

1 Trust Point One
2 Eileen Monteagudo

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5 COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY,
6 SELECT SUBCOMMITTEE ON THE CORONAVIRUS PANDEMIC,
7 U.S. HOUSE OF REPRESENTATIVES,
8 WASHINGTON, D.C.

9

10 THURSDAY, MAY 30, 2024

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13 INTERVIEW OF: BETH GARVEY

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17 The interview of the above matter was held
18 at One Vanderbilt Avenue, New York, New York 10017,
19 commencing at 10:01 a.m.

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23

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25 A P P E A R A N C E S

26 ON BEHALF OF BETH GARVEY:

27 Gregory Kehoe, Esquire

28 Jordan Behlman, Esquire

29 Harold Iselin, Esquire

30 Of: Greenberg Traurig, LLP

31 One Vanderbilt Avenue

32 Floor 29

33 New York, New York 10017

34 ALSO PRESENT:

35 Anna-Blake Langley, Majority

36 Professional Staff Member

37

38 ON BEHALF OF THE SELECT SUBCOMMITTEE

39 ON THE CORONAVIRUS PANDEMIC:

40 FOR THE REPUBLICAN STAFF (MAJORITY):

41 MITCHELL BENZINE, Staff Director

42 JACK EMMER, Counsel

43 ERIC OSTERHUES, Chief Counsel

44

45 FOR THE DEMOCRATIC STAFF (MINORITY):

46 [REDACTED], Senior Counsel

47 [REDACTED], Counsel

48

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101 MR. EMMER: We can go on the record. Thank
102 you.

103 This is a transcribed interview of Beth
104 Garvey conducted by the House Select Subcommittee on
105 the Coronavirus Pandemic under the authority granted to
106 it by House Resolution 5 and the rules of the Committee
107 on Oversight and Accountability.

108 Further, pursuant to House Resolution 5,
109 the Select Subcommittee has wide-ranging jurisdiction,
110 but specifically to investigate the implementation or
111 effectiveness of any federal law or regulation applied,
112 enacted or under consideration to address the
113 Coronavirus Pandemic and prepare for future pandemics.

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

116 THE WITNESS: Yes.

117 My name is Beth Garvey. Last name spelled
118 G-A-R-V-E-Y.

119 MR. EMMER: Thank you, Ms. Garvey.

120 My name is Jack Emmer, and I am the senior
121 counsel for the majority staff of the Select
122 Subcommittee. I want to thank you for coming in today
123 for this interview. The Select Subcommittee recognizes
124 that you are here voluntarily and we appreciate that.

125 Under the Select Subcommittee and Committee
126 on Oversight and Accountability's rules, you are
127 allowed to have an attorney present to advise you
128 during this interview. Do you have an attorney
129 representing you in a personal capacity present with
130 you today?

131 THE WITNESS: Yes, I do.

132 MR. EMMER: Will counsel please identify
133 themselves for the record?

134 MR. KEHOE: My name is Gregory Kehoe.

135 MR. BEHLMAN: Jordan Behlman.

136 MR. ISELIN: Harold Iselin.

137 MR. BENZINE: Ms. Garvey, considering your
138 previous position with Governor Cuomo, the Select
139 Subcommittee offered for a counsel from the Executive
140 Chamber to attend for today for the purposes of
141 exerting privileges. Is there somebody present today?

142 THE WITNESS: No, there is not.

143 MR. KEHOE: Yes, there has been a request
144 as we spoke about individually to have someone from the
145 Executive Chamber to attend. They have declined,
146 obviously, from our conversations.

147 Mitch and [REDACTED], there has been an
148 indication of the attorney-client privilege on certain
149 documents. Ms. Garvey obviously is ready, willing and

150 able to talk to you about it.

151 Obviously there is the attorney-client
152 privilege and that issue that is out there. So she
153 obviously cannot waive that privilege. That privilege
154 belongs to the Executive Chamber. Albeit to the extent
155 we go through here, and I don't think it will be too
156 often, to the extent there is an indication of the
157 privilege, as I told you, Mitch and I told [REDACTED],
158 should the Executive Chamber after that indication
159 offer to waive privilege on that issue, certainly we'll
160 come back and answer any questions that you have.
161 Ms. Garvey wants to be as cooperative as possible, but
162 there is also this attorney-client privilege out there,
163 and she cannot waive the privilege. So I appreciate
164 that.

165 I know this is a repetition of what we all
166 talked about before but I thought it was important that
167 we articulate it on the record.

168 MR. BENZINE: Perfect. Thank you.

169 MR. EMMER: For the record starting with
170 the majority staff and the additional staff members,
171 please introduce themselves with your name, title and
172 affiliation.

173 MR. BENZINE: Mitch Benzine, staff director
174 for the Majority.

175 MR. OSTERHUES: Eric Osterhues, chief
176 counsel for the Majority.

177 MS. LANGLEY: Anna-Blake Langley,
178 professional staff member for the Majority.

179 MS. [REDACTED]: [REDACTED], senior counsel for
180 the Democratic staff.

181 MR. [REDACTED]: [REDACTED], Democratic
182 counsel.

183 MR. EMMER: Thank you all.

184 Ms. Garvey, before we begin I would like to
185 go over the ground rules for this interview. The way
186 this interview will proceed is as follows:

187 The majority and minority staff will
188 alternate asking you questions for one hour per round
189 until each side is finished with their questioning.
190 The majority staff will begin and proceed for an hour
191 and then the minority staff will have an hour to ask
192 questions. We will then alternate back and forth in
193 this manner until both sides have no more questions.

194 If either side is in the middle of a
195 specific line of questions, they may choose to end a
196 few minutes past an hour to ensure completion of that
197 specific line of questioning, including any pertinent
198 follow-ups.

199 In this interview while one member of the

200 staff for each side may lead the questioning,
201 additional staff may ask questions.

202 There is a court reporter taking down
203 everything I say and everything you say to make a
204 written record of this interview. For the record to be
205 clear, please wait until the staffer questioning you
206 finishes each question before you begin your answer,
207 and the staffer will wait until you finish your
208 response before proceeding to the next question.

209 Further to ensure the court reporter can
210 properly record this interview, please speak clearly,
211 concisely and slowly. Also, the court reporter cannot
212 record nonverbal answers such as nodding or shaking
213 your head, so it is important that you answer each
214 question with an audible, verbal answer.

215 Exhibits may be entered into a record.
216 Majority exhibits will be identified numerically.
217 Minority exhibits will be identified alphabetically.

218 Do you understand?

219 THE WITNESS: Yes.

220 MR. EMMER: We want you to answer our
221 questions in the most complete and truthful manner
222 possible so we will take your time. If you have any
223 questions or do not fully understand the question,
224 please let us know. We will attempt to clarify, add

225 context to or rephrase our questions.

226 Do you understand?

227 THE WITNESS: Yes.

228 MR. EMMER: If we ask about specific
229 conversations or events in the past and you are unable
230 to recall the exact words or details, you should
231 testify to the substance of those conversations or
232 events to the best of your recollection. If you recall
233 only a part of a conversation or event, you should give
234 us your best recollection of those events, parts of
235 conversations that you do recall.

236 Do you understand?

237 THE WITNESS: Yes.

238 MR. EMMER: Although you are here
239 voluntarily and we will not swear you in, you are
240 required pursuant to Title 18, Section 1001 of the
241 United States Code to answer questions from Congress
242 truthfully. This also applies to questions posed by
243 congressional staff in this interview.

244 Do you understand?

245 THE WITNESS: Yes.

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

249 Do you understand?

250 THE WITNESS: Yes.

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

254 THE WITNESS: No.

255 MR. EMMER: The Select Subcommittee follows
256 the rules on the Committee of Oversight and
257 Accountability. Please note that if you wish to assert
258 a privilege over any statement today, that assertion
259 must comply with the rules of the Committee on
260 Oversight and Accountability.

261 Pursuant to that, committee rule 16-C-1
262 states for the chair to consider assertions of
263 privilege or testimony or statements, witnesses or
264 entities must clearly state the specific privilege
265 being asserted and the reason for the assertion on or
266 before the scheduled date, testimony or appearance.

267 Do you understand?

268 THE WITNESS: Yes.

269 MR. EMMER: Ordinarily we take a
270 five-minute break at the end of each hour of
271 questioning. But if you need a longer break or a break
272 before that, please let us know and we will be happy to
273 accommodate; however, to the extent that there is a
274 pending question, we would ask that you finish

275 answering the question before we take a break.

276 Do you understand?

277 THE WITNESS: Yes.

278 MR. EMMER: Do you have any other questions
279 before we begin?

280 THE WITNESS: No.

281 MR. KEHOE: Jack, just one issue. I have
282 talked to Beth about this to the extent that she has a
283 question about if something implicates, for instance,
284 the attorney-client privilege, we may take a two-minute
285 break so she can just chat with us off the record
286 outside and come back. So that may happen. I'm not
287 saying it will but it could.

288 MR. EMMER: That's fine.

289 Ms. Garvey, I want to thank you again for
290 taking part in this interview and for your work over
291 the years. Let's start by discussing your education
292 and experience.

293 EXAMINATION BY

294 MR. EMMER:

295 Q.Where did you attend undergraduate school?

296 A.I graduated from Mary Baldwin College in
297 Staunton, Virginia.

298 Q.What degree did you graduate with?

299 A.Bachelor's in communications.

300 Q.Where did you get your doctorate?

301 A.I got my J.D. from Albany Law School in 2004.

302 Q.Who is your current employer and what is your
303 current job title?

304 A.Greenberg Traurig. It is a law firm and I am a
305 shareholder.

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

308 A.Yes. After I graduated law school I did a
309 fellowship with New York State Senate. I was placed in
310 the majority counsel's office, which at the time, was
311 Republican Majority. The Majority Leader was Joseph
312 Bruno. I did that for a year and was fortunate enough
313 to be brought on full-time.

314 While there in the Majority Counsel's office
315 you analyze legislation, perform research projects,
316 advise members on different issues that come before the
317 legislative committees.

318 I held that role working with various
319 committees, transitioning into the minority
320 until -- let's see. I think this was fall of 2009. I
321 then briefly worked for the law firm Wilson Elser LLP
322 doing government affairs work primarily. I was there
323 for about 15 months.

324 In February 2011, I rejoined the Republican

325 conference in the State Senate that had then taken back
326 the Majority. That was under Majority Leader Dean
327 Skelos.

328 I was First Assisting Counsel there,
329 eventually being promoted to counsel in 2013. I
330 transitioned to the same role when John Flanagan became
331 the Senate leader and then ultimately left that position
332 at the end of the year in 2017.

333 In 2018, I became General Counsel to the state
334 university system. And I held that role until I joined
335 Governor Cuomo's office as his Special Counsel in
336 September of 2019.

337 Q.Let's discuss your role as Special Counsel within
338 the New York Executive Chamber. Can you
339 briefly describe your duties and responsibilities as
340 Special Counsel?

341 A.Yeah. So my responsibility was all of the
342 legislative and policy objective matters of the
343 Governor. That included assisting and preparing state
344 of the state, negotiating the budget as well as
345 negotiating legislation with both houses, Senate and
346 Assembly of the state legislature. I made
347 recommendations to him regarding whether a bill should
348 be signed or vetoed.

349 And we also worked with the various agencies

350 to ensure that their regulatory and policy agendas
351 aligned with the Governor's.

352 Q.Did you have any responsibilities related to FOIA
353 requests?

354 A.No. I might from time to time be consulted on
355 something, but that actually reported to another Special
356 Counsel, Judy Mogul.

357 Q.You just brought up Judy Mogul. Were there any
358 other special counsels or attorneys in the Executive
359 Chamber that advised the Governor?

360 A.Um, I don't -- I don't believe so. I'm having a
361 hard time actually remembering everyone's specific
362 title.

363 But Judy, I specifically know, had the same
364 title that I did. It's possible that Julia Kupiec may
365 have had a Special Counsel title as well. She was also
366 the Chamber Ethics Counselor, but I don't specifically
367 remember off the top of my head. There was Kumiki
368 Gibson, who was counsel to the Governor.

369 All of the assistant counselors in the chamber
370 reported to both of us, but I don't believe that there
371 were any other Special Counsels besides Judy and maybe
372 Julia.

373 Q.So to summarize what you just said, would it be
374 true that the attorneys within the Executive Chamber

375 have distinct roles or portfolios or subject matters
376 that they were handling for the Governor?

377 A.Yeah. At that sort of senior staff level, it was
378 pretty siloed between myself, Kumiki and Judy. The
379 assistant counsels, again, had sort of dual reporting
380 lines to me and Kumiki.

381 Judy -- actually, I just talked myself through
382 this one. Laura Edidin, who ran what we called
383 the "Special Counsel Program," I think her title was
384 also Special Counsel. She reported to Judy and then a
385 number of Special Counsels reported to Laura that were
386 placed in the various state agencies.

387 So they were not considered Executive Chamber
388 employees. Someone was Special Counsel for risk and
389 compliance at tax and they were an employee of the Tax
390 Department and they reported to Laura Edidin, who was a
391 Special Counsel within the Executive Chamber and Laura
392 reported to Judy.

393 Q.And to clarify, you had other counsels that would
394 need to run advice through you, correct?

395 A.On legislative and policy matters. If they had
396 issues with regulatory issues or litigation issues or
397 certain personnel issues, those would flow through
398 Kumiki.

399 Q.To the best of your recollection, which attorneys

400 had to run advice through you?

401 A.It was about 14 individuals.

402 Q.Okay.

403 A.Um, but again, I would also say that we worked
404 collaboratively with the state operations folks who were
405 the -- what we called the program side of the office and
406 they were deputy secretaries or assistant secretaries
407 that oversaw various policy areas as well.

408 So you know, it was not uncommon that I would
409 interact with the Assistant Secretary for the Department
410 of Health, say, on a policy matter that they would run
411 things through me as well.

412 Q.Prior to the pandemic, what was your day-to-day
413 like as far as interactions with Governor Cuomo?

414 A.Um, there was no typical day in government,
415 right? So I would say that, you know, overall, we would
416 start the day with a senior staff call that he was not
417 on where we would all sort of align ourselves around the
418 day's objectives, major news stories.

419 If he had an event, typically senior staff
420 would be there, whether it was a press event or a site
421 visit, there would be a certain number of staff there
422 from time to time. I was required to staff him at those
423 events. If every event had a policy lead, press lead,
424 etc. So from time to time, I would do that.

425 There was -- pre COVID, there was a big focus on
426 cracking down on vaping. We did that in conjunction
427 with Connecticut. So sometimes it would be, you know,
428 we are going to do a trip out to Connecticut to see
429 Governor Lamont. You would go with him, do the press
430 event, go back, make sure any follow-up work was done.

431 We were also, when I started, dealing with a
432 significant number of bills that had passed both houses
433 of the legislature and had not yet been signed. So I
434 wouldn't say this was a daily occurrence, but at least
435 once a week we would get on the phone and go through
436 legislation with staff recommendations for signature or
437 veto.

438 Q.Who did you report to as Special Counsel?

439 A.Melissa DeRosa, Secretary to the Governor.

440 Q.Let's talk about once the pandemic started. Did
441 your duties and responsibilities change at all?

442 A.Um, I would say the focus of the day-to-day
443 certainly shifted away from, you know, what I would call
444 more regular legislative policy business to focus almost
445 exclusively on the pandemic.

446 We did have to negotiate a budget at the same
447 time, which we did, but, you know, I think the
448 day-to-day focus was COVID every day. I
449 became involved in drafting the executive orders and

450 that really flowed through -- we had enacted legislation
451 to grant the Governor enhanced -- we called
452 it "directive responsibility authority" under the
453 executive law.

454 And so, as part of that, you know, we began
455 drafting the executive orders, which prior to COVID had
456 typically run through Kumiki, the more
457 run-of-the-mill -- you know, there's flooding in this
458 county, issue an executive order, Kumiki would have
459 handled that prior.

460 Q.And you may have just answered that, but were you
461 the only counsel that provided legal advice to the
462 Executive Chamber on COVID task force related issues?

463 A.I would not say only. I mean, I think there were
464 so many different legal issues that would have been
465 impossible for only one person to provide legal advice.

466 But, you know, Judy was also involved, Linda
467 Lacewell was also very involved in legal considerations
468 and, you know, one of the great things about COVID was,
469 we had a number of people volunteering to help -- law
470 firms volunteered pro bono.

471 So you know, we would reach out for advice to
472 other folks, experts, in various areas of law
473 frequently.

474 EXAMINATION BY

475 MR. BENZINE:

476 Q.Ms. Lacewell, what was her position during the
477 pandemic?

478 A.Linda was the Superintendent of the Department of
479 Financial Services. She had previously been Chief of
480 Staff to Governor Cuomo as well as his Special Counsel.

481 Q.You said she was one of the people providing
482 legal advice. Did she have a formal legal relationship
483 with the Executive Chamber?

484 A.We do consider all of the executive branch
485 agencies to come under the Executive Chamber's
486 privilege. We have all of the general counsels report
487 in through the counsel to the Governor, and so, you
488 know, we did view attorney-client privilege as covering
489 communications with any agencies on any topic where we
490 were seeking or they were assisting us with legal
491 advice.

492 Q.Okay.

493 EXAMINATION BY

494 MR. EMMER:

495 Q.I'll warn you. This is a long list but I want to
496 ask you if you have spoke with or e-mailed any of the
497 following people regarding COVID-19 between January 2020
498 and the present. And we'll walk through each one after.

499 A.Okay. I was going to say, I don't know that I

500 could possibly, you know, remember with specificity now
501 four years later, but --

502 Q.And you can testify to that too.

503 A.Yeah, okay.

504 Q.So former Governor Andrew Cuomo?

505 A.No.

506 Q.Former Secretary to the Governor Melissa DeRosa?

507 A.Yes.

508 Q.Mr. Gareth Rhodes?

509 A.Yes.

510 Q.Dr. Jim Malatras?

511 A.Yes.

512 Q.Mr. Rich Azzopardi?

513 A.Yes.

514 Q.Mr. Peter Ajemian?

515 A.Ajemian, yes.

516 MR. KEHOE: Got to get the Armenian names
517 down, Jack.

518 Q.Ms. Dani Lever?

519 A.Yes.

520 Q.Ms. Linda Lacewell?

521 A.Yes.

522 Q.Ms. Judith Mogul?

523 A.Yes.

524 Q.Ms. Megan Baldwin?

525 A.Yes.

526 Q.Mr. Larry Schwartz?

527 A.I don't recall specifically. Larry did come back
528 to assist. He was involved in a lot of pandemic-related
529 efforts. I don't really specifically remember, but I
530 will also say that the practice in the Executive Chamber
531 was to generally CC a number of individuals on an e-mail
532 for wide visibility and awareness and it is possible
533 that he may have been CCed on certain things.

