest health crisis of the century. And he was not going to say anything that he was not comfortable with.

Q And I understand that. Someone has got to make the call, especially in decisions where people disagree. So in those situations that you just talked about --

The Witness. He would come to me.

Mr. Benzine. In those situations where you just talked about where Ms. DeRosa was suggesting one thing and Dr. Zucker was suggesting another, who won?

A If he -- he would come to me.

Q And you would make the determination on which advice?

A He would come and say I want to say this number, Melissa says politically they are going to say this, and the press is going to ask me this and this and this, but I think we should say this number. He would have come to me.

Q And then you would have made the decision?

A I would have talked -- it was going to be his decision. I would have talked to him, I would have counseled him, but I'm not getting up there and say that's my number. It's Dr. Zucker, he's the one that's presenting the report.

Q Is there a specific instance you're recalling where Dr. Zucker and Ms. DeRosa were opposed?

A Yeah. I can think of one off the top of my head, because it was a heated one about opening summer camps, should summer camps be opened. This became a big kerfuffle on should -- not to make light of it, it's a big decision -- but it was a very heated discussion between them. And not just Melissa. There was somebody else, I think the

counsel was also against it.

Q I'll be more specific. We're being cognizant of time.

Do you recall any specific times Dr. Zucker came to you and was opposed to Ms. DeRosa's advice on a nursing home-related issue?

A On nursing homes, no. Summer camps I remember was a big issue that they disagreed and he came to me.

Q Is this no, I don't recall, or is it no, they agreed on everything? Nursing home-related.

A He never came to me with the disagreement on nursing homes.

BY MR. LANGWORTHY:

Q This really came to a head in January '21. If you touched on this when I wasn't in the room, I apologize. But when Letitia James, our Attorney General, came forward with her 76-page report, at the time you were political allies, you certainly endorsed her election.

When she came forward with this report, speculating that your administration had

miscounted and speculated with the intention to miscalculate the deaths in the nursing homes, is there a motivation that you for the record would say was behind that report? Or was this done in collaboration with your administration?

A We had told the legislature we were going to put out the numbers January something. Literally, Congressman, she did this report either like days or a couple of weeks before.

When you're telling the legislature you're going to do it, everybody knows. My speculation is she's a highly political person. And she thought this would be good press for her. The report was flawed, it was rushed. It wasn't really a report. They sampled like a small number of nursing homes and then extrapolated to 600.

But this was a very hot topic with the out-of-facility, what's the out-of-facility. We get hung up with the Department of Justice request. We have to be very careful. We tell them January, she jumps out ahead just before and puts out this report, Oh, they undercounted

knowing we were going to put the number out within a week or two.

And she got very good press coverage. You know a colleague member is going to put out a bill, you find out about it, you step in front. You announce a bill a week before. That's what this was. Not that you would do that. Not to a colleague, maybe.

BY MR. EMMER.

Q When did you decide to write a book?

A I decided to write the book as the briefings were coming to an end.

Q When were you first approached about writing a book?

A Oh, I had numerous requests very early on. I had requests for embedded reporters, documentarians, movie people, books. None of which I entertained.

Q When, approximately what -- when was the first time you were approached about writing a book?

A Very early on. There were agents who called

my press office, called anyone who they knew, would he like to do a movie, would he like to embed. That started very early on.

BY MR. BENZINE.

Q And I don't recall so I'm not expecting you necessarily to recall, but when did the press briefings start to slow down? If you recall like a month of the decision to --

A June-July.

Q All right. Who would have known that you were making that decision?

A I said it on the radio.

Q Prior to the making the decision, would you have consulted with anybody in your office?

A I may have, but I don't think I did.

Ms. Glavin. Which decision?

Mr. Benzine. To write the book.

Ms. Glavin. To write the book, okay.

The Witness. I think I said I'm thinking about writing a book on the radio in sort of an interview chatty show.

BY MR. EMMER.

Q But had you already started writing the book when you announced it on the radio?

A No. What I would do is, especially towards the end when I started to free up, I would dictate notes into my iPhone. Just little points that I thought were important that I wanted to make.

Q When did you start dictating the notes in your iPhone?

A Towards the end of June when it started to slow down.

Ms. Glavin. I'd say approximately around this, around June.

Q Are you aware of any of your -- are you aware of any members of your staff starting to work on time book prior to that?

A Subsequently, I am. Not at this time. A staff member goes to somebody, either Beth or Melissa and said, "I think he should write a book. He was a speech writer." I didn't know about it at the time. I didn't talk to him about it. He had nothing to do with my book.

Q What staff member are you referring to?

A A fellow named Jaime.

Q You don't have a last name for him?

A I don't remember. But it was not that novel a suggestion; right. A lot of people were making that suggestion.

Q And you said you dictated notes and that started at the end of June. Was there a certain --

A -ish, -ish.

Q When you were dictating these notes, were they in real time during the day? What time of the day were you doing this?

A 3:00 in the morning when I couldn't sleep.

Q And how often were you dictating the notes into your phone?

A Sporadic.

Q What information did you use to write the book?

A (Indicating).

Q You didn't take notes to draft the book?

A (Indicating).

Q Can you answer the question?

Ms. Glavin. Let the record reflect that he's pointing to his head.

Q Who from your administration was involved in writing the book?

A (Indicating). Me.

Q No one else?

A I wrote the book. Writing the book, me. I had Melissa DeRosa read it. I had -- at the end, I had people who were relevant to the book and mentioned in the book or had a part in the book read it.

BY MR. BENZINE.

Q And that occurred at the governor's mansion?

A Yes. Just to make sure, frankly, they were comfortable with what I said about them personally. I've written a previous book. People are very sensitive about what you say about them. I learned the hard way.

So I said to them, Read it, if you don't like the way you're characterized, let me know. If you don't think I'm fair to you, let me know. If there's any substantive problem with anything I

say about what you did, let me know, but it was just tell me now if you have a problem, but don't tell me after.

Q Beyond the kind of like if people had a personal problem with how they were portrayed, did anyone else in your office help edit the book?

A No.

Q There's a government ethics process in the State of New York for personal compensation based off official work. Who was helping you with that process?

A My ethics counsel, an agency called Jayco. Got the approval from JCOPE. And she handled it. Top notch lawyer. I think former Eastern District U.S. attorney.

Q Was it Ms. Lacewell?

A No, a woman named Judy Mogul.

Q Was Miss Lacewell involved at all in the ethics?

A Not really.

Ms. Glavin. If you know.

The Witness. I don't know. I believe she

was.

Mr. Langworthy. What was the compensation for the book?

The Witness. After taxes, contributions, expenses, about 900,000.

BY MR. EMMER.

Q So when you started writing the book or dictating it --

A I think Jim Jordan got more, not that I'm jealous.

Q When you began the process of dictating and drafting the book, which members of your administration were you having conversations with related to the book?

A None. This was my book, my voice, and my personal voice, my personal opinion, my personal observations.

Q In the senate impeachment report, which you have, should have, and I'll just --

Ms. Glavin. Not the senate impeachment report.

Mr. Benzine. The House.

Ms. Glavin. It's not a house. The assembly, the state assembly had the report done.

It's judiciary committee, actually.

Q It says that there was an instruction from you to the staff reviewing it to keep fleshing out the chapter related to nursing homes.

Do you recall instructing the staff to keep fleshing out that chapter?

A I didn't instruct the staff to do anything. At the very end when the book was done, I brought three or four or five people over to the mansion. I think it took them a couple of days or maybe like over two weekends to read the book.

I said, If there's anything wrong, tell me now. If I give anything short shrift, tell me now. If you are in charge of data collection and you said, I don't think the data collection is accurate, I say, Tell me what you think is correct on data collection, and then I would look at your thoughts. If I agreed with them, I put it in. And if I didn't agree, I'd throw them out.

Q So you're testifying that they were

volunteering when they were conducting this review?

A Totally. They came over to the mansion. They knew it was a private book. They knew I was getting compensated for the book. And they were in the book, and they read the book, and that was the literal contribution.

BY MR. BENZINE.

Q The impeachment report also says a staff force member also assisted in the drafting and editing of Chapter 6 of the book. You don't recall someone assisting you in the drafting and editing?

A First of all, I don't think that report is worth the paper it's written on. We asked for the evidence, underlying evidence, they wouldn't produce it. But if someone said I think you're not doing this justice or you misunderstood it or you're miscommunicating it, I said, and it only happened on a couple of occasions, tell me what you think is fair and sometimes I accepted it, sometimes I didn't.

Q So that's what -- I'm asking you to suppose on that, but that's what you think they meant by drafting and editing, it's like volunteer?

A Yes, or that person's area.

Q If Jack is okay with it, I think just one more quick question and then maybe one final question.

Did the book ever influence any official decision-making?

A No. The decisions were all basically made -- by then that tranche was over.

Q Did you ever have any discussions, do you recall any discussions regarding the book and the July 6 report on nursing homes?

A No.

Q And then unless [redacted] has any final questions, and we didn't have the list of names, but at the time was Lieutenant-Governor Hochul involved at all in any of the nursing home issues.

A No.

Q You never had any discussions with the lieutenant-governor regarding the --

A Not that I recall. No. Not that I recall.

Q Surrounding any of the March 2025 directive, July report?

A Not that I recall.

(Discussion held off the record.)

BY MR. EMMER.

Q What role did Governor Hochul play in your response to the pandemic?

A In what way?

Q Did she play a role in the state's response to the coronavirus?

A She was an advisor.

Q Often? You're beating around the answer, I guess. Was Governor Hochul --

A That was my intention.

Q I'll ask directly, was lieutenant-governor involved in the State of New York's pandemic response?

A She was an advisor to the pandemic response. She was not -- I don't think she was -- she was not in the briefings, and I don't think she was

involved on the working group. She wasn't involved in the working group.

BY MR. LANGWORTHY.

Q Was the now governor in Albany?