534 Q.Mr. Robert Mujica?

535 A.I believe, yes.

536 Q.Ms. Jill DesRosiers?

537 A.Yes.

538 Q.Ms. Annabelle Walsh?

539 A.I believe so, yes. I think, you know, Annabelle,
540 not so much on substance, but probably on some of these
541 for visibility.

542 Q.Dr. Howard Zucker?

543 A.Yes.

544 Q.Dr. Eleanor Adams?

545 A.Yes.

546 Q.Ms. Sally Dreslin?

547 A.From January 1st?

548 Q.2020.

549 A.Yes, I'm sure there was some.

550 Q.Mr. Gary Holmes?

551 A.Yes.

552 Q.Mr. Kenneth Raske?

553 A.Um, to be honest, I don't think so. I did deal
554 from time to time with his counsel, Laura -- oh my gosh,
555 I'm blanking on her last name. It starts with an A.
556 She's not on your list, is she? I can't think of her
557 name.

558 EXAMINATION BY

559 MR. BENZINE:

560 Q.Would it have been in the course of the
561 legislative process -- I mean, Mr. Raske had --

562 MR. ISELIN: Alfredo.

563 THE WITNESS: Laura Alfredo. Thank you.

564 A.Um, look, I don't recall specifically e-mails
565 necessarily about nursing homes, but there were
566 certainly -- greater New York was very concerned about
567 staff and out of state and even out of country practice
568 waivers that were required of the executive orders for a
569 very broad part of the pandemic.

570 And so, there were a lot of conversations
571 about executive orders with respect to that. I don't
572 specifically recall really e-mailing with Ken Raske
573 about nursing homes specifically.

574 EXAMINATION BY

575 MR. EMMER:

576 Q.Just to make sure the record is clear, the prompt
577 is e-mailed or spoken with.

578 A.E-mailed or spoken with. (Nodding.)

579 Q.Continuing down the list, Mr. Lee Pearlman?

580 A.That name is not ringing any bells for me.

581 I'm sorry, Mr. Lee Pearlman, whoever you are.

582 Q.Mr. Michael Dowling?

583 A.Um, again, we spoke with Michael frequently about
584 hospital issues. Um, I don't recall specifically
585 conversations or e-mails with him about nursing homes,
586 no.

587 Q.Dr. Anthony Fauci?

588 A.Um, I can say no to that one, yes.

589 Q.Dr. Francis Collins?

590 A.I don't think so, no.

591 Q.Mr. Alex Azar?

592 A.I don't believe so.

593 Q.Ms. Seema Verma?

594 A.I don't think so.

595 Q.Dr. Deborah Birx?

596 A.No.

597 Q.Dr. Robert Redfield?

598 A.It's possible that I might have gotten, like,
599 forwarded an e-mail.

600 Again, it's very hard to recall. I don't want
601 to be so equivocal here, but I just, you know, again, I
602 don't recall any specific conversations or any e-mail
603 where I was directly interacting with any of these
604 individuals, but on the off chance that someone may have
605 forwarded me something that I no longer remember, I'm
606 going to just give you that little asterisk here that
607 it's possible.

608 Q.Dr. Michael Osterholm?

609 A.I would put him in the same camp.

610 Q.That's possible?

611 A.Possible that maybe someone forwarded me an
612 e-mail, but I had no direct interactions, no.

613 Q.Finally, David Grabowski?

614 A.No. I don't recall.

615 EXAMINATION BY

616 MR. BENZINE:

617 Q.It was almost finally.

618 What about Giorgio DeRosa?

619 A.About nursing homes, no.

620 Q.Okay.

621 EXAMINATION BY

622 MR. EMMER:

623 Q.Going through the list, let's start with Melissa
624 DeRosa.

625 Do you recall the nature of the discussions or
626 e-mails you had regarding COVID-19 and nursing homes
627 with Ms. DeRosa?

628 A.Um, yeah. Look, I think there was a wide variety
629 of conversations throughout the pandemic around nursing
630 homes. We started, I think, very early in trying to
631 quickly get out guidance and adapt to changing CMS and
632 CDC guidelines. And so, you know, this would have been
633 early March.

634 You know, we talked about restricting
635 visitation to, you know, only essential medical
636 personnel, you know, at any nursing home initially.

637 There was, for a time, a containment zone
638 within Westchester where we were trying to isolate COVID
639 and contact trace to diminish the spread. This would be
640 around March 9, 10, around that period. So there was
641 certainly e-mails around that.

642 There were conversations and e-mails around
643 masking policies for staff. Staff health screenings.
644 Um, you know, it really ran the gamut of issues that we
645 were sort of dealing with in serial. As new guidance
646 came out, do we want to extend this new guidance that
647 just came out, do we want to put out a new document,
648 those kinds of issues.

649 Early on, um, after I think it was April 2020

650 when there were questions around the March 25th
651 guidance, I think there were a number of e-mails as well
652 about what the questioning in the press conference was
653 related to. And then follow-ups from there about all of
654 the efforts that we had undertaken in nursing homes to
655 try to contain the spread of COVID. Um, and, you know,
656 certainly, lots of e-mails, conversations about, you
657 know, just outbreaks, testing, what else we could be
658 doing at different points.

659 I mean, I wouldn't say we e-mailed or spoke
660 about it every day, but there were certainly too many
661 e-mails and too many conversations to specifically
662 recall now at this point.

663 Q.And we'll discuss the March 25th order in more
664 detail later on, but you brought up how in early March
665 you were discussing the threat to nursing homes with Ms.
666 DeRosa. Prior to its issuance, did you talk about the
667 need for the March 25th order?

668 MR. KEHOE: Well, I think at that point,
669 that would be a privileged conversation on that.

670 MR. BENZINE: That is a policy question,
671 whether or not the policy supported the order, not
672 whether or not there was a legal backing for the order.

673 MR. KEHOE: Let me think about that for a
674 minute. We are talking about a conversation -- I mean

675 if you want to say that they had conversations without
676 going into the details of it, that's fine. Did you
677 talk about it? Yes. Without going into the details.

678 MR. BENZINE: Okay.

679 MR. KEHOE: Is that fine?

680 EXAMINATION BY

681 MR. EMMER:

682 Q.My question was, if you ever spoke to Ms. DeRosa
683 about the need for the March 25th order?

684 A.I don't believe so.

685 MR. KEHOE: Kind of solved the problem.

686 MR. BENZINE: There you go. It's nice when
687 it works out that way.

688 MR. KEHOE: That is right.

689 Q.What about Ms. Lacewell? Do you recall the
690 nature of your conversations related to nursing homes
691 with her?

692 A.Um, it's highly likely that Linda was involved in
693 many of the same conversations. So in an effort to sort
694 of keep some of this a little bit streamlined, I think,
695 you know, Linda was very engaged in some of the data
696 tracking and working with Megan Baldwin on, like -- I
697 don't know the best way to describe it, but sort of like
698 putting out fires as it related to what we were calling
699 actually, you know, hot spots or clusters of outbreaks

700 in nursing homes, making sure nursing homes had PPE, had
701 staff, that DOH could provide supplemental support where
702 needed, but again, I think a lot of the conversations
703 that I had with Melissa, Linda would have been part of
704 them.

705 Q.And to make sure the record is clear, you brought
706 up Megan Baldwin. Do you recall what her role was in
707 the response or within the administration?

708 A.Mm-hmm. So Megan Baldwin was our Assistant
709 Secretary for Health. And so she was on the program
710 side of the house responsible for the Department of
711 Health. Its, you know, policy, operations, etc.

712 So she was really a critical liaison between
713 the Executive Chamber and the Department in terms of,
714 you know, being our window into what their capabilities
715 were, what they were currently doing on any given issue.

716 Q.So in regards to former Governor Andrew Cuomo,
717 you have answered that you have not spoken with or
718 e-mailed with him regarding COVID and nursing homes, but
719 were you ever in any meetings where it was discussed?

720 A.Again, I think I misheard your proviso in the
721 beginning, spoken or e-mailed. Governor Cuomo does not
722 e-mail, so I can answer categorically there were no
723 e-mails, but we certainly had conversations about a lot
724 of the same issues. Creation of the containment zone,

725 restricting visitation. So definitely, there were
726 conversations with him, just not any e-mails.

727 Q.Since January 2023 have you had any conversations
728 with Governor Cuomo or Melissa DeRosa about our
729 investigation?

730 A.Um, I believe I had one conversation with
731 Melissa, um, where she had asked if I had been contacted
732 by the committee, where I had not at that point, so I
733 told her that I had not been contacted by the committee.

734 And I believe shortly after that, I did
735 receive a letter requesting this interview, which I did
736 not have to tell her I got because it was reported in
737 the New York Post immediately, so that was helpful.

738 EXAMINATION BY

739 MR. BENZINE:

740 Q.When was the last time that you had spoken to
741 Governor Cuomo?

742 A.I think I wished him a happy birthday in December
743 maybe. We certainly don't speak regularly but, you
744 know, periodically.

745 EXAMINATION BY

746 MR. EMMER:

747 Q.To clarify, you heard from Ms. DeRosa prior to us
748 sending a letter in February of 2023, and you haven't
749 spoken with her since you received the letter?

750 A.I have not spoken with her about the committee
751 since then. I think, um, you know, we may have
752 exchanged a few texts of just, you know, what's going on
753 vis-a-vis, like, world news, but not anything specific
754 to this.

755 Q.To make sure the record is clear, you haven't
756 discussed the substance of your testimony today with
757 anyone involved in this investigation, including
758 Ms. DeRosa and the Governor?

759 A.Correct.

760 MR. KEHOE: When the letter came in, we
761 pretty much shut down communications to respect the
762 process.

763 MR. EMMER: Thank you.

764 Q.Now, I want to ask if you had any interactions
765 with any of the following institutions and related
766 nursing homes during COVID-19 between January 1st, 2020
767 and the present.

768 So first, the office of the New York State
769 Attorney General?

770 A.And by interactions, right, you would mean phone,
771 e-mail, you know, conversation?

772 Q.Correct.

773 A.And I'm sorry. Give me the first one again.

774 Q.If you have spoken with or e-mailed any of the

775 following institutions relating to nursing homes and
776 COVID-19 between January 1, 2020 and the present.

777 A.And that was with anyone in the office of the New
778 York State Attorney General?

779 Q.Correct.

780 A.Yes.

781 Q.And we are going to walk through them and ask
782 follow-up questions.

783 A.Mm-hmm.

784 Q.The Manhattan District Attorney's office?

785 A.Um, yes.

786 Q.New York State Comptroller?

787 A.I -- I mean again, I'm aware of interactions. I
788 don't recall specifically having any of those
789 conversations, but I'm sure someone forwarded me an
790 e-mail at some point.

791 Q.The New York State Assembly Judiciary Committee?

792 A.Yes.

793 Q.U.S. Department of Justice?

794 A.Yes.

795 Q.I believe you already answered this but the
796 Greater New York Hospital Association?

797 A.Yes.

798 Q.Northwell Health?

799 A.Yes.

800 Q.Finally, McKinsey & Company?

801 A.I mean, again, I think some of these are, like, I
802 might have gotten forwarded some of their
803 communications. I don't recall specifically having any
804 interaction with anyone from McKinsey on this. I know
805 that they were working with the Department, so I'm going
806 to say yes. I'm probably on some e-mails with them, but
807 there was not really substantive interaction.

808 MR. KEHOE: When you say "department,"
809 Department of Health?

810 THE WITNESS: Correct. Department of
811 Health.

812 Q.Starting with the office of the New York State
813 Attorney General --

814 MR. KEHOE: I'll stop you for a second.
815 You do know that Ms. Garvey was deposed by AG, so
816 that's --

817 MR. BENZINE: It's separate, so we're
818 qualifying her for any conversations.

819 MS. KEHOE: Okay, that's fine.

820 Q.Starting with the Attorney General, were you
821 interviewed as far as their investigation into nursing
822 homes in the end of 2020 and 2021?

823 A.No.

824 Q.What about the Manhattan District Attorney's

825 office inquiry into nursing homes?

826 A.Nope.

827 EXAMINATION BY

828 MR. BENZINE:

829 Q.I'll mention there was the AG's report came out
830 in like --

831 A.February --

832 Q.February 22nd.

833 MS. [REDACTED]: '21.

834 MR. EMMER: 2021?

835 Q.And Ms. DeRosa wrote in her book that she had a
836 phone call with the Attorney General the morning that it
837 came out. Were you on that phone call?

838 A.Yes.

839 Q.The way Ms. DeRosa described it in her book as
840 opposed to the transcript of the call is a little bit
841 different. In the book she framed it as being a little
842 bit upset that they didn't get a heads-up. The actual
843 transcript was pretty littered with expletives and was
844 more than upset, and frankly, I think suggested that
845 they should have had the opportunity to review the
846 report prior to its issuance.

847 A.Yes.

848 Q.What is your recollection of that phone call?

849 A.My recollection upon reading the transcript that

850 was published on that call was that it accurately
851 reflected my recollection of that call.

852 Q.Okay.

853 A.It was a rather heated call. The -- it was
854 clear during the call that reporters had already been
855 given the report, you know, embargoed, and we were given
856 about a 10-minute heads-up. So I think tempers
857 certainly flared at that.

858 I think prior to this, there was a real
859 expectation that, you know, we were working
860 collaboratively with the Attorney General's office on a
861 number of different initiatives. And this was, I think,
862 in terms of taking a leap, not based on our
863 understanding of the facts, we were very concerned about
864 the potential for inaccurate information being put out
865 to the public.

866 Q.The Attorney General of New York is independently
867 elected, correct?

868 A.Correct.

869 Q.Is it an expectation that the Executive Chamber
870 gets to review their reports prior to issuance?

871 A.I would say that it is very situational.
872 Certainly, the Attorney General is also the lawyer for
873 every state agency. And so it really does sort of put a
874 crimp in your attorney-client working relationship when,

875 you know, they feel the need to take information and
876 publish it about one of the agencies that they
877 purportedly represent.

878 But, um, look, I think there was no legal
879 requirement that they give us a heads-up but, you know,
880 there are typically, even in politics, rules about fair
881 play and good form and I -- you know, I think that this
882 report, you know, would have benefitted from a little
883 consultation directly with certainly the Department at
884 minimum but also the Chamber.

885 Q.Okay. I appreciate.

886 Jack?

887 EXAMINATION BY

888 MR. EMMER :

889 Q.Really quick follow-up since we are talking about
890 it right now. You have brought up how it would have
891 been beneficial to review it and concerns with
892 inaccurate information within the report.

893 Can you generally describe what parts of the
894 report you had concerns with?

895 A.The Attorney General did update the report after
896 issuing it. I think they miscounted the number of
897 nursing homes that had not had a positive COVID case
898 before the distribution of the March 25th guidance.

899 Q.Okay.

900 A.And they sort of silently updated the report
901 online acknowledging that it was an error but not -- you
902 know, again, it was something that was a knowable fact.
903 If they had, you know, actually intended to seek any of
904 our input.

905 Q.As it relates to nursing homes, what was the
906 nature of your interactions with the New York State
907 Assembly Judiciary Committee?

908 A.Um, I believe that we were asked for
909 records -- that the Chamber was asked for records, that
910 individuals were asked for records.

911 Um, I personally did not appear, but I believe
912 that I also personally got a request for records, not
913 just, you know, on behalf of the Chamber.

914 Q.And the request, that was in relation to their
915 impeachment inquiry?

916 A.Yes.

917 Q.You answered yes to the U.S. Department of
918 Justice. Can you briefly describe the interactions that
919 you have had with them?

920 MR. KEHOE: That is one -- and it's not on
921 our side -- but in conversations with the Executive
922 Chamber counsel, that has been a red line area.

923 So if we can just pass on that one
924 and -- look, Mitch, I'll gladly answer the question.

925 I'm just telling you that one of the things that they
926 had put a red line on us from the beginning were the
927 DOJ investigations, for whatever reason. It's not
928 clear to me why. That's different from the others.
929 But I just want to bring that.

930 So if you can pass on this one and then
931 just get back to us, we'll gladly answer anything you
932 want if they just say it's okay.

933 MR. BENZINE: I'll phrase it as a yes no
934 and then move on.

935 MR. KEHOE: Sure.

936 EXAMINATION BY

937 MR. BENZINE:

938 Q.The Executive Chamber sent letters under CRIPA to
939 the Executive Chamber in, like, August of 2020 and
940 opened the CRIPA investigation. And just a yes no,
941 understanding the restrictions, were you involved in the
942 State's response to those letters?

943 A.Yes.

944 Q.Okay.

945 MR. KEHOE: I don't mean to be obstructive.

946 MR. BENZINE: No, no. I understand.

947 EXAMINATION BY

948 MR. EMMER:

949 Q.I would like to now ask you some general

950 operational questions.

951 How did the Governor's team typically
952 communicate with each other?

953 A.We had, as I said earlier, a standing senior
954 staff call to catch up on the day's activities. We also
955 communicated a lot by e-mail. And again, to the extent,
956 you know, we needed to have one-off phone calls about
957 specific topics, we would do phone calls. It -- you
958 know, to the extent we were able to be in the same place
959 at various points during COVID, we would -- you know,
960 walk down the hall into people's offices too.

961 Q.You had a state e-mail, correct?

962 A.Yes.

963 Q.Did you ever conduct official business via
964 personal e-mail?

965 A.Every once in a while I would get something that
966 would go to my personal e-mail inadvertently, but no.
967 As a general rule, everything was on my Executive
968 Chamber e-mail.

969 Q.Did you have a state issued cell phone?

970 A.Yes. I had two, an iPhone and a BlackBerry
971 device.

972 MR. BENZINE: That sounds horrible.

973 MR. KEHOE: I miss BlackBerries. I really
974 do.

975 THE WITNESS: It was not what I would call
976 fun.

977 MR. BENZINE: Yeah.

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

980 A.Yeah. From time to time like if one of my other
981 phones was dead, I would use my personal cell phone, but
982 as a rule, I think generally people would text or, you
983 know, on the BlackBerry device I would get pins to.

984 Q.Did you ever conduct official business via an
985 encrypted messaging app like Signal or WhatsApp?

986 A.I have both, but I did not conduct official
987 business via them.

988 Q.Do you recall whether the Executive Chamber
989 conducted business via Microsoft Teams on a desktop or a
990 laptop?

991 A.I don't. I'm sure we had it. Um, our typical
992 platform for videoconferencing was Zoom.

993 Q.At this time, I would like to introduce what will
994 be marked as Majority's Exhibit 1.

995 (Whereupon, an e-mail thread is marked as
996 Majority Exhibit 1 by Mitch Benzine.)

997 Q.This is an e-mail thread between yourself,
998 Melissa DeRosa, Judith Mogul, Gareth Rhodes, Linda
999 Lacewell and other Executive Chamber and Health

1000 Department officials.

1001 And I just want to direct your attention to
1002 the top e-mail from Ms. DeRosa where she states in all
1003 caps, "delete this chain. Don't respond to it."

1004 Ms. Garvey, do you recall this request to
1005 delete an e-mail thread?

1006 A.I don't, actually.

1007 Q.So you wouldn't recall if you deleted it?

1008 A.I don't remember.

1009 Q.Do you recall any other requests from Ms. DeRosa
1010 or any other Executive Chamber employees to delete
1011 e-mails or official documents?

1012 A.Um, no.

1013 Let me just qualify that. You know, in New
1014 York we have a very strict rule about separating out
1015 political communications from state official
1016 communications. Every once in a while, someone would
1017 send out -- even if it was completely innocent -- a
1018 fundraising -- you know, I'm hosting a fundraiser for
1019 this person, please come kind of a thing, it would come
1020 to an official e-mail and immediately be followed with a
1021 please delete. So I'm certain that that occurred once
1022 or twice.

1023 Um, but no. As a practice, that was not a
1024 directive that I recall getting.

1025 Q. So you differentiated between unofficial and
1026 official, but are you aware of at any time any Executive
1027 Chamber or Task Force deleting official documents?

1028 A. Um, no. And but I just do want to say also, you
1029 know, I think some people had automatic deletion set up
1030 on their e-mail after a period of time. You know, so I
1031 guess I'm trying to hedge a little bit here.

1032 Like, it's possible that every single document
1033 from the beginning of the COVID-19 pandemic to present
1034 is not perfectly preserved because someone had a 90-day
1035 delete on their official e-mail inbox. New York's
1036 freedom of information law, you know, does not have a
1037 general requirement that every official e-mail that
1038 comes to your official address be preserved.

1039 So the freedom of information law provides a
1040 presumption of access to records that are in possession
1041 but not a baseline requirement to maintain possession of
1042 every single document.

1043 EXAMINATION BY

1044 MR. BENZINE:

1045 Q. Do you know the Executive Chamber's retention
1046 policy? I know at universities or even if me, if I
1047 delete my e-mail, it is still on a Congressional server
1048 somewhere. It really doesn't matter. Is that similar
1049 in the Executive Chamber?

1050 A.No. So there is not a, you know, mandatory
1051 requirement of preservation. You know, there are
1052 obviously certain records that are preserved
1053 indefinitely. Things like, you know, records of the
1054 Governor signing a bill. And some of that information
1055 is an official record of the chamber and it is
1056 preserved. There are also certain
1057 requirements related to maintenance of other memos
1058 related to executive orders, for instance. But there's
1059 not a general policy.

1060 I believe the chamber's policy was 90 days.
1061 You could override that as an individual. And as
1062 counsel, I preferred to keep my e-mails so I do did not
1063 have an automatic delete on my e-mails.

1064 MR. KEHOE: So it's different then, having
1065 worked on the Hill like you guys, National Archives,
1066 they scoop up anything and everything they possibly can
1067 from toilet paper to notes. So when I came into this,
1068 I asked the same question and it is different.

1069 MR. BENZINE: I appreciate it.

1070 Q.I'll state for the record, and you can see by the
1071 Bates number, this was produced by the State Department
1072 of Health and not by the Executive Chamber, despite
1073 Executive Chamber's being on it.

1074 So we have questions of whether or not we are

1075 missing things, whether or not there are documents that
1076 are missing. Not necessarily from your inbox, but just
1077 in general. So asking the retention questions?

1078 A.Yeah. And look, there were certainly
1079 preservation notices sent out associated with certain
1080 legal process that the Chamber received that came later.
1081 And I would expect that those preservation notices were
1082 adhered to. I have no reason to think that they were
1083 not.

1084 But again, I think prior to that, there was
1085 not an inherent legal requirement that every record be
1086 maintained. I -- well, I can only speak to that.

1087 Q.Yeah. I appreciate it.

1088 MR. EMMER: We can go off the record.

1089 (Whereupon, an off-the-record discussion
1090 was held.)

1091 MS. [REDACTED]: We can go back on the record.

1092 EXAMINATION BY

1093 MS. [REDACTED]:

1094 Q.Good morning, Ms. Garvey.

1095 A.Good morning.

1096 Q.I want to first echo the thanks of my Republican
1097 colleagues for you agreeing to speak with us today. We
1098 know it is voluntary and we appreciate that.

1099 As I said before, my name is [REDACTED]. I

1100 am Senior Counsel for the Select Committee Democrats.

1101 As an initial matter, you spoke in the
1102 previous hour a little bit about your responsibilities
1103 pre-COVID with Governor Cuomo and then sort of after
1104 COVID started.

1105 Based on your start date of September of 2019
1106 you didn't have all that much time --

1107 A.No.

1108 Q.-- in sort of your normal course of business
1109 before COVID sort of kicked in. So we talked about how
1110 your responsibilities changed, but I would like to hear
1111 about how the atmosphere changed, how your work hours
1112 changed and all of those things, if you can mention
1113 anything.

1114 A.Yes. I will say, you know, the previous months
1115 of working for Governor Cuomo were certainly, you know,
1116 strenuous. He always had a very aggressive policy
1117 agenda. You know, I probably pretty typically, you
1118 know, worked 12-hour days. That was not unusual.

1119 You know, Saturday might be a little quieter,
1120 but typically Sundays were another workday, right? You
1121 may get a little time for errands in the morning and
1122 then we were pretty much back in the office doing work.

1123 When COVID happened, it really became almost a
1124 24/7 response effort. That entire, I don't know, three,

1125 three and a half month period we did not have a single
1126 day off.

1127 Q.March to May?

1128 A.Yeah. It really started before March really.

1129 Um, you know, we had started tracking the novel
1130 coronavirus with, you know, some of the early WHO and
1131 CDC alerts that went out.

1132 So Megan Baldwin, who as I mentioned earlier,
1133 who was the Assistant Secretary, sent us updates
1134 starting in January. And I have a very distinct memory
1135 of going back. You know, we issued the budget, which is
1136 usually around Martin Luther King Day. And we released
1137 the budget and that's a big effort. You know, it's lots
1138 of legislation, thousands of pages, all the policy
1139 objectives, right, so that's sort of all consuming.

1140 But getting the budget out the door and then I
1141 remember saying to one of my colleagues, Rebecca Wood,
1142 have you been following all of these e-mails from Megan?
1143 This novel coronavirus really does not sound good at
1144 all. Because, you know, it was really in the
1145 background.

1146 When we started to see some of the first PUIs,
1147 or the persons under investigation, Megan would send a
1148 morning update of, you know, here's a person who
1149 traveled to the Hubei province. They have come down

1150 with respiratory symptoms. They are in quarantine and a
1151 testing sample is on its way to the CDC and we'll advise
1152 about test results.

1153 So it really was a ramp up, you know, prior to
1154 March. So the Governor did have his eye on this as a
1155 potential issue.

1156 And there were a number of meetings with the
1157 Department of Health in advance. There were meetings
1158 with both houses of the legislature. But you know, it
1159 really took on sort of the singular focus as the most
1160 important issue facing the state for virtually, you
1161 know, almost all of the remainder of our time there.

1162 Q.Thank you.

1163 As you know, one of the things we haven't
1164 touched on it too much today, one of the reasons that
1165 brings you here today is the Department of Health report
1166 that was released on July 6, 2020.

1167 So I'm just going to dive right in with that
1168 and we'll introduce it. This will be Minority Exhibit
1169 A.

1170 (Whereupon, July 6th Department of Health
1171 Report was marked as Minority's Exhibit A for
1172 identification as of this date by the Reporter.)

1173 Q.As I said, this is Minority Exhibit A. It is the
1174 Department of Health report issued July 6, 2020, titled

1175 Factors Associated with Nursing Home Infections and
1176 Fatalities in New York State during the COVID-19 Global
1177 Health Crisis.

1178 Are you familiar with this report?

1179 A.Yes.

1180 Q.This was the first in-depth analysis of nursing
1181 home data publicly released by the Department of Health,
1182 so we have to assume multiple people and we have heard
1183 about multiple people being involved in pulling this
1184 report together.

1185 Do you know who was involved with drafting
1186 this report?

1187 A.Um, I believe that the initial draft was prepared
1188 by the Department of Health. Um, I know that they also
1189 utilized McKinsey as far as assisting with some of the
1190 data analysis. As far as who specifically at the
1191 Department of Health, I'm not totally positive.

1192 Q.Are you aware of others outside of the Department
1193 of Health besides McKinsey who were involved in the
1194 drafting and the editing of the report?

1195 A.As far as drafting, no. But there was a group
1196 within the Executive Chamber that were involved in
1197 editing the report, yes.

1198 Q.Okay. And who were those people?

1199 A.Um, I received copies, um, I believe that Melissa

1200 DeRosa did as well. Linda Lacewell, Gareth Rhodes, Jim
1201 Malatras, our press folks I think, you know, Dani Lever
1202 was still there and Peter Ajemian and probably Rich
1203 Azzopardi as well. Um, I think Dana Carotenuto was
1204 probably given a copy.

1205 Q.Thank you.

1206 Are any of those people who you just listed
1207 data or public health experts?

1208 A.No, I would not say public health experts or data
1209 experts.

1210 Q.And do you know at what point in the drafting
1211 process DOH shared the report with the Executive
1212 Chamber?

1213 A.It would be hard for me to characterize where it
1214 was. I think what we -- the first version that I saw
1215 was a pretty final product, right? I mean, I don't
1216 think that I could give you, you know, this section was
1217 missing or that section was missing, but you know, I do
1218 recall being copied on several versions of the report
1219 that was going through, you know, various refinements
1220 for things like readability. Different folks were
1221 raising different points.

1222 I think my viewpoint and looking at the report
1223 and offering suggestions was making sure that the
1224 narrative around what our, you know, executive order

1225 said, what the public health law said, etc., that those
1226 were all accurate and easily understandable in the
1227 report.

1228 Um, but overall, um, I know I did receive
1229 several different versions at different points in time.

1230 Q.Thank you.

1231 Dr. Eleanor Adams has previously spoken with
1232 us and she told us, in her view, there were two versions
1233 of the report. One that she and others at DOH had
1234 worked on that was very data driven. Their idea was
1235 that it would be published in an academic or scientific
1236 journal and that really did a deep dive into the data
1237 that they were seeing at the Department of Health.

1238 She said the other version is what was
1239 published and that it was not data focused. The
1240 second -- so that the second not-data focused one was
1241 the one that was released, and she said she didn't do
1242 much on it and can't claim credit for that work product.

1243 Do you know why there were two distinct
1244 versions of the report?

1245 A.I certainly don't want to, you know, contradict
1246 Eleanor's testimony. You know, I don't know that I
1247 could say there were two versions of the report. I
1248 certainly did not do a very deep dive into the report,
1249 but I believe that I saw several different iterations of

1250 it, right?

1251 So I don't know that I would concur that there
1252 were only two versions, but I think that might make
1253 sense from her perspective that there was a version that
1254 was more data driven and that later, the ultimate report
1255 was less data driven.

1256 I do think that there was a desire for the
1257 report to answer questions that had been raised in the
1258 press and in the public. And that in order to really
1259 address those questions clearly and cogently, a
1260 scientific journal article was not necessarily the best
1261 way to get that message across to the broader public and
1262 to the press.

1263 Q. Was there a specific person who was involved in
1264 the drafting or editing who made the decision on sort of
1265 how the report should present?

1266 MR. KEHOE: We are going to invoke
1267 privilege on that.

1268 MS. [REDACTED]: The drafting of the -- a report
1269 would not be --

1270 MR. KEHOE: No. Making decisions on. That
1271 involves conversations that are covered by the
1272 privilege.

1273 MS. [REDACTED]: Okay.

1274 MR. KEHOE: Again, [REDACTED], if the Executive

1275 Chamber says we can answer it, we'll answer it.

1276 MS. [REDACTED]: I understand.

1277 Q.I guess the question then, this will just be a
1278 yes or no, were the conversations about the report
1279 in-person conversations?

1280 A.Um, there were some in-person conversations.
1281 There were some phone conversations.

1282 Q.Were there e-mail conversations?

1283 A.I certainly received copies of the report in an
1284 e-mail. I think there may have been e-mail traffic that
1285 followed that up. I don't recall anything really
1286 specific.

1287 Q.Did those e-mails about the report contain the
1288 different versions of the report as it was going through
1289 the editing process?

1290 A.I think they probably would have. Again, I'm at
1291 a little bit of a disadvantage here not having access to
1292 my e-mail documents anymore, but I believe that the
1293 different versions traveled, you know, between and among
1294 the group by e-mail.

1295 Q.Okay. Dr. Jim Malatras told us that there was a
1296 phone call about the report that took place on, as he
1297 recalled, June 27, 2020. He told us that Ms. DeRosa
1298 instructed people on what numbers to include in the
1299 report and he said that you were on this call.

1300 Do you remember it?

1301 MR. KEHOE: That's where we'll invoke
1302 privilege on it.

1303 Q.Was it normal for the Executive Chamber to be
1304 involved with an agency report?

1305 A.Yes.

1306 Q.Do you know if Governor Cuomo was involved in
1307 drafting this report?

1308 A.I don't recall having any specific conversations
1309 with him about the substance of the report. I do recall
1310 conversations that the report was necessary. And there
1311 were also additional conversations that occurred later
1312 after the report was final.

1313 Um, but beyond that, I think the substance of
1314 those conversations is also going to be likely covered
1315 by the privilege there.

1316 Q.And do you know if Governor Cuomo reviewed the
1317 actual draft of the report before it was released?

1318 A.I don't.

1319 Q.Let's take a look at the actual report itself. I
1320 want to turn to page 7.

1321 A.(Witness complies.)

1322 Q.And in that big full paragraph that is on page 7,
1323 it reports, and you can take your time to review it, but
1324 I will say it reports New York's fatality number for

1325 nursing homes at this time was 6,432. Do you see that?

1326 A.Yes.

1327 Q.So this is the number of nursing home deaths that
1328 the New York State Department of Health was stating
1329 publicly had occurred at this point in time, correct?

1330 A.I believe so, yes.

1331 Q.Is it your understanding that that was the actual
1332 number of nursing home deaths at this time?

1333 A.You know, I'm not sure that I can answer, again
1334 sitting here now, and without looking at the different
1335 data sets, that I can make a really confident assertion.
1336 A lot of it depends on what you mean by the word actual.

1337 Q.So was there some knowledge at that point in time
1338 that the numbers being reported were not giving a full
1339 picture of data that was being collected?

1340 A.I think that if I could recharacterize that
1341 slightly, I think the questions at this point had been
1342 raised in the press about nursing home residents who
1343 later died in hospitals not being captured in that
1344 nursing home fatality number. We reported by location
1345 of death.

1346 So there was a nursing home death if a survey
1347 respondent responded to HERDS and said we had a death in
1348 the facility that day. It was not captured in the
1349 nursing home survey. If a resident was transferred to a

1350 hospital, a hospital would report that death.

1351 So, you know, when we talk about the nursing
1352 home fatalities, every fatality was counted in our
1353 overall death number every day, which was a very
1354 sobering number every day to look at. And the Governor
1355 was doing his press conference and there was a press
1356 release every single day of the number of deaths
1357 reported to us that day.

1358 So I do think that by this point we were
1359 certainly aware that people were saying there were
1360 nursing home residents dying in the hospital and
1361 appearing in the hospital number, but you know, based on
1362 what I know of how we were collecting that data, these
1363 were the deaths that occurred in the nursing homes.

1364 Q.Thank you for that explanation.

1365 EXAMINATION BY

1366 MR. [REDACTED]:

1367 Q.Just to go back to what you just said so I can
1368 understand, are you saying that the HERDS survey that
1369 nursing homes submitted to DOH did not describe the
1370 deaths of residents that died at hospitals?

1371 A.Correct. So based on the specific questions on
1372 the HERDS survey, a nursing home would be queried about
1373 staff infections, resident infections, how much PPE they
1374 had and they were also asked if there were any deaths in

1375 the facility to report that were either confirmed COVID
1376 or presumed COVID.

1377 Q.Okay.

1378 A.If a patient had to go to the hospital for
1379 further care, you know, that might -- that death may not
1380 occur for, you know, weeks.

1381 EXAMINATION BY

1382 MS. [REDACTED]:

1383 Q.And not getting into privileged conversations,
1384 were there conversations among staff or disputes among
1385 staff about how those numbers should be reported?

1386 MR. KEHOE: To the extent that there was a
1387 dispute, it was a conversation so I'll invoke.

1388 Q.I'm going to introduce Minority Exhibit B.
1389 (Handing).

1390 MR. [REDACTED]: (Handing).

1391 (Whereupon, a New York Times article was
1392 marked as Minority's Exhibit B for identification as of
1393 this date by the Reporter.)

1394 Q.This is a New York Times article originally
1395 published on March 4, 2021. I'm going to go through a
1396 couple of different things that are in this article. I
1397 don't expect you to be familiar with it, but we'll go
1398 through a couple of things.

1399 At the very beginning it begins with top aides

1400 to Governor Andrew M. Cuomo were alarmed. A report
1401 written by state health officials had just landed and it
1402 included a count of how many nursing home residents in
1403 New York had died in the pandemic. The number, more
1404 than 9,000 in that point in June, was not public and the
1405 Governor's most senior aides wanted to keep it that way.
1406 They rewrote the report to take it out according to
1407 interviews and documents reviewed by the New York Times.

1408 So the first question is, obviously this 9,000
1409 number and the number that was included in the report,
1410 6,432 are different, correct?

1411 A.Yes.

1412 Q.Did you have knowledge at the time of a number of
1413 more than 9,000 being the number of nursing home deaths?

1414 A.On March 4th?

1415 Q.Well, no, when the report came out on July 6,
1416 2020.

1417 A.Yes. I was aware that there was a larger number.
1418 I, you know, could not swear to a specific number,
1419 but --

1420 Q.Were other members of the executive team or COVID
1421 Task Force also aware of a larger number?

1422 A.Yes.

1423 Q.And to your knowledge, was that larger number
1424 purposely kept out of the DOH report?

1425 A.I believe that there was an effort to make sure
1426 that the report was as accurate as it could possibly be.
1427 I do believe that there were concerns with the vetting
1428 of the actual number.

1429 New York Times reports 9,000. Whatever that
1430 number was, whether it was really well vetted and
1431 whether it double counted certain deaths that were also
1432 being reported in the hospital number.

1433 Q.Was any consideration given to delaying the
1434 report until numbers could be verified?

1435 A.I don't know that I can answer the question that
1436 way without running afoul of the privilege.

1437 Q.Understood.

1438 Was there a desire to fully vet the numbers
1439 that were given?

1440 A.Yes. There was a desire to make sure that every,
1441 you know, number was accurate and could be backed up
1442 with hard data.

1443 Q.So was there a reason that the report had to be
1444 released on July 6th before that could be done?

1445 A.Um, I'm not aware of any particular urgency to
1446 the July 6th date as opposed to, you know, some later
1447 point, no.

1448 Q.Okay. And did it seem that it would be possible
1449 to vet the numbers that were not reliable?

1450 A.We were -- and I say we, the Department of Health
1451 staff, you know, the outside consultants and others,
1452 were trying to understand how we could verify data that
1453 was reported at various points in time, including at the
1454 height of the pandemic against other more reliable
1455 datasets.

1456 We did have, I think, just genuine concerns
1457 about how reliable any of these reports could be when it
1458 was largely self-reported by the nursing homes.

1459 Q.Let's look at another section of this New York
1460 Times article, turning to the second page the -- a
1461 paragraph right above the picture block.

1462 A.Mm-hmm.

1463 Q.It reads, "The changes sought by the Governor's
1464 aides fueled bitter exchanges with health officials
1465 working on the report. The conflict punctuated an
1466 already tense and evolving relationship between
1467 Mr. Cuomo and his Health Department."

1468 Based on your knowledge, is this an accurate
1469 depiction of the relationship between Governor Cuomo and
1470 the Department of Health?

1471 MR. KEHOE: We'll invoke the privilege on
1472 that.

1473 MS. [REDACTED]: It is just a yes or no.

1474 MR. KEHOE: Well, I mean, it is not because

1475 you are asking yes or no to the content of, clearly, a
1476 conversation.

1477 Q.Were there disagreements between Governor Cuomo
1478 and the Department of Health?

1479 A.Yes. From time to time, there were
1480 disagreements.

1481 Q.Was the report one of those areas of
1482 disagreement?

1483 A.I don't recall there being a fundamental
1484 disagreement. I believe that there was a desire to
1485 ensure that the information was accurate. The
1486 information that was self-reported by the nursing homes
1487 was difficult to verify. In the absence of that
1488 verification, a determination, you know, was made to
1489 keep the report as the way it was published on July 6,
1490 2020.

1491 Q.And then turning to the next page.

1492 A.(Witness complies.)

1493 Q.The third full paragraph down, it begins, "The
1494 aides who were involved in changing the report included
1495 Melissa DeRosa, the Governor's top aide; Linda Lacewell,
1496 head of the state's Department of Financial Services;
1497 and Jim Malatras, a top adviser to Mr. Cuomo brought
1498 back to work on the pandemic. None had public health
1499 expertise."

1500 So you have already confirmed you were not
1501 aware of any of these individuals having public health
1502 expertise; is that accurate?

1503 A.Yes.

1504 Q.And none of them, Ms. DeRosa, Ms. Lacewell or Mr.
1505 Malatras, were employees of the Department of Health,
1506 correct?

1507 A.Correct.

1508 Q.And you also listed them as reviewing drafts of
1509 the Department of Health report, right?

1510 A.Yes.

1511 Q.To your knowledge, did they make decisions about
1512 the numbers to include in the report?

1513 MR. KEHOE: Invoking the privilege on that.

1514 Q.Were any of the three regularly involved in
1515 drafting DOH reports?

1516 A.The Department of Health puts out hundreds of
1517 reports. You know, no, they were not regularly
1518 involved, but as I answered earlier to your question,
1519 every agency report would come to the Executive Chamber
1520 for review by the policy and programmatic staff.

1521 So it was not unusual that a report from
1522 Department of Health or any agency would come and be
1523 reviewed by Chamber. And we would provide edits,
1524 feedback, you know, questions, concerns, often leading

1525 to redrafts of reports.

1526 Um, so, you know, I wouldn't say that there
1527 would not be anything unusual in having agency reports
1528 come to the Executive Chamber and be reviewed. I think
1529 what's different about this situation was it was COVID
1530 so we had a different group of people who were involved
1531 including Linda and Jim, who, you know, were involved
1532 here.

1533 But ultimately things would go to Melissa for
1534 approval before anything would go out.

1535 Q.Thank you.

1536 And it sounded like there were a number of
1537 drafts going back and forth between the Department of
1538 Health and the Executive Chamber.

1539 Was that number of drafts and number of
1540 revisions in line with what would normally happen with
1541 an agency report?

1542 A.Yeah, I think so. I mean, it was not unusual for
1543 things to go through multiple iterations and, you know,
1544 things would sort of ping-pong, right? So I might edit
1545 and then they would make changes and then program would
1546 have questions about my edit and then they would have
1547 their own additional questions and then I would review
1548 their edits.

1549 So, you know, it's hard to say that there was

1550 a hard and fast rule. It was not a very rigorous, like,
1551 step one, it goes to this person and those edits are
1552 made and edited. A lot of times, drafts ping-ponged
1553 like that.

1554 So I would say yes, it was fairly typical.

1555 Q.Thank you.

1556 It was mentioned in the previous hour that the
1557 New York Attorney General conducted an investigation and
1558 issued a report on that investigation which was into the
1559 nursing home response. That report, as we said earlier,
1560 was released on January 28, 2021, and entitled Nursing
1561 Home Response to the COVID-19 Pandemic. Are
1562 you familiar with that report?

1563 A.Yes.

1564 Q.I don't have it printed mostly to save paper. It
1565 was a large report?

1566 A.Mm-hmm.

1567 Q.And we don't need to get into too many specifics
1568 of it, but I just want to reiterate as we stated earlier
1569 in New York the Attorney General does not report to the
1570 Governor, correct?

1571 A.Correct.

1572 Q.So this was an independent investigation and
1573 report?

1574 A.Correct.

1575 Q.I'm just going to read out two little things from
1576 the report.

1577 The report found that quote "Discrepancies
1578 remain over the number of New York nursing home
1579 residents who died of COVID-19. Data obtained by OAG
1580 shows that DOH publicized data vastly undercounted these
1581 deaths." End quote.

1582 The report then continued with the
1583 recommendation to the DOH that quote "It ensure public
1584 reporting by each nursing homes as to the number of
1585 COVID-19 deaths of residents occurring at the facility-
1586 and those that occurred during or after hospitalization
1587 of the residents-in a manner that avoids a double
1588 counting of resident deaths at hospitals and reported
1589 state COVID-19 death statistics."

1590 MR. KEHOE: Can I ask you a question?

1591 MS. [REDACTED]: Sure.

1592 MR. KEHOE: The first bullet point, I
1593 believe, is not in the report. It's in a press report.

1594 MS. [REDACTED]: Discrepancies?

1595 MR. KEHOE: Yeah.

1596 MS. [REDACTED]: It is in the executive summary
1597 of the report.

1598 MR. KEHOE: It is in the press release. I
1599 mean, I don't know if it's the report itself, but be

1600 that as it may.

1601 MS. [REDACTED]: It is in the executive summary.

1602 MR. KEHOE: If it's --

1603 MS. [REDACTED]: We are not going to get into the
1604 details of that.

1605 MR. KEHOE: Sure.

1606 Q.My point is, this seems to be describing what you
1607 were talking about earlier, the difference in deaths in
1608 the nursing home residents who died in the hospitals; is
1609 that correct?

1610 A.Correct.

1611 Q.So that discrepancy of numbers that the New York
1612 OAG was talking about in the report reflects the
1613 discrepancies that you were seeing with the data at the
1614 time of working on the July 6th report?

1615 A.Yes.

1616 Q.On February 11, 2021, the New York Department of
1617 Health released an updated version of the July 6, 2020,
1618 report. Do you know if this report was issued in
1619 response to the OAG report?

1620 A.Um, I believe it was not so much in response to
1621 the OAG report, but also it followed up the finalization
1622 of the analysis of those numbers, which had just, you
1623 know, previous to that, been provided to members of the
1624 state legislature.

1625 But you know, it certainly was close in time
1626 to when the Attorney General report was being issued.
1627 But I don't believe it was directly in response, no.

1628 Q.Did the update that was released on February 11,
1629 2021 contain complete data on nursing home deaths?

1630 A.I believe that there was still a small number of,
1631 let's call them sort of disputed deaths, which I think
1632 we were unable to definitively match to a particular
1633 individual leading to some uncertainty about whether or
1634 not there may be double counting for that, you know,
1635 small subset.

1636 Q.And do you agree that it is important to report
1637 accurate public health data to the public during a
1638 public health emergency?

1639 A.Yes.

1640 Q.And why is that?

1641 A.We determined early on that we needed to keep the
1642 public informed all throughout the pandemic as to what
1643 we were seeing, that the, you know, absence of
1644 information would lead to, you know, unnecessary
1645 concern, anxiety, and also it benefitted us in guiding
1646 our response. So, you know, we did collect
1647 a lot of data and we did publish a lot of data. So
1648 every day that the Governor was doing his press
1649 conferences, he was, you know, listing the number of

1650 tests that were completed, the number of positive tests,
1651 he was showing, you know, by county, these are where we
1652 are seeing clusters and outbreaks. He would give
1653 updates on contact tracing. And they would update,
1654 every day, the number of deaths and the locations of
1655 those deaths.

1656 Q.Thank you. Changing topics.

1657 You just mentioned COVID testing and that obviously
1658 played a huge role in the response to COVID-19 and how to
1659 contain outbreaks and things like that.

1660 A.(Nodding.)

1661 Q.Was testing a focus of the Executive Chamber
1662 during the COVID-19 pandemic?

1663 A.Absolutely. We sought and received clearance
1664 from the CDC to run our own tests for COVID-19 because,
1665 you know, we felt the three-day lag -- three or four-day
1666 lag -- of, you know, shipping test samples down to
1667 Atlanta to wait for a result was going to really hamper
1668 our efforts to contact trace and get ahead of the virus.

1669 So we got that approval, we faced shortages
1670 throughout the pandemic for things like the swabs, the
1671 reagents. Everything was in very short supply but, you
1672 know, we did actually work very collaboratively with the
1673 Federal Government. They expedited the approval of our
1674 test. We worked with private labs.

1675 So testing was a major focus of the Governor.
1676 We set up testing centers that were free.
1677 Drive-through. Utilizing staff from different state
1678 agencies as well as National Guard to try to give
1679 everyone access to free and efficient testing.

1680 Q.You mentioned just now shortages that would limit
1681 the number of tests that could be given. That was a
1682 concern for the administration, correct?

1683 A.Yes.

1684 Q.There were also allegations in the early days of
1685 the pandemic when there were these shortages of tests
1686 that Governor Cuomo gave preferential access to the
1687 limited supply of COVID tests that were available at
1688 that point. And this has been reported in several media
1689 outlets.

1690 MS. [REDACTED]: I'm going to introduce Minority
1691 Exhibit C. (Handing).

1692 And I will actually also introduce Minority
1693 Exhibit D.

1694 (Whereupon, Washington Post articles were
1695 marked as Minority Exhibits C and D for identification
1696 as of this date by the Reporter.)

1697 Q.So Minority Exhibit C and D are both articles
1698 from the Washington Post regarding the issue of priority
1699 testing. The first Exhibit C is from March 24, 2021,

1700 and the second Exhibit D is from March 29, 2021.

1701 You may not be familiar with these articles
1702 but are you familiar with the allegations of priority
1703 testing?

1704 A.Yes.

1705 Q.I just want to say while we appreciate the
1706 importance of ensuring that individuals close to the
1707 Governor and other key officials were tested to minimize
1708 disruptions to the continuity of government operations,
1709 particularly during a public health crisis, there is a
1710 distinction between priority tests for this reason and a
1711 suggestion that friends and allies of Governor Cuomo
1712 were given preferential access to tests.

1713 So I want to delve into this issue more with
1714 you. Is it true as the report states, and I could give
1715 you time to read the articles if you choose to do so?

1716 MR. KEHOE: It's probably a good idea.

1717 MS. [REDACTED]: Sure.

1718 MR. KEHOE: Do you want to cruise through
1719 them?

1720 THE WITNESS: Yeah.

1721 MS. [REDACTED]: Take your time.

1722 MR. KEHOE: We New Yorkers don't read the
1723 Washington Post.

1724 You're from Minnesota, Jack. You don't

1725 read them either.

1726 MR. EMMER: No, no.

1727 A. (Perusing).

1728 MR. KEHOE: Ready to go?

1729 THE WITNESS: Yeah.

1730 MS. [REDACTED]: To your point, Greg, there were
1731 several articles in the New York Times --

1732 MR. KEHOE: I'm just kidding about that.
1733 Just have to joke.

1734 Q. But getting to the meat of the matter, these
1735 articles talk about DOH staff being tasked with
1736 administering COVID tests to what are deemed VIPs.

1737 If you look at the very bottom of the first
1738 page of Exhibit D, the article mentions Kenneth Cole
1739 being part of this program.

1740 A. (Witness complies.)

1741 Q. And if you turn to the third page of Exhibit C in
1742 the middle of the page, there's a paragraph that begins
1743 separately and it says "Separately, nurses working for
1744 the State were dispatched in two-person swabbing teams
1745 to test "dozens" of the VIPs, some living in penthouses
1746 in Manhattan, according to one person with direct
1747 knowledge."

1748 Do you have knowledge about a VIP COVID
1749 testing program?

1750 A. Not as, you know, you have described it. I am
1751 aware that there was expedited testing for cases that
1752 were deemed, you know, critical to the response.

1753 So I know DOH staff, and these two-person
1754 teams, for instance, when we first had the cluster in
1755 New Rochelle, DOH created a schedule of nurses that went
1756 house to house testing people. State troopers drove
1757 those tests up to Wadsworth because at that time, it was
1758 the only location that could perform the testing.

1759 There were others, like people working at our
1760 test sites that from time to time did get priority
1761 testing. Eventually, you know, we got to the point
1762 where there were the antigen tests that people could do
1763 on their own and those were distributed to critical
1764 places.

1765 So I do think that there were certain
1766 priorities that because we were in control of a limited
1767 number of tests, that from time to time we said we need
1768 to know right away whether or not this person has COVID
1769 because we need to know if everyone that came in contact
1770 with this person needs to be quarantined. It would have
1771 the effect of, you know, shutting down an entire testing
1772 site.

1773 We had a person within the Chamber who tested
1774 positive. A number of people -- you know, they did the

1775 contact tracing. I think Dr. Zucker was personally
1776 involved in doing the contact tracing.

1777 And individuals who came into contact with
1778 that person had to quarantine for two weeks. It was not
1779 a situation where we tested them and went against the
1780 CDC guidelines. Those people had to quarantine. We
1781 would only test them when and if they developed
1782 symptoms.

1783 So, you know, I think the characterization is
1784 a little bit unfair that if you knew someone you could
1785 get a test. That was certainly not the case and
1786 Dr. Zucker was consulted as far as what his medical
1787 judgment was warranted and we followed the advice we got
1788 from him.

1789 Q. So did Dr. Zucker sign off on where all the COVID
1790 tests went?

1791 A. I don't know that he signed off on, you know,
1792 every single test, but I think if there was ever a
1793 question about whether or not priority could be given to
1794 a test, it was done in consultation with DOH senior
1795 officials. Whether it was in every case, Dr. Zucker or
1796 not, I don't remember.

1797 Q. And I think we can all appreciate priority tests
1798 being given for continuity of operations or keeping
1799 vital services going. However, allegations in the media

1800 that people like Kenneth Cole were receiving priority
1801 tests is different, right?

1802 A.Oh, absolutely.

1803 Q.So what you described was sort of continuity of
1804 operations.

1805 A.Mm-hmm.

1806 Q.Making sure testing sites stayed open.

1807 Do you have any knowledge of priority tests
1808 being given outside of those specific government
1809 operations' needs?

1810 A.I became aware, as, you know, the pandemic
1811 progressed that there were individuals who were in
1812 contact with the Governor that were also given tests.
1813 And I think that, you know, we did consider him
1814 essential to our state's response, so him coming in
1815 contact with someone who was positive was of concern.

1816 MR. BENZINE: [REDACTED], I'm sorry. Can we go
1817 off the record for a second?

1818 MS. [REDACTED]: Sure.

1819 (Whereupon, an off-the-record discussion
1820 was held.)

1821 MS. [REDACTED]: We can go back on the record.

1822 Q.Are you aware of Department of Health staff being
1823 diverted from their usual responsibilities in order to
1824 participate in priority testing?

1825 A.Um, I'm aware of what, you know, I just read in
1826 the New York Post, or Washington Post rather. Got New
1827 York on the brain.

1828 Um, I will say, everyone got diverted from
1829 their normal responsibilities from time to time during
1830 COVID and whether there was, you know, someone who felt
1831 they could have been doing something more important with
1832 their time throughout the day, I'm certainly not going
1833 to quarrel with their own judgment about that, but I do
1834 think there were times we had to ask people to do some
1835 things that were outside the normal scope of what they
1836 were normally asked to do, absolutely.

1837 Q.Did you ever get the sense that individuals were
1838 receiving COVID-19 tests for reasons other than
1839 preventing infection of Governor Cuomo himself or
1840 continuity of government operations?

1841 A.I don't think I really have a full understanding
1842 of every single one of these, you know, allegations.
1843 There are a lot of sort of veiled references here to
1844 VIPs. You know, I can't speak with any real knowledge
1845 about any of that.

1846 My understanding was that it related to the
1847 operation of government. It related to contact with the
1848 Governor, contact with other critical infrastructure to
1849 the response. Beyond that, there's not much to go on

1850 here in this story.

1851 So, you know, no, but at the same time, I
1852 don't know that I was ever in that loop of reviewing or
1853 approving those testing protocols.

1854 Q.So you don't have any personal knowledge of that?

1855 A.Correct.

1856 Q.Okay. Thank you.

1857 MS. [REDACTED]: We can go off the record.

1858 (Whereupon, an off-the-record discussion
1859 was held.)

1860 MR. EMMER: We can go back on the record.

1861 EXAMINATION BY

1862 MR. EMMER:

1863 Q.Ms. Garvey, during this hour we are going to talk
1864 about perhaps the main reason we are here, which is the
1865 March 25th order, but first can you explain how Health
1866 Department guidance was developed and issued during the
1867 pandemic?

1868 A.Um, yes. So generally, guidance would come from
1869 the Department to the Executive Chamber. We started
1870 reviewing it really as we were right at the very, very
1871 beginning of the pandemic.

1872 There were some regulations that were revised
1873 related to isolation and quarantine. And a number of
1874 the, you know, publications, let's call it, like, they

1875 were guidance documents for different settings and
1876 different groups needed to be updated.

1877 So those were coming to the Chamber for us to
1878 sort of look at those, make sure they were consistent
1879 with the new regulations, and that process really
1880 continued throughout COVID for a variety of things. It
1881 might be that guidance was issued in response to an
1882 executive order or it might be guidance would be issued
1883 in response to CMS changing guidance or CDC changing
1884 guidance. And they were, you know, all variety of
1885 things.

1886 So it would rarely be the Chamber saying we
1887 need to issue guidance on this, but more someone at
1888 Department of Health or it could have been another
1889 agency.

1890 There were other agencies like AG and
1891 markets-issued guidance about contact with wild animals
1892 during COVID for COVID prevention.

1893 So we got a number of different guidance
1894 documents that were all coming into the Chamber to be
1895 reviewed before publication.

1896 Q.As Special Counsel, what role did you play in the
1897 issuance of guidance?

1898 A.So I was reviewing every piece of guidance that
1899 went out. We had other folks involved. So someone

1900 like, you know, Megan Baldwin would look at it. She
1901 also had a fellow who was working with her, Rachel
1902 Baker. Assistant Counsel might review certain pieces of
1903 guidance.

1904 Eventually after it went through certain
1905 levels of review it would come to me to make sure we
1906 were in accord with what the guidance was saying, what
1907 its purpose was and we didn't have any questions.

1908 And then typically, you know, for the first
1909 part of the pandemic, it would just go to me and then go
1910 out. Then as we got further into the pandemic, we
1911 started sending those guidance documents also to Melissa
1912 to a broader group of senior staff and she would approve
1913 before they went out.

1914 EXAMINATION BY

1915 MR. BENZINE:

1916 Q.Do you know about when that switch was?

1917 A.Yeah. It was towards the end of April. There
1918 was some guidance that the Department put out that was
1919 wildly misconstrued, that the EMS boards -- so emergency
1920 medical services is a board of regional appointments
1921 within the Department of Health, and they wanted to
1922 update their guidance as it related to, you know, how
1923 they were going to handle individuals who were deceased
1924 rather than transport them to the hospitals.

1925 And the New York Post ran a headline saying it
1926 was that the new guidance was that everyone should be
1927 allowed to die instead of, you know, be transported to
1928 the hospital for extraordinary life-saving measures.

1929 And at that point, Melissa wanted to see every
1930 piece of guidance that was going out.

1931 EXAMINATION BY

1932 MR. EMMER:

1933 Q.Are you aware of guidance ever being issued
1934 independently from the Department of Health that is
1935 without their knowledge or consultation prior to
1936 issuance?

1937 A.Um, you know, I don't think so. I believe that
1938 everything that came from the Department went through
1939 the Department in some form or fashion.

1940 EXAMINATION BY

1941 MR. BENZINE:

1942 Q.Who was the final check on guidances?

1943 A.If it was sort of pre that end of April date, it
1944 was probably me unless I felt someone else needed to see
1945 or be made aware of it, but after that, it was Melissa.

1946 Q.Okay.

1947 EXAMINATION BY

1948 MR. EMMER:

1949 Q.So let's pivot to the beginning of COVID and I

1950 believe you may have answered some of these questions in
1951 the previous hour, so I might make you repeat yourself.

1952 A. (Nodding.)

1953 Q. But when did you learn about COVID-19?

1954 A. You know, really, I think we got alerted -- I
1955 mean it probably even was November of '19. Late
1956 November. It might have been the first couple of
1957 e-mails, but we started getting sort of daily updates
1958 that really sort of picked up from December into
1959 January.

1960 EXAMINATION BY

1961 MR. BENZINE:

1962 Q. Late November?

1963 A. I believe it might have been, like, yeah.
1964 There's an issue happening overseas and you should be
1965 aware of it kind of thing. Like, not that we, in New
1966 York, had any COVID.

1967 Q. No, I know. China didn't report it until
1968 December 30th. So do you recall --

1969 A. I don't recall November.

1970 Q. Okay.

1971 A. I recall --

1972 Q. Okay.

1973 A. I recall --

1974 Q. Late 2019?

1975 A.Late 2019.

1976 Q.Okay. Just making sure.

1977 A.Whatever point that was, sitting here four years
1978 later again. But, yeah. We started to get, something
1979 is happening in China. You should be aware.

1980 Q.Thank you. I just wanted to make sure.

1981 A.Yeah. Not a public health expert, for the
1982 record.

1983 EXAMINATION BY

1984 MR. EMMER:

1985 Q.With that in mind, when would you say you learned
1986 that elderly populations were particularly vulnerable to
1987 COVID-19?

1988 A.Um, look, I would say we followed CMS guidance
1989 that was coming out in early March that was talking
1990 about, you know, communal settings of elderly patients
1991 are particularly vulnerable.

1992 We instituted temperature checks and health
1993 screenings for staff, we shut down visitation, I said
1994 earlier, with New Rochelle containment zone.

1995 We were trying to, you know, interact with
1996 nursing homes to make sure they had information they
1997 needed to be prepared and ready.

1998 So early on.

1999 Q.At this time I would like to introduce what will

2000 be marked as Majority Exhibit 2.

2001 (Whereupon, an e-mail was marked as
2002 Majority's Exhibit 2 for identification as of this date
2003 by the Reporter.)

2004 Q.This is an e-mail from Joseph Popcun to you and
2005 other Executive Chamber officials with the subject line
2006 that reads approved DOH advisory on hospital discharges
2007 and admissions to nursing homes --

2008 MR. KEHOE: Wait a second, Jack. He is
2009 talking about that page.

2010 THE WITNESS: Okay.

2011 Q.On March 25, 2020. As you notice the e-mail also
2012 attaches the actual nursing home guidance.

2013 So let's start with the March 25th guidance on
2014 this other page, on the second page.

2015 A.(Perusing).

2016 Q.Ms. Garvey, do you recognize this document?

2017 A.Yes.

2018 Q.Did you play any role in the development of this
2019 guidance?

2020 A.Yes.

2021 Q.Can you explain your role?

2022 A.Um, so I have no specific memory of this, but as
2023 I stated earlier, guidance was coming to the Executive
2024 Chamber and it was being reviewed by a number of

2025 different staff people and ultimately coming to me for
2026 approval to go out.

2027 It did typically run through Joe Popcun, who
2028 sent this e-mail. He was deployed, you know, from
2029 Department of State to help our office.

2030 And so I would have looked at this guidance to
2031 make sure that it was consistent with executive orders,
2032 policies, every, you know, communication that the
2033 Governor was making and then approved it for
2034 distribution by whatever department had asked for the
2035 guidance.

2036 Q.What prompted this guidance to be drafted, do you
2037 know?

2038 A.You know, as I just said, I don't have any
2039 specific memory of this or the, you know, we were
2040 requiring this guidance to go out.

2041 But I do think that sitting here now, this was
2042 consistent with the need to preserve hospital capacity
2043 so we had promulgated an executive order that directed
2044 hospitals to ramp up their bed capacity, having been
2045 advised by people who were experts in public health and
2046 epidemiology that we would require upwards of 100,000
2047 hospital beds. And this was a corollary to that.

2048 That a medically stable person who could be
2049 discharged from the hospital either back into their home

2050 where they had come from, or a person who required extra
2051 care and couldn't go home but was medically stable,
2052 needed to be admitted back into the nursing home.

2053 And that solely, the potential of contact with
2054 a person with confirmed or suspected diagnosis, was not
2055 going to be a basis for the nursing home to reject the
2056 patient or demand a test, which at the time, couldn't be
2057 obtained.

2058 EXAMINATION BY

2059 MR. BENZINE:

2060 Q. Could you be a little bit more specific about
2061 saying they couldn't discriminate against someone who
2062 was in contact with someone with a presumed COVID
2063 diagnosis? That's not what the guidance says.

2064 A. Yeah. So we talked about a lot of things later
2065 and one of -- so again, not in the context of preparing
2066 this guidance to go out or preparation for this guidance
2067 but in conversations later on that spring, you know, we
2068 talked with the Department and one of the justifications
2069 that was given to us was that hospitals were being told
2070 that, you know, just if there was COVID even in the
2071 hospital, that nursing homes were going to say we are
2072 not taking a patient from this hospital where there are
2073 COVID patients, whether or not the individual ever even
2074 had contact with them or not.

2075 And that that was part of the consideration
2076 that underlined this document, not to suggest that it
2077 actually says those specific words.

2078 Q.That's just an awfully large difference. I
2079 understand -- I think it would be frankly more
2080 understandable that just contact with someone --

2081 A.Mm-hmm.

2082 Q.-- should not be discrimination against accepting
2083 them back.

2084 A.Yeah.

2085 Q.But an actual diagnosis is different than a
2086 contact. So we are going to ask a little bit more about
2087 the drafting and those spring conversations too.

2088 A.Yeah. Look, I can't claim credit for the
2089 drafting of this.

2090 Q.Yeah.

2091 A.So I don't know specifically why some of these
2092 words were chosen. I don't really have any recollection
2093 of making any edits to this or asking any questions at
2094 this time, you know? Late March, it would have been in
2095 a pile of probably ten to fifteen documents.

2096 EXAMINATION BY

2097 MR. EMMER:

2098 Q.This might go a little off topic, but you had
2099 mentioned in your answer previously that the concern was

2100 hospital capacity.

2101 A. (Nodding.)

2102 Q. And you had brought up that it was a
2103 relayed -- and I don't want to mischaracterize what you
2104 said but effectively that public health experts and
2105 policy experts were concerned with bed capacity.

2106 Can you elaborate on which experts would have
2107 been consulting with the Governor on this issue?

2108 A. Um, gee. McKinsey was one. Cornell. There were
2109 some London people -- London -- I don't know -- School
2110 of Economics maybe. I don't remember particular names
2111 or anything else, but I know that we were given a range
2112 of numbers to expect to need and, you know, there were
2113 some that were higher than a hundred thousand, some that
2114 were a little bit lower, but every single "expert,"
2115 let's call them, suggested that New York needed well
2116 over the number of certified beds that we had at the
2117 time, which was about 50,000. And we only had staff for
2118 about I think under 40,000.

2119 So, you know, we were not even able to staff
2120 our certified bed capacity when we started the pandemic.

2121 I was not really in the loop on those
2122 conversations so, you know, a lot of this is kind of
2123 gleaned from later discussions, later documents, later
2124 awareness, but I remember there was an awful lot of

2125 consternation about the fact that there was going to be
2126 a definite need and at some point, the number 100,000
2127 was settled on as the number we needed to shoot for.

2128 Q.You were a member of the COVID Task Force; is
2129 that right?

2130 A.Mm-hmm.

2131 MR. KEHOE: You can't -- just yes or no.

2132 THE WITNESS: Sorry.

2133 A.Yes.

2134 Q.In December, Dr. Zucker, related to the March
2135 25th order, effectively testified that he recalls being
2136 in a meeting with members of the Task Force and the
2137 Governor when the Governor received a call from the
2138 Greater New York Hospital Association asking the
2139 Governor to do something about patients that the
2140 hospitals wanted discharged back into the nursing homes,
2141 or, I want to be fair to Dr. Zucker, but having the
2142 ability to discharge patients that were there.

2143 A.Mm-hmm.

2144 Q.Do you recall being at any meeting where the
2145 Governor received a call from the Greater New York
2146 Hospital Association?

2147 A.I don't recall that, no.

2148 Q.Okay.

2149 EXAMINATION BY

2150 MR. BENZINE:

2151 Q.Do you recall that ever being conveyed to you?

2152 A.I recall being made aware that we needed to surge
2153 the bed capacity, that there was a need to make
2154 hospitals blow out their capacity, right? Bring in
2155 staff from wherever, put beds in the cafeteria if they
2156 needed to. That was sort of the mandate.

2157 There were -- there was a suspension on
2158 elective surgeries, there was all sorts of coordinated
2159 efforts made to try to get hospitals the ability to meet
2160 the need that we were anticipating we needed to meet.

2161 And you know, at this point, no one could
2162 really give us any clear guidance about, you know, what
2163 that would look like.

2164 EXAMINATION BY

2165 MR. EMMER:

2166 Q.Let's focus back on the guidance.

2167 I believe you testified that you had no role
2168 in the drafting or editing; is that right?

2169 A.No, I -- I said I didn't draft this.

2170 Q.Yes. That's what I meant.

2171 A.So it would have come to my desk.

2172 Q.Okay.

2173 A.I said I have no specific memory of editing.

2174 Q.Okay.

2175 A.I really can't say four years later, I don't
2176 remember this specific document in particular.

2177 What I talked about was the general policies
2178 for guidance. I made edits to dozens and dozens and
2179 dozens. I don't remember this one in particular.

2180 So I don't want to say I didn't make any
2181 changes to this. I might have. There might be a
2182 document somewhere with my handwriting on it. I just
2183 don't remember it.

2184 EXAMINATION BY

2185 MR. BENZINE:

2186 Q.Do you know who drafted it?

2187 A.It would have come from the Department of Health.
2188 And beyond that, I can't really -- you know, every
2189 program area was drafting guidance and different
2190 agencies were drafting guidance and sending it to us.
2191 So it came from someone at the Department.

2192 Q.Dr. Zucker testified it didn't.

2193 A.Okay.

2194 Q.He said that he was in this meeting, got the
2195 phone call from the Greater New York Hospital
2196 Association, and a few weeks later a final guidance was
2197 in his inbox and he has no idea where it came from.

2198 A.(Nodding.)

2199 Q.So we are trying to figure that out. Obviously,

2200 the guidance was in the news an awful lot after the
2201 fact.

2202 A.Yeah.

2203 Q.Did you ever ask where this came from?

2204 A.Who the specific author was? No.

2205 Q.Okay.

2206 A.And again, I do know that Dr. Zucker was
2207 incredibly taxed during this time, the demands on his
2208 time were immense as were the demands on my time. I
2209 would be very, very surprised if he was personally
2210 drafting guidance.

2211 It probably would have been program heads in
2212 his division of public health. Like, a Brad Hutton
2213 maybe who was still there or even someone, you know,
2214 further down in that public health division.

2215 EXAMINATION BY

2216 MR. EMMER:

2217 Q.At this time I would like to introduce what will
2218 be marked as Majority Exhibit 3.

2219 (Whereupon, Impeachment Investigation
2220 Report was marked as Majority Exhibit 3 for
2221 identification by Mitch Benzine.)

2222 Q.This is the impeachment investigation report to
2223 judiciary chair Charles Lavine and the New York State
2224 Assembly Judiciary Committee published on November 22,

2225 2021.

2226 A.Lavine.

2227 Q.Ms. Garvey, do you recognize this report?

2228 A.Um, yes. I'm aware that they issued this report.

2229 Q.And to be clear, I believe in the last hour you
2230 testified that you were asked to produce documents in
2231 furtherance of the committee's investigation?

2232 A.I was asked. I don't believe I provided any.

2233 Q.I want to direct your attention to page 41 of the
2234 report.

2235 A.(Witness complies.)

2236 Q.We are looking at subsection G, the second
2237 paragraph.

2238 A.(Perusing).

2239 Q.And I will read this out loud into the record
2240 when you are ready.

2241 A.Okay.

2242 Q."During testimony before the New York State
2243 Senate in August 2020, a senior Executive Chamber
2244 official who was in the room where a senior DOH official
2245 was remotely testifying wrote a message on a whiteboard
2246 suggesting that the senior DOH official did testify, in
2247 fact, that the March 25th directive was authored by DOH
2248 and that the Executive Chamber was not involved. This
2249 statement was not true and the senior DOH official did

2250 not make such a statement in the testimony."

2251 Ms. Garvey, do you know who the senior DOH
2252 official is that this excerpt is referring to?

2253 A.Yes. I believe that the senior DOH official was
2254 Dr. Zucker, who testified in an August, I think, 3rd
2255 hearing before the legislature.

2256 Q.What this excerpt is referencing, that there was
2257 an incident where senior Executive Chamber wrote a
2258 message on the whiteboard. Did you witness that occur?

2259 A.I was present in the room where he was remotely
2260 testifying at that time. There was a whiteboard. I
2261 don't have any specific memory of this.

2262 Q.Do you know who the senior Executive Chamber
2263 official referenced here was that was writing the
2264 messages on the whiteboard?

2265 A.I don't know who they are referring to here, no.

2266 Q.In transcribed interviews that we have had with
2267 other witnesses - and I want to be fair, I believe we
2268 had two witnesses - at least one testified it was
2269 Melissa DeRosa that was writing on the whiteboard.

2270 Do you have any recollection of her writing,
2271 not just this message, but other ones, while Dr. Zucker
2272 was testifying?

2273 A.Yes. Look, I also wrote things on the
2274 whiteboard, you know, where I thought I could be helpful

2275 to Dr. Zucker to prompt his memory in testifying. There
2276 were also folks from DOH present in the room as well.
2277 Eleanor Adams, um, I'm trying to think who the acting
2278 exec dep was at that point in time, but there were other
2279 folks.

2280 There was a whiteboard there so he could sort
2281 of visualize beyond the camera if there was something
2282 relevant to be written to him.

2283 But I, again, can't corroborate that specific
2284 example.

2285 Q.Do you recall whether Ms. Lacewell would have
2286 been in the room for this testimony?

2287 A.I believe she was, yes.

2288 Q.This specific statement that the senior Executive
2289 Chamber official wrote a message on the whiteboard to
2290 effectively testify that the March 25th directive was
2291 authored by DOH and the Executive Chamber was not
2292 involved, do you believe that the senior Executive
2293 Chamber official was acting under the orders of the
2294 Governor?

2295 A.Because I don't have any recollection of this, I
2296 really can't say. That would just be, I think, pure
2297 speculation.

2298 EXAMINATION BY

2299 MR. BENZINE:

2300 Q.Was it true that the Executive Chamber was not
2301 involved in the March 25th order?

2302 A.No. I mean again, I don't have the specific
2303 memory of looking at this document, but I must have. It
2304 must have come through. And if Joe Popcun sent it out
2305 as approved, he is referring to me as the approver.

2306 There was involvement. Again, it is
2307 impossible to say at this point what that level of
2308 involvement was. By the time guidance came to me, it
2309 was usually pretty clean and if I didn't have any
2310 concerns or edits, it would just go out.

2311 Q.In Dr. Zucker's interview he said something
2312 similar to what Jack just said, that what he was being
2313 told to say was not true and that he did not say it
2314 because it was not true. What's the
2315 punishment for telling someone to commit perjury in the
2316 state of New York?

2317 MR. KEHOE: That's -- can we just state the
2318 facts and suppose --

2319 MR. BENZINE: She's a lawyer.

2320 MR. KEHOE: I understand she's a lawyer.

2321 THE WITNESS: I'm not that kind of lawyer.

2322 MR. KEHOE: She's not that kind of lawyer.

2323 I'm going to instruct her not to answer.

2324 MR. BENZINE: All right. I'll rephrase it.

2325 Q.Is it illegal to instruct a witness to commit
2326 perjury?

2327 MR. KEHOE: Let's just all stipulate that
2328 anybody who tries to influence anybody to commit
2329 perjury, that's improper.

2330 MR. BENZINE: All right.

2331 MR. KEHOE: I'll just say that.

2332 MR. BENZINE: All right.

2333 EXAMINATION BY

2334 MR. EMMER:

2335 Q.To the best of your recollection, or actually
2336 referring back to the March 25th guidance, was the
2337 guidance intended to be interpreted as mandatory for
2338 nursing homes?

2339 A.I think the department, anytime it issues
2340 guidance, is telling a particular industry group what
2341 its perspectives are about a home's obligations.

2342 I do believe that there are a number of things
2343 not said in this particular guidance that qualify what
2344 some folks have otherwise said is a mandatory directive.

2345 You know, for instance, you know, we have no
2346 resident shall be denied readmission or admission solely
2347 based on -- you know, again, I think there are a number
2348 of reasons why a nursing home could have said we cannot
2349 accept this patient, not because we don't have a

2350 negative COVID test, not because of COVID, but certainly
2351 there were lack of staffing, lack of adequate space,
2352 lack of ability to care for a patient, all would have
2353 been appropriate justifications not to admit a patient
2354 that a hospital was attempting to discharge.

2355 Q.Ms. Garvey, do you recall the Governor and his
2356 administration arguing that nursing homes always had the
2357 obligation option or obligation under preexisting state
2358 law to deny patients that they could not handle?

2359 A.Correct. It is in a regulation, not a state law.

2360 Q.And that regulation is Section 415.26?

2361 A.Yes.

2362 Q.What is your understanding of what Section 415.26
2363 is?

2364 A.415.26 is a very detailed regulation that's
2365 promulgated by the Department of Health to the nursing
2366 homes. So it has a variety of mandatory requirements
2367 for nursing homes that they have to comply with.

2368 Q.And this might be a general question, but can you
2369 describe how 415.26 applied in the context of the
2370 March 25th order, or at least as far as the nursing
2371 home's responsibilities and under the March 25th order?

2372 A.So, look, nursing homes are skilled care
2373 facilities, right? They have medical staff, they have
2374 nursing staff, they have a medical director who has to

2375 be appointed in order for a nursing home to be licensed.
2376 They are regulated by the state. They are also
2377 regulated by the Federal Government.

2378 So these are, you know, again, in the realm of
2379 different entities caring for people during COVID,
2380 really sophisticated operators. I believe that nursing
2381 home administrators were aware that this guidance
2382 existed but also were always aware of their obligations
2383 under 415.26 as well as federal requirements placed on
2384 them by CMS.

2385 Q.Do you recall who would have made the
2386 determination that 415.26 superseded how, I guess, the
2387 argument that this was a mandatory directive for nursing
2388 homes to follow?

2389 MR. KEHOE: Can you just rephrase that?

2390 Q.I guess I'm curious who made the determination
2391 that 415.26 was applicable to the March 25th order, or
2392 superseded it? Sorry.

2393 MR. KEHOE: Didn't the AG say that
2394 everybody understood in the report that 415.26, that
2395 not accepting everybody in was understood by everyone
2396 in the nursing homes?

2397 MR. EMMER: But that report was issued in
2398 late January 2021. I'm just asking whether there was
2399 consideration during the time that this was issued,

2400 whether 415.26 applied. And it might be a general yes
2401 or no.

2402 MR. KEHOE: I'm just trying to clarify.

2403 From my understanding, and correct me if
2404 I'm wrong, on the OAG's report was that they concluded
2405 that everybody in the nursing home understood that, for
2406 instance, the nursing home didn't have to take somebody
2407 in that they couldn't provide adequate care for them.
2408 That was never a question.

2409 I mean, is that where you are at?

2410 EXAMINATION BY

2411 MR. BENZINE:

2412 Q.Was 415.26 still in effect when the March 25th
2413 order was issued?

2414 A.Yes.

2415 Q.Was it ever superseded by another executive
2416 order?

2417 A.It was superseded to the extent -- my
2418 understanding, again, it was superseded only to the
2419 extent that paperwork requirements and discharge
2420 planning was suspended for a period of time during the
2421 pandemic.

2422 Q.But the ability to isolate, cohort or otherwise
2423 care for patients was not suspended?

2424 A.Correct. And again, based on guidance, that

2425 protection protocol was still in effect. There were
2426 other -- I believe, other documents issued by CMS to
2427 that effect.

2428 EXAMINATION BY

2429 MR. EMMER:

2430 Q.Do you recall the Governor and his administration
2431 arguing that the order was consistent with CMS and CDC
2432 guidance; is that right?

2433 A.Yes.

2434 Q.Do you know if anyone from the Executive Chamber,
2435 Task Force or Health Department consulted with CMS or
2436 CDC prior to the issuance of the orders?

2437 A.I don't know specifically, no.

2438 Q.And for the record, you yourself, you didn't
2439 consult CDC or CMS regarding the order?

2440 A.Correct.

2441 Q.Do you recall after it was issued whether anyone
2442 from the administration, including Department of Health,
2443 contacted anyone from CMS, CDC regarding whether it was
2444 consistent?

2445 A.I don't know, but I would just say I would think
2446 that would be Department of Health, in any event, and
2447 they were in regular contact. You know, Department of
2448 Health continued to do surveys of nursing homes, which
2449 are surveys that the Department conducts on behalf of

2450 CMS. So there was regular contact between CMS and DOH
2451 throughout the pandemic.

2452 And you know, I would also think that if there
2453 was a disagreement, that that would have been raised.
2454 And I'm not aware that anyone ever raised any
2455 disagreement with that either.

2456 Q.Do you know who would have made the determination
2457 that the March 25th order was consistent with CMS and
2458 CDC within the administration?

2459 A.I believe it was Department of Health, but again,
2460 I'm not certain of a specific person.

2461 Q.So for the record, when you testified earlier
2462 that you had signed off on guidance that was being
2463 issued --

2464 A.Mm-hmm.

2465 Q.-- would the question such as the CMS or CDC,
2466 would that be something that you would be looking at or
2467 are you saying that the DOH would do that on the front
2468 end considering guidance?

2469 A.I would rely on the subject matter experts to
2470 ensure the consistency with their particular regulatory
2471 framework. It was not typically my function to go
2472 behind, you know, whatever work had been put into this
2473 and try to, you know, recreate the wheel, so to speak.

2474 Q.Okay. At this time I would like to introduce

2475 what will be marked as Majority's Exhibit 4.

2476 (Whereupon, an e-mail thread was marked as
2477 Majority Exhibit 4 by Mitch Benzine.)

2478 MR. EMMER: (Handing).

2479 MR. KEHOE: Thank you.

2480 Q.This is an e-mail thread certified by Ms. DeRosa
2481 to yourself as well as senior Executive Chamber and
2482 Health Department staff on May 17, 2020. The subject
2483 reads, "Rich, Peter, please give us a read and send back
2484 any edits you have and we shall post in the New York
2485 Post from Dr. Zucker tomorrow."

2486 MR. KEHOE: I'm sorry, Jack, where are you
2487 reading?

2488 MR. BENZINE: The bottom of 2189.

2489 MR. KEHOE: Okay. Got it.

2490 Q.I'll give you a moment to look it over.

2491 A.(Perusing).

2492 MR. KEHOE: I'm sorry. Are you looking
2493 here? (Pointing).

2494 MR. BENZINE: The first e-mail is 2189
2495 flowing on 2190.

2496 MR. KEHOE: Okay. I was just trying to see
2497 what Jack was just reading.

2498 Jack, are we supposed to be able to see
2499 what is underneath the block? Is that redacted or --

2500 MR. BENZINE: It's not redacted. I think
2501 it was highlighted and it reduced.

2502 MR. KEHOE: All right. I just can't see
2503 it.

2504 MR. BENZINE: Yeah.

2505 Q.Ms. Garvey, do you recall this e-mail thread?

2506 A.I do not.

2507 Q.Do you recall at any point during the pandemic
2508 whether Executive Chamber employees were involved in
2509 drafting public statements for Dr. Zucker?

2510 A.Yes, definitely. You know, I -- again, I don't
2511 recall this specifically, but it is not surprising that
2512 we would weigh in on something of this importance.

2513 Q.So I want to direct your attention to the fourth
2514 paragraph of the op-ed on the second to last page.

2515 A.(Witness complies.)

2516 I am a Doctor? Is that the one?

2517 Q.Yes. I'll read this into the record too, but we
2518 are starting on the third sentence, our Department.

2519 It states, "Our Department followed President
2520 Trump's CDC guidance in saying nursing homes cannot
2521 discriminate against COVID patients. The CDC issued
2522 that guidance at a time when the primary care was at
2523 hospital capacity and would be overwhelmed and was
2524 premised on having hospital beds for Urgent Care.

2525 "We, along with states across the country,
2526 agree with President Trump's CDC because the operational
2527 mandate has always been that a nursing home can only
2528 accept or retain a patient if it can adequately and
2529 effectively care for that patient."

2530 Ms. Garvey, the reference to the CDC, do you
2531 know whether that was correct as far as the argument
2532 that Ms. DeRosa was arguing for?

2533 A.Yes, I believe it was correct.

2534 Q.Later on in the e-mails or the subsequent drafts
2535 it's changed to CMS and I believe she asked for
2536 clarification on why it was changed to CMS.

2537 I guess this is a long-winded way of asking,
2538 do you believe that Ms. DeRosa was aware of the CMS CDC
2539 guidance prior to the issuance of the order?

2540 A.By order you mean the March 25th --

2541 Q.March 25th order. Thank you.

2542 A.Um, it's really impossible to say.

2543 Q.Okay.

2544 A.I really couldn't speculate.

2545 Q.Do you think that there was anyone within the
2546 Executive Chamber that had reviewed CMS or CDC guidance
2547 applicable to the March 25th order prior to its
2548 issuance?

2549 A.Yes. I believe that the folks who were

2550 responsible for that program area, the Assistant
2551 Counsel, Assistant Secretary, they were tracking and
2552 monitoring CMS and CDC guidance as well as with the
2553 Department. And I believe the Department would have
2554 flagged for them if that guidance had been released.

2555 Q.Do you have specific names of people who were
2556 within those roles?

2557 A.Um, Megan Baldwin, the Assistant Counsel was Axel
2558 Bernabe. Also, Alison Birzon. Also, Rachel Baker was
2559 assisting Megan.

2560 But again, I should also probably clarify, I
2561 don't have specific knowledge that they did, but those
2562 were those people that were in those positions that I
2563 assume would have.

2564 Q.Thank you.

2565 I would now like to introduce what will be
2566 marked as Majority's Exhibit 5.

2567 MR. EMMER: (Handing).

2568 (Whereupon, a document was marked as
2569 Majority Exhibit 5 by Mitch Benzine.)

2570 MR. KEHOE: Thank you.

2571 Q.And while this document is significantly
2572 redacted, I'll give you a moment to look it over.

2573 This is an e-mail thread between Executive
2574 Chamber and Health Department officials including

2575 yourself, Secretary DeRosa, Dr. Malatras, Ms. Lacewell,
2576 and Dr. Zucker starting on June 22nd attaching an
2577 article where Administrator Verma, Cuomo contradicted
2578 federal nursing home guidance.

2579 A. (Perusing).

2580 MR. KEHOE: Ready to go?

2581 THE WITNESS: Yep.

2582 Q. Do you recall this e-mail thread?

2583 A. I do not.

2584 EXAMINATION BY

2585 MR. BENZINE:

2586 Q. Do you recall Administrator Verma saying that the
2587 March 25th directive violated federal guidance?

2588 A. I mean, I have a vague recollection that there
2589 were some sharply worded statements back and forth
2590 between our Administration and the Federal Government at
2591 this point in time, but I don't recall specifically
2592 anymore, no.

2593 Q. Probably the same answer, but do you recall how
2594 the Cuomo Administration responded to Administrator
2595 Verma's comments?

2596 A. I don't, but again, I think, you know, a nursing
2597 home is accountable to DOH and also CMS and, you know,
2598 our emergency authority under the executive law doesn't
2599 give us the ability to override federal law or federal

2600 regulations. And so nursing homes always had to comply
2601 with CMS guidance.

2602 I think there is a nuance here, which is that,
2603 you know, nothing in the March 25th order suggested that
2604 a nursing home should disregard transmission-based
2605 precautions, which seems to be what Verma is saying
2606 here. That's not in the March 25th order.

2607 So, you know, again, I think even the Attorney
2608 General, when she issued her report, acknowledged that
2609 there were other requirements that nursing homes had to
2610 follow and that they understood those obligations.

2611 EXAMINATION BY

2612 MR. EMMER:

2613 Q.Do you recall any nursing homes reaching out for
2614 clarification on how to interpret the order?

2615 A.I don't remember receiving any, you know,
2616 questions or concerns about the March 25th guidance. I
2617 became aware later that an organization had, you know,
2618 mailed a letter to us expressing concerns. That was
2619 published in the newspaper, but I became aware of that
2620 letter when it was published in the newspaper.

2621 EXAMINATION BY

2622 MR. BENZINE:

2623 Q.What organization was that?

2624 A.It was, like, the -- I don't know. It was some

2625 national association of assisted living or something of
2626 that nature.

2627 MR. KEHOE: Do you want the name of the
2628 organization?

2629 MR. BEHLMAN: I think one of them is AMDA.

2630 MR. KEHOE: Right.

2631 Q.At this time I would like to introduce what will
2632 be marked as Majority's Exhibit 6.

2633 MR. EMMER: (Handing).

2634 MR. KEHOE: Thanks. (Handing).

2635 THE WITNESS: Thank you. (Handing).

2636 MR. BEHLMAN: Thanks.

2637 (Whereupon, the Guidance was marked as
2638 Majority's Exhibit 6 by Mitch Benzine.)

2639 Q.This is the guidance issued by the New York State
2640 Health Department on April 7, 2020, entitled "adult care
2641 facility administrators hospital discharge planners."

2642 Excuse me. It's issued to adult care facility
2643 administrator hospital discharge planners, but it is
2644 advisory hospital discharges and admissions to ACF.

2645 Ms. Garvey, do you recognize this document?

2646 A.Yes.

2647 Q.Can you explain your role in the issuance of this
2648 guidance?

2649 A.So similar to the March 25th guidance, this would

2650 have been drafted by the department, come to the
2651 Chamber, been reviewed by other staff before making its
2652 way to my desk for review for, you know, consistency
2653 purposes and then being distributed back to Department
2654 for publication.

2655 Q.Prior to your review, do you have any knowledge
2656 of who drafted this guidance?

2657 A.I assume, you know, program staff at Department
2658 of Health drafted it, but I don't know specifically.

2659 EXAMINATION BY

2660 MR. BENZINE:

2661 Q.Would it be different programs for nursing homes
2662 versus adult care facilities?

2663 A.Um, it probably would have all fallen under
2664 office of long-term care.

2665 Q.Just to point out in this document versus the
2666 March directive, this one actually advises adult care
2667 facilities on denial of admissions must be based on
2668 inability to provide the level of care required by the
2669 prospective resident --

2670 A.(Nodding.)

2671 Q.-- pursuant to the hospital's discharge
2672 instructions.

2673 That was not in the March 25th order?

2674 A.Yes.

2675 Q.And I don't believe the March 25th order had been
2676 amended at this point.

2677 And you said part of your job was consistency
2678 across the orders. When this came back to your desk
2679 would you have gone back to the March 25th order and
2680 seen the inconsistency?

2681 A.Um, I might have. I did occasionally say we just
2682 said this for this group, but I will just point out an
2683 adult care facility doesn't have medical staff. So it
2684 is a different level of care. You know, we might have
2685 folks there who are administering medications who might
2686 be able to attend to, you know, sort of minor needs.

2687 But I think that the reason for this
2688 distinction appears because they would not have
2689 generally been able to follow that transmission-based
2690 precautions procedures. That would have been highly
2691 unusual for the ACF to do.

2692 Q.And then before Jack asks more questions, I have
2693 one more.

2694 It has been consistent across everyone that we
2695 have interviewed that the prohibition on testing prior
2696 to admission or readmission was just a lack of tests.

2697 A.Yes.

2698 Q.But the ability to isolate and cohort and
2699 properly care for, you would have to have knowledge of

2700 the patient's status. And without testing them, you
2701 don't know how to cohort them.

2702 A.Yeah.

2703 Q.Would the assumption just be that at this point
2704 in time they should have cohorted everybody?

2705 A.You would have assumed that any new admission was
2706 a potential source of transmission. And I believe that
2707 that was consistent with the CMS guidance issued at the
2708 beginning of the pandemic that said any new admission
2709 should be isolated and treated potentially as a source.

2710 Q.Okay.

2711 EXAMINATION BY

2712 MR. EMMER:

2713 Q.Ms. Garvey, do you recall how long the March 25th
2714 order was in effect?

2715 A.I don't believe that the March 25th order was
2716 ever repealed. Um, it was I think functionally mooted
2717 out by later requirements once testing capacity existed
2718 that hospital discharges were prevented prior to receipt
2719 of a negative test.

2720 EXAMINATION BY

2721 MR. BENZINE:

2722 Q.We have the EO that amended the order to require
2723 the test.

2724 A.Yeah.

2725 Q.What prompted the change?

2726 A.Um, I believe that a number of questions had been
2727 raised publicly about the March 25th order and whether
2728 or not it was still, in fact, necessary.

2729 At this point in time, I believe April 17th
2730 was the sort of peak date of hospital capacity need.
2731 And we were starting to see some positive trends, so to
2732 speak, in terms of positivity rates and hospitalization
2733 rates that we may be at the peak of our first wave. And
2734 we were short of where we thought we were going to be
2735 with needing 100,000 hospital beds.

2736 So a number of circumstances had changed by
2737 that point in time, right? We were starting to see
2738 better treatment protocols, we were starting to see
2739 testing capacity ramp up, we were starting to see a lot
2740 of these things that allowed us to say we can pivot here
2741 and make sure that we don't have to send anyone who is a
2742 positive patient who is medically stable back to a
2743 nursing home.

2744 EXAMINATION BY

2745 MR. EMMER:

2746 Q.At this time, I would like to introduce what will
2747 be marked as Majority's Exhibit 7.

2748 (Whereupon, an e-mail was marked as
2749 Majority's Exhibit 7 by Mitch Benzine.)

2750 MR. EMMER: (Handing).

2751 MR. KEHOE: Thank you, buddy. (Handing).

2752 THE WITNESS: Thanks. (Handing).

2753 A. (Perusing).

2754 Q. This is an e-mail that you are CCed on.

2755 A. Mm-hmm.

2756 Q. From Peter Ajemian to Megan Baldwin asking if we,

2757 presuming that is referring to the Executive Chamber,

2758 told DOH to remove the order from the website.

2759 First, do you remember this e-mail thread?

2760 A. Um, I mean, this refreshes my recollection of it,

2761 yes.

2762 Q. Do you know who instructed the Department of

2763 Health to remove the March 25th order from the website?

2764 A. I don't know.

2765 EXAMINATION BY

2766 MR. BENZINE:

2767 Q. Would that have been common?

2768 A. I think we were always trying to make sure

2769 accurate information was out in the public, so if, you

2770 know, this is true for any agency, if we found something

2771 that we didn't think was accurate or current, you know,

2772 we would absolutely flag it and say that should probably

2773 be taken down.

2774 Um, you know, again, I think the idea that the

2775 March 25th order was sort of functionally superseded,
2776 but not literally superseded, I think could have created
2777 confusion in the general public. And I think, you know,
2778 it was reasonable to take it down.

2779 EXAMINATION BY

2780 MR. EMMER:

2781 Q.At this time I would like to introduce what will
2782 be marked as Majority's Exhibit 8.

2783 MR. EMMER: (Handing).

2784 (Whereupon, an e-mail thread was marked as
2785 Majority Exhibit 8 by Mitch Benzine.)

2786 MR. KEHOE: Did you say 8, Jack?

2787 MR. EMMER: 8. (Handing).

2788 Q.This is an e-mail thread between Department of
2789 Health staffers that you are not part of, but I just
2790 want to direct your attention to the second e-mail in
2791 response to the question of whether the guidance was
2792 taken off the website.

2793 There is a response that says on "April 29th
2794 there was instruction that this needed to be pulled
2795 down."

2796 In the prior question, you talked about the
2797 May 11th superseding order. Is it your testimony today
2798 that you weren't aware of the guidance being taken off
2799 the website prior to the May 11th superseding order?

2800 A.I mean, I really can't say now at what point I
2801 became aware that it was pulled down. So whether I was
2802 sort of alerted by that e-mail thread of, you know,
2803 May 27th or whether it was, you know, earlier, I -- I
2804 can't say.

2805 Q.Okay.

2806 A.Um, sorry.

2807 Q.I just want to direct your attention to the first
2808 e-mail here, and if you are not able to answer, that's
2809 fine.

2810 But it says in response to why they were
2811 instructed to take it down it says "yes, because it was
2812 inconsistent and we were directed by the Chamber to pull
2813 it."

2814 Do you know why it would have been determined
2815 as inconsistent?

2816 A.You know, look, guidance is always supplemental
2817 and to the extent it's no longer serving a helpful
2818 purpose to guide someone in how best to comply, the
2819 Department probably shouldn't have it out anymore.

2820 And really, the point that we had reached in
2821 the pandemic, you know, we didn't have that overriding
2822 need for bed capacity in the hospitals. We didn't have
2823 this, you know, doing a mass discharge of everyone who
2824 is medically stable and here's a bunch of patients

2825 coming at you.

2826 There was an element in the March 25th order
2827 that was about being able to promptly receive patients,
2828 right? That, you know -- the discharge planner from
2829 the hospital could do it with a phone call instead of
2830 paperwork and, you know, medical exams and discharge
2831 planning processes.

2832 So you know, that moment was really passed
2833 after we reached the peak of our hospitalizations
2834 towards the, you know, mid-April.

2835 Q.I guess my concern is the announcement that the
2836 order was being superseded, the executive order, that
2837 wasn't until May 10th or May 11th --

2838 A.Mm-hmm.

2839 Q.-- that it was taken down.

2840 Prior to that, was the administration
2841 discussing during that period whether it was needed or
2842 applicable?

2843 A.Um, there were conversations ongoing from the
2844 second this was really raised in that press conference
2845 at the end of April. But there was a Dear Administrator
2846 letter that I think went out in advance of the executive
2847 order change that I think also reinforced and alerted
2848 nursing home administrators of the Department's position
2849 that this was never intended to have them compromise the

2850 safe and adequate care of their residents.

2851 EXAMINATION BY

2852 MR. BENZINE:

2853 Q.Were you ever involved in any discussions where
2854 political ramifications were brought up?

2855 A.Um, political ramifications of what, March 25th?

2856 Q.So, you know, I think Governor Cuomo even said
2857 the March 25th order is still in effect even when EO
2858 superseded it --

2859 A.Mm-hmm.

2860 Q.-- or amended it or however it was. So it was
2861 still an order in effect that the Health Department took
2862 off its website, so that is concerning in and of itself.

2863 Were there ever any discussions about the
2864 public relations or political backlash on the March 25th
2865 order?

2866 A.There were definitely conversations about press
2867 coverage, definitely conversations about, um, you know,
2868 other critical commentary from other elected officials.
2869 So in that sense, certainly. There were conversations
2870 about the ramifications of March 25th.

2871 I think overall the concern was in making sure
2872 that the nursing home administrators, though, had access
2873 to adequate resources, adequate information, and that we
2874 were not somehow misleading any person into jeopardizing

2875 anyone's health or safety.

2876 Q.Were you a part of any conversations where any
2877 decisions surrounding the amendment of the order were
2878 based off of any public pressure or political
2879 considerations?

2880 A.I think it is very fair to say that the press
2881 inquiries drove this as a concern because they captured
2882 comments from administrators and, you know, different
2883 operators that did not reflect what we had been told by,
2884 you know, what the Department was actually hearing.

2885 So you know, when you say this sort of drove
2886 the response, it was the idea that a nursing home
2887 administrator was saying I was forced to jeopardize a
2888 person's safety that caused an awful lot of concern that
2889 we needed to address that so that patients weren't being
2890 put in harm's way.

2891 Absolutely. We took that sort of allegation
2892 incredibly seriously.

2893 Q.All right. Thank you.

2894 MR. EMMER: We are over our hour so we'll
2895 go off the record.

2896 (Whereupon, an off-the-record discussion
2897 was held.)

2898 MS. [REDACTED]: All right. We can go back on
2899 the record.

2900 EXAMINATION BY

2901 MS. [REDACTED]:

2902 Q.I'm going to pick up with the CMS order that you
2903 all were discussing. I think we had a lot of
2904 conversation about a potential CMS order but didn't
2905 actually look at it.

2906 So I think it would help to actually talk
2907 about what was going on at the time of the March 25th
2908 order and what guidance was being looked at.

2909 In general, and I think you covered this a little
2910 bit so this might be a little bit of repetition, but how
2911 does Federal guidance such as from CMS or CDC, how does
2912 that inform state level policymaking in general?

2913 A.So CDC is, you know, I think viewed more as an
2914 expert resource, right, rather than sort of regulatory
2915 obligation on any particular entity, right?

2916 So I viewed CDC as the north star on things of
2917 public health. You know, when they were talking about
2918 things like how COVID could be transmitted, that was our
2919 understanding of the best science available as to what
2920 was happening. CMS has a regulatory role and they were,
2921 I think, always looked at as the baseline.

2922 And then we would look for, do we need to be
2923 more protective, right, than what CMS is requiring? So
2924 if CMS said we are going to exercise caution with

2925 visitation, you know, we had gone so far as to say no
2926 visits, right?

2927 And there were points in time during the
2928 pandemic when I think we were intentionally more
2929 restrictive than certain CMS guidance until CMS said no,
2930 this is the guidance as far as visitation and that
2931 certain visitation must be permitted. So there's, you
2932 know, a variety of those sources.

2933 And we were also looking at what other
2934 countries were doing, what WHO was doing and what other
2935 states were doing. And we were collaborating with
2936 particularly our other northeast governors, including
2937 Governor Baker, Governor Lamont and Governor Murphy to
2938 sort of make sure we were all making coordinated
2939 decisions, you know, not so much on the individual
2940 public health side, because we were dealing with a very
2941 different outbreak from everyone else, a little bit
2942 ahead of these other states, but certainly as it related
2943 to restrictions on businesses and other activities that
2944 were happening, like the mass gathering guidance that
2945 was also coming out at that time.

2946 Q.And that's not specific to COVID-19, correct,
2947 that New York State would as a general matter of
2948 practice look into any federal guidance on issues?

2949 A.Correct.

2950 Q.On March 24th the Trump administration's CMS
2951 issued nonbinding guidance regarding infection control
2952 and prevention of COVID-19 for nursing homes.

2953 I'm going to enter this as Minority Exhibit E.

2954 MS. [REDACTED]: (Handing).

2955 THE REPORTER: Thank you.

2956 (Whereupon, a document was marked as
2957 Minority's Exhibit E for identification as of this date
2958 by the Reporter.)

2959 Q.I see you are taking a moment to review it, but I
2960 just want to draw your attention to page 3 of the
2961 guidance under the second bold heading.

2962 A.(Witness complies.)

2963 Q.Okay. I'm going to read what it says there.

2964 "A nursing home can accept a patient diagnosed
2965 with COVID-19 and still under transmission-based
2966 precautions for COVID-19 as long as it can follow CDC
2967 guidance for transmission-based precautions. If a
2968 nursing home cannot, it must wait until these
2969 precautions are discontinued."

2970 Do you agree that this federal guidance from
2971 CMS does not bar the readmission of COVID-19 patients to
2972 nursing homes?

2973 A.Hold on. There was a double negative there.

2974 Q.It does not bar readmission?

2975 A.Correct.

2976 Q.And is this the type of guidance that New York
2977 would have been looking at when drafting their own
2978 guidance?

2979 A.Yes.

2980 Q.And on the flip side, do you agree that this
2981 federal guidance establishes a premise that COVID-19
2982 positive hospital patients could be readmitted to
2983 nursing homes under certain circumstances?

2984 A.Yes.

2985 Q.And again, that guidance would have informed the
2986 guidance that New York State was developing?

2987 A.Correct.

2988 Q.Thank you.

2989 Speaking of the Federal Government, and it has
2990 come up before, but I would like to get your perspective
2991 on what the working relationship between the Federal
2992 Government and the New York State government was during
2993 the COVID-19 pandemic and what we can potentially learn
2994 from that for future public health crises.

2995 Based on your experience, what role does the
2996 Federal Government play in working with and coordinating
2997 with state governments during a crisis?

2998 A.So in my experience, you know, Federal Government
2999 has always had a really important role to play in terms

3000 of bringing to bear, you know, not only their ability to
3001 ramp up production for things, through, like the Defense
3002 Production Act, but also different resources.

3003 I mean, we were so thrilled when we had the
3004 opportunity to get the U.S. Navy ship Comfort to come to
3005 New York because, you know, we were at that point in
3006 time, at critical capacity levels for a lot of the
3007 downstate hospitals.

3008 Um, we also, you know, coordinate with the
3009 Federal Government through FEMA for funding for any
3010 number of disaster and emergency efforts.

3011 So I have always felt that there is no I in
3012 team when it comes to these things, that it is a
3013 multilayered response. It's the states that need to
3014 coordinate for their local governments and we took that
3015 primary role in New York, but we also need the support
3016 and coordination of the Federal Government to keep all
3017 of the states rowing in the same direction.

3018 Q.As you mentioned earlier, the COVID-19 crisis and
3019 outbreaks hit New York a little earlier than many other
3020 states in the country.

3021 A.(Nodding.)

3022 Q.Did the Federal Government have difficulty
3023 fulfilling its responsibilities to partner in the early
3024 days of the COVID-19 pandemic?

3025 A.Yes. I do think there were difficulties.

3026 I think one of the things that I recall being
3027 a particular issue was the production of PPE because,
3028 you know, the world sources so much of this from China
3029 and China was essentially in full shutdown pursuing
3030 their zero COVID policy.

3031 So, you know, our hospitals were left, you
3032 know, scrambling. Nursing homes were left scrambling.
3033 You know, people had no way to get even things like hand
3034 sanitizer.

3035 But, you know, I will say, like, the FDA was
3036 incredibly responsive. I mean, we would e-mail
3037 someone -- we decided to make our own hand sanitizer and
3038 we needed FDA approval for the recipe and labeling and a
3039 private manufacturer had shared the recipe with us that
3040 was FDA approved, and so we knew it was -- would be
3041 fine, but you know, we had one staff person who said,
3042 well, it's Sunday so we are not going to get anyone from
3043 the FDA.

3044 And it was like 9:00 p.m. on a Sunday night
3045 and we said, that's ridiculous. We are working 24/7.
3046 They are working 24/7. We sent an e-mail and we had a
3047 response within, like, 10 minutes. We had a conference
3048 call with someone. We had approval of the label later
3049 that night.

3050 I mean, it was -- they were incredible. We
3051 were sourcing ventilators from Korea. You know, we were
3052 getting things from all over the world and, you know,
3053 able to give them a model number and they would say,
3054 yes, we can give you an emergency use authorization for
3055 that.

3056 And it was -- that spirit of partnership and
3057 collaboration in a really difficult time was really
3058 something that we valued.

3059 Q.You mentioned inadequate source of PPE. Did that
3060 lead to states competing with each other to obtain PPE?

3061 A.Definitely. Definitely. I mean, you saw prices
3062 sort of wildly swing from, you know, what should be a
3063 dollar to \$3 to \$6. But even more than states competing
3064 against each other, hospital systems.

3065 So you know, you had public hospitals
3066 competing against better resourced private hospitals and
3067 that was a really, really challenging thing too.

3068 Q.Did having that lack of coordination and lack of
3069 supply, did that impact nursing homes in other
3070 congregate care facilities as well?

3071 A.Absolutely. They were, um, you know, I think
3072 overall at the back of the pecking order. You know, if
3073 you have 5,000 masks to sell and you have someone who
3074 says well, I only need 500 for my nursing home and the

3075 hospital is saying I'll take all 5,000, right, you are
3076 selling to the hospital. So I think they, you know, did
3077 leverage some association purchasing. We
3078 definitely, with assistance from FEMA through our
3079 state's stockpile, tried to make as much available as we
3080 could, but there were definitely some days of shortage.
3081 And CDC issued guidance about washing of N95 respirators
3082 and reusing them.

3083 And I know it was a great point of
3084 consternation of a lot of staff that they had to go
3085 through a lot of those shortages. Particularly gowns
3086 and gloves and things that should have been changed
3087 multiple times throughout their shift, and instead, they
3088 were being told, nope, we have got to conserve.

3089 Q.And PPE would be considered a first line
3090 infection control mitigation measure, correct?

3091 A.Yes, that's my understanding.

3092 Q.Yeah.

3093 During a Select Subcommittee hearing last May
3094 we heard from Dr. David Grabowski, who is a professor of
3095 health care policy at Harvard Medical School, and he
3096 said community spread was a driving force of spread, not
3097 just in New York but across the country.

3098 Is that consistent with your understanding?

3099 A.Yes. That's what the, you know, Department of

3100 Health study showed, was that the infection rate was
3101 higher in areas where there was higher community spread.

3102 Q.And PPE would have been a primary tool to prevent
3103 that spread, right?

3104 A.To the extent that it was the correct kind of PPE
3105 and not subject to those other conservation measures,
3106 absolutely.

3107 Q.So would you say that the lack of a federal
3108 coordinated response to aiding the states, particularly
3109 in things like PPE, put vulnerable residents of these
3110 facilities and others at an increased risk?

3111 A.Look, I think it would have been ideal if we had
3112 a one-year head start on COVID. I don't think anyone
3113 had that. I really do think there were challenges that
3114 the Federal Government needed to address, and probably
3115 in hindsight could have been addressed better.

3116 But I think there were things that New York with
3117 hindsight could have addressed better too.

3118 My overriding concern with looking at this is
3119 just that, you know, we understand that everyone was
3120 dealing with really impossible situations and I don't
3121 know, you know, even if we had 200 million masks, you
3122 know, should those have gone to places that didn't quite
3123 have as much COVID yet or should they all go to the
3124 places that did have it and leave the other states

3125 saying what about us, right? We are defenseless here.

3126 I mean, there are challenges. And when you
3127 are in those spots of making public health decisions
3128 that can really mean life and death for people, it's
3129 incredibly difficult to weigh those competing interests.

3130 Q.Lastly, under President Biden, when he came into
3131 office in January of 2021, he initiated a national
3132 vaccination campaign.

3133 Are you aware of that?

3134 A.Yes.

3135 Q.And New York obviously had great interest in
3136 getting its population vaccinated, correct?

3137 A.Yes.

3138 Q.Did vaccines reduce the threat COVID-19 posed to
3139 nursing home residents and staff?

3140 A.Yes. I do think that they certainly assisted,
3141 but again, you know, looking back on it, I think we did
3142 rush to say that the vaccine was preventive for any
3143 transmission. That turned out to be not as promising as
3144 we thought it was at the early side.

3145 And I think, you know, that data that we had,
3146 those first studies that seemed to show that you could
3147 not transmit, you know, did, in some cases, lead to
3148 transmission continuing.

3149 So you know, I think we don't -- we don't

3150 always know everything at the moment we are making these
3151 decisions and we are going on the best guidance. But I
3152 think, you know, overall, it certainly helped to
3153 diminish the spread in facilities.

3154 Q.And in early 2021 when the vaccine first became
3155 widely available, there was a focus on getting the
3156 elderly and those who worked in congregate care
3157 facilities vaccinated first?

3158 A.Yes.

3159 Q.And New York participated in that and also
3160 encouraged those communities?

3161 A.Absolutely.

3162 Q.And that was to mitigate infection spread within
3163 those facilities?

3164 A.Yes.

3165 Q.Thank you.

3166 MS. [REDACTED]: We can go off the record.

3167 (Whereupon, an off-the-record discussion
3168 was held.)

3169 MR. EMMER: We are back on the record.

3170 EXAMINATION BY

3171 MR. EMMER:

3172 Q.At this time I would like to introduce what will
3173 be marked as Majority's Exhibit 9.

3174 MR. EMMER: (Handing).

3175 (Whereupon, an e-mail thread was marked as
3176 Majority Exhibit 9 by Mitch Benzine.)

3177 MR. EMMER: (Handing).

3178 MR. KEHOE: (Handing).

3179 THE WITNESS: Thank you.

3180 Q.I'll give you a moment to look this over, but
3181 this is an e-mail thread that you are not on started by
3182 Ms. Stephanie Benton with Dr. Jim Malatras, Gareth
3183 Rhodes, Melissa DeRosa and Dr. Zucker on June 7th of
3184 2020.

3185 A.(Perusing).

3186 MR. KEHOE: What is Malatras a doctor of?

3187 THE WITNESS: Political science. He has a
3188 PhD. He is a doctor of philosophy.

3189 MR. KEHOE: All set?

3190 THE WITNESS: Yep.

3191 Q.And we are looking specifically at that e-mail
3192 from Stephanie Benton and I'll read it into the record.

3193 "This is going to be the great debacle in the
3194 history books. The longer it lasts, the harder to
3195 correct. We have a better argument than we have made.
3196 Get a report on the facts because its legacy will
3197 overwhelm any positive accomplishment. Also, how many
3198 COVID people were returned to nursing homes in that
3199 period? How many nursing homes? Don't you see how bad

3200 this is? Or do we admit error and give up?"

3201 First, who is Ms. Benton?

3202 A.She was Director of Chamber Operations, I
3203 believe.

3204 Q.And I know you are not on this e-mail, but when
3205 it says the longer it lasts the harder to correct, we
3206 have a better argument than we made, by better argument
3207 is it your impression that she is referring to the
3208 administration's attempts to argue that the March 25th
3209 order was necessary or lawful?

3210 MR. KEHOE: That's speculation. How would
3211 she know that?

3212 EXAMINATION BY

3213 MR. BENZINE:

3214 Q.Did anyone on this e-mail chain ever inform you
3215 of Ms. Benton's e-mail?

3216 A.No.

3217 EXAMINATION BY

3218 MR. EMMER:

3219 Q.We have had numerous witnesses testify that they
3220 believed this e-mail was from Governor Cuomo himself.
3221 Do you recall it being customary of the Governor to
3222 write e-mails from Stephanie Benton's account?

3223 A.No. I do know that sometimes because the
3224 Governor would use pins, he would send a pin to

3225 Stephanie, that she would then put into an e-mail
3226 herself.

3227 So in other words, I think she was functioning
3228 as more of a forward here than, you know, him going to
3229 her computer and acting as if he was her.

3230 EXAMINATION BY

3231 MR. BENZINE:

3232 Q.And first, what's a pin?

3233 A.A pin is a secure message that's sent to a
3234 BlackBerry from BlackBerry to BlackBerry that is not an
3235 e-mail that is hosted on a server.

3236 Q.Governor Cuomo didn't have his own computer is
3237 our understanding.

3238 A.Um --

3239 Q.Did he have a BlackBerry?

3240 A.He did have a BlackBerry. He did have a
3241 BlackBerry. I don't -- I know that there was a computer
3242 in the Executive Mansion. I believe it was OGS. Um,
3243 you know, that ran the Executive Mansion where staff
3244 could print things for him.

3245 So again, you couldn't e-mail him. He didn't
3246 have an e-mail. You know, he was not like some ghost
3247 operating Stephanie's e-mail. But if you needed to get
3248 him something, you could print it -- you could e-mail it
3249 to someone working at the mansion and they would print

3250 it and give it to him.

3251 Q.And we haven't necessarily heard from other
3252 witnesses that it was like him sitting at Ms. Benton's
3253 computer typing an e-mail.

3254 A.Okay. That was the impression I had from the
3255 question.

3256 Q.The impression that they had was that the e-mail
3257 came from the Governor, or the words came from the
3258 Governor. So either via the system you just said where
3259 he sent a BlackBerry pin to her or dictating, I
3260 don't -- no one really knows.

3261 A.Mm-hmm.

3262 Q.Was the using of the BlackBerry pin common? Did
3263 the Governor send them to you?

3264 A.Yeah. Yes. When I had a BlackBerry, I would
3265 sometimes get pins from him.

3266 You know, again, he is not a prolific writer
3267 so it was often, like, please call, kind of thing.

3268 Q.Anything to your recollection regarding nursing
3269 homes?

3270 A.I'm sure throughout, you know, the course of the
3271 pandemic, there may have been. Um, you know, but again,
3272 it also was probably likely something like a news clip
3273 because a press staffer would also have them and they
3274 would sometimes pin clips that would go to different

3275 senior staff.

3276 So, like, I don't really recall any commentary
3277 about things.

3278 Q.This is just me not knowing how a BlackBerry
3279 works.

3280 A.Yes.

3281 Q.So I apologize.

3282 MR. KEHOE: I love BlackBerries. They were
3283 great. I hated when they went out of business.

3284 Q.Is it like a group chat situation or is it like
3285 an instant message? How would you describe the pin?

3286 A.Um, it came through a separate app. I am not
3287 very technologically minded.

3288 Q.It's fine.

3289 A.So, you know, it would -- you know, I guess it is
3290 equivalent to on your phone, you get an e-mail and,
3291 like, the mailbox gives you the little icon that you
3292 have an e-mail. Or you get a text message and the
3293 message app lights up that you got an e-mail.

3294 There was, like, a mail message that was just
3295 a regular e-mail. That was my chamber e-mail. And then
3296 there was, like -- it kind of looked like a phone, like
3297 a BlackBerry, and those were the pins. And that icon
3298 would light up.

3299 Q.Okay. And would it go, just if you remember, and

3300 if it's both or and, let me know.

3301 A.Yeah.

3302 Q.Is it like one-off things like with a page with a
3303 message or would the Governor, for example, send a pin
3304 to like, four different people?

3305 A.He could send it to like four different people.

3306 Q.Okay.

3307 A.Um --

3308 Q.So it is like a BlackBerry instant messaging kind
3309 of thing but not a text message?

3310 A.Not a text message because it is not phone based.
3311 So you would have to know -- we at one time in the
3312 chamber had a directory of -- and you know, you would
3313 have -- you know, this is their phone number, this is
3314 their e-mail, this is their pin if they have one. You
3315 know, so that you would know if I want to pin this
3316 person, I can pin this person.

3317 Q.It was, like, quasi official? Like, it was
3318 sanctioned? It wasn't like using Signal or something?

3319 A.Yes.

3320 Q.It was a known process?

3321 A.Yes. It was being phased out.

3322 Q.Okay.

3323 A.So when I arrived at chamber, I got a BlackBerry
3324 but a lot of people had been phased out of BlackBerries.

3325 So some people had legacy BlackBerries because they had
3326 been there, but it was, you know -- it was another means
3327 of a communication.

3328 Q.And just if you know, did Ms. DeRosa have a
3329 BlackBerry?

3330 A.Yes.

3331 Q.And did she use the pin service?

3332 A.Yes.

3333 EXAMINATION BY

3334 MR. EMMER:

3335 Q.Were messages via pin retained or were they
3336 automatically deleted?

3337 A.You know, that's a question beyond my knowledge.

3338 Q.I know you already spoke with the minority on
3339 some of these questions in their first hour, but I want
3340 to move on to discussing the data that nursing homes
3341 were reported and what was being publicly reported.

3342 So first, yes or no, do you think the former
3343 Governor presented accurate data throughout the
3344 pandemic?

3345 A.Yes.

3346 Q.Do you think the Governor was fully transparent
3347 regarding data throughout the pandemic?

3348 A.Yes.

3349 Q.Can you explain how the administration collected

3350 data specifically related to nursing homes during the
3351 pandemic?

3352 A. So the Department had what was called a HERDS
3353 survey, um, which I can never remember what it stands
3354 for. It's something like health emergency data or
3355 something.

3356 But it was a survey that went to every nursing
3357 home administrator, a series of questions, people would
3358 have to respond, and that was how we, you know, gathered
3359 the data. There were folks at the
3360 Department of Health that would collate it and we would
3361 get statistical updates of these numbers every -- I
3362 think we would get it every morning at, like, three or
3363 four in the morning.

3364 Q. Did you have any role or part in the collecting
3365 or reviewing of the data?

3366 A. No. I would get it, but in terms of, you know,
3367 sending it out or getting that sort of raw data, I just
3368 got the updates from staff.

3369 EXAMINATION BY

3370 MR. BENZINE:

3371 Q. Was there a point person for it?

3372 A. So Mahesh Nattanmai was the IT person for the
3373 Department of Health and he was involved in a lot of the
3374 statistical collection. Some of the Special Counsels

3375 that we talked about in the various agencies volunteered
3376 for Linda to assist with reviewing and collating some of
3377 that.

3378 So every morning when we would get the e-mail
3379 of these are the stats, it would come from either Andrea
3380 Herasimtschuk, or there were a couple other names, but
3381 typically it was Andrea who would typically go through
3382 it.

3383 And I think there was some back and forth she
3384 would have with the Department of Health where this
3385 number was a hundred thousand yesterday, why is it all
3386 of a sudden 80,000 kind of things.

3387 So obvious discrepancies would get scrubbed,
3388 but that was -- we would get a pretty clean version of
3389 it.

3390 EXAMINATION BY

3391 MR. EMMER:

3392 Q.I know that you guys were responding in realtime
3393 but were you aware that the initial HERDS surveys didn't
3394 ask for nursing home fatality data or numbers? Excuse
3395 me.

3396 A.Um, I -- so when we -- when we first initiated
3397 HERDS, I think it was at the point where we had not yet
3398 even had a fatality in the state. So I think it might
3399 have been a situation where we were dealing still with

3400 cases in the tens, right?

3401 And so that we were talking about symptoms, we
3402 were talking about PPE, we were talking about other
3403 things without having that focus on deaths.

3404 And at some point, I think it was added, yes.

3405 Q.Okay. At this time, I would like to introduce
3406 what will be marked as Majority Exhibit 10.

3407 MR. EMMER: (Handing).

3408 (Whereupon, The Department of Health, Use,
3409 Collection and Reporting of Infection Control Data,
3410 issued in March of 2022, was marked as Majority Exhibit
3411 10 by Mitch Benzine.)

3412 MR. EMMER: (Handing).

3413 MR. KEHOE: (Handing).

3414 THE WITNESS: (Handing).

3415 A.(Perusing).

3416 Q.This is the report issued by the Office of the
3417 New York State Comptroller entitled, The Department of
3418 Health, Use, Collection and Reporting Infection Control
3419 Data, issued in March of 2022.

3420 Ms. Garvey, do you recognize this report?

3421 A.Um, yes.

3422 Q.And I may be asking you to repeat yourself but
3423 were you interviewed as part of the Comptroller's
3424 review?

3425 A.No.

3426 Q.I want to direct your attention to the top of
3427 page 13.

3428 A.(Witness complies.)

3429 Q.When you are ready, I will read this into the
3430 record.

3431 MR. KEHOE: Have you read through his
3432 statistical gathering capabilities on this thing?

3433 MR. EMMER: Excuse me?

3434 MR. KEHOE: Have you read through
3435 DiNapoli's statistical gathering capabilities in this
3436 thing? Because it's nothing short of -- I mean, it's a
3437 bit -- it's the most bizarre report I have ever read on
3438 how he gathers his statistics, his timeframes and then
3439 comes to his conclusions. I have read this thing many,
3440 many times.

3441 MR. EMMER: For the record, we'll just be
3442 using it for references as to the timeline.

3443 MR. KEHOE: Yeah, okay.

3444 Q.So reading it into the record, "When the
3445 Department first started collecting information about
3446 deaths in nursing homes, data accuracy was poor.
3447 However, even as data accuracy improved, the Department
3448 consistently underreported the total number of nursing
3449 home deaths to the public until February 4th of 2021.

3450 Throughout the pandemic, the Department used alternating
3451 methodologies to account for nursing home deaths."

3452 First, Ms. Garvey, for the record, do you
3453 agree with the Comptroller's characterization that
3454 nursing home deaths were undercounted?

3455 A.No.

3456 Q.Can you elaborate why you disagree?

3457 A.So again, I think what every one of these
3458 reports, whether it's the Assembly, the Attorney
3459 General, the Comptroller, they are characterizing with a
3460 person prior to their death as a nursing home resident
3461 being some sort of special category that needs to follow
3462 that person irrespective of the place of their death.

3463 When we started this, and again, I
3464 don't -- you know, I haven't looked at this with enough,
3465 you know, focus to really, you know, be able to parse
3466 through April 12th to April 13th and April 15th to
3467 May 2nd, but just the general principle was, we ask
3468 nursing homes if they have death in their facilities.
3469 We asked hospitals if they had deaths in their
3470 facilities and we took those numbers and that went into
3471 the count. So you were a nursing home death or you were
3472 a hospital death based on whether or not you were in
3473 that facility when you died.

3474 So when the concern was raised that you are

3475 not accurately tracking nursing home deaths because you
3476 are not reporting nursing home patients who later died
3477 in hospitals, those deaths are reported in that hospital
3478 count.

3479 So you have to be able to back out the person,
3480 you know, Joe Shmoe from the hospital death count put
3481 him back, not only in that nursing home count, but in
3482 the proper place where he came from.

3483 So the complexity of that is that if you get
3484 diagnosed with COVID, you progress to needing
3485 ventilation, you are going to leave that nursing home.
3486 That might be 10 days after your infection. You go to
3487 the hospital, you may be on a ventilator for a period of
3488 days, weeks or even months and then you ultimately die.

3489 We needed to be able to go back to the nursing
3490 home and say this person actually came from a nursing
3491 home, which was not that easy to do when the only data
3492 that we had from the nursing home or the hospital was
3493 initials. So it would be for Joe Shmoe, it would be JS
3494 died in a hospital. And it would be difficult for us to
3495 go back at a later point in time and say, you know, is
3496 the JS that died May 20th the same JS that was a
3497 positive COVID case in this hospital, or in this nursing
3498 home on April 10th.

3499 And you know, again, looking at how we were

3500 trying to load balance between the hospitals, you might
3501 not even go to a hospital in the county where your
3502 nursing home was. Right? It is possible that you were
3503 here, you know, if you were a nursing home near Elmhurst
3504 Hospital, you might have been sent up to Albany Med, you
3505 know, because they didn't have bed space.

3506 So it was not as simple as saying, you know,
3507 Joe Shmoe has a tag on his arm that says he is a nursing
3508 home patient so that whatever hospital he dies in, that
3509 hospital is reporting that as a nursing home death and
3510 we are able to then put this in some other special
3511 category without double counting that.

3512 I do think we were -- to go back to your
3513 earlier question about whether we were transparent all
3514 the time, there was a lot of confusion. Nursing homes
3515 were constantly updating their data. So were hospitals.

3516 But what we always tried to do was tell the
3517 public clearly what we were reporting. And what we were
3518 reporting was deaths that occurred in nursing homes and
3519 deaths that occurred in hospitals, and I have not seen,
3520 except for one small reference in the Attorney General's
3521 press release, where she said nursing homes
3522 underreported to DOH, that there is any allegation that
3523 our count wasn't accurate.

3524 The overall total deaths in New York, I think

3525 everyone largely