A She was in -- she was in Congressman Langworthy's district, usually. I don't know what they were doing. And I don't know if it was coincidental, but that's where she was. She was in Buffalo, mostly. She's not in your district, is she?

Q I represent her in -- not the city of Buffalo currently.

But I think your response speaks volume about the Lieutenant-Governor Hochul.

A Remember David Patterson's line? David Patterson was the lieutenant-governor before he became governor. He said the lieutenant-governor has one job. You call up the governor in the morning. If he answers the phone, you go back to sleep.

Make one point on the question about the July 6 report and out-of-facility deaths in

connection with the book. Not at all. There is no possible connectivity between the two. There was no relevance besides accuracy to this de minimis number. I understand why you're fascinated by it. But it was wholly without relevance on any level. Whether you want accurate, yes. Accurate. But 1400 here, 1400 there was not going to change anything; right.

We had the highest numbers in every category. So it was not -- 9,000, 6000, 4,000, that's not what it was about.

BY MS. STEFANIK.

Q I want to ask about some of the nursing home family advocates, and many of them have met with their congressional representatives sharing their concerns about their loved ones and mourning the loss of their lovered ones.

One of the most effective advocates and effective advocates has been Janice Dean, and your spokesperson smeared her publicly on the record saying she's not a credible source on anything except the weather.

Do you agree with that assessment?

A Who said that?

Q Your spokesperson. On the record.

A That was an unkind thing to say. She happens to be a meteorologist, but she lost her in-laws, and the pain -- I've spoken to hundreds of families and nursing home people. The pain they have from the theory that their loved one didn't have to die, it was a government blunder, that makes it even worse. You know, it makes it even worse. You don't want to lose a loved one, but if God says I'm taking your loved one, God says I'm taking your loved one.

Government makes a mistake, which is what was said to these people by President Trump, this was government mismanagement, poor Democratic governors, I'm starting a federal investigation, your father didn't have to die. That's -- that compounds the pain. And that's what she represents. And many other people.

Q Do you believe that New York State government has any accountability for the deaths of over

15,000 seniors related to the directive on March 25?

A I think, I think every person in this room has liability. I think the federal government does. I think the state government does. I think everyone who was involved. I think the federal government that knew there was no testing going on, that knew you had a president who was denying the existence of a virus, allowed it to go on.

Who knew that you had a president who got a memo from Navarro but was lying to the American people, but you let it go on. Who was telling people it's going to go away by Easter, but you let it go on. Who was telling people to take hydroxychloroquine and 16,000 people died.

Q That's a lot of things. What about your accountability?

A Yes, I think as a governor of a state, yes. I think if I knew then what I know now, I would have done many, many things differently.

Q Including the directive?

A Including the nursing homes. Not the

directive. Because it wasn't about the readmissions. If it was, we're not number 39. If it's not states that never did the readmission aren't higher, if it is, then you don't have nursing homes in my state that didn't take readmissions that have a higher death rate. It was the no testing for staff. That's where it came from.

Q Have you discussed the nursing home situation related to any future political campaign for office with any of your political advisers.

A No. Congresswoman, I don't know.

Q There's many press reports that you and your political team are considering potential campaign and running for office. Has there been any discussion on the nursing home issue in the context of those discussions or considerations?

A No. I have had conversations, not with political advisers but with public relations people about how President Trump and the federal government-handled COVID. Because I believe they were the driver. No tests, no PPE, no national

policy. Hydroxychloroquine, never tested remdesivir. I believe that was all federal.

Yes, the states, I take responsibility. But I think 90 percent of it was on the federal government. You may say, Well, that's convenient. But I couldn't do the testing. I couldn't buy the PPE. I couldn't do any of that stuff. I couldn't counteract the president running around for three months saying don't worry about it, the Easter bunny is going to take it away. Don't wear a mask by July, his statistical group says that was 67,000 deaths.

He does a 180 on the vaccine. He goes from saying the vaccine was the greatest creation of mankind and he said the people who get sick and go to the hospital are people who don't take the vaccine. That's what he said.

DeSantis comes out against the vaccine, anti-vaxxers become an issue, he does a total 180.

Q It is not about President Trump and not about Governor DeSantis. The question is about New York state and those that were lost in New York state.

Do you have any final messages for those families who are still mourning their loved ones who they lost?

A This was a horrendous tragedy, and to lose a loved one creates a great pain, and to have the impression that was cast makes it even worse. I believe everyone did the best they could.

Q Would you apologize for the mishandling of the nursing homes?

A Would you apologize for not saying anything when President Trump misled this nation?

Q I'm asking you --

A Will you apologize for that? Which was far more impactful than 1100 out-of-facility deaths.

Q I'm asking you, did you have an opportunity to apologize for those families?

A Would you apologize for what you did and didn't do in your federal role?

Q It's your deposition, I'm not. I'm a member --

A I don't see how this question is relevant to the deposition, whether or not I should apologize.

Q Would you apologize?

A I have.

Q Would you apologize to those families?

A I have apologized. Have you?

Ms. Glavin. Okay.

Mr. Benzine. We can go off the record.

(Whereupon the proceedings were terminated at 5:33 p.m.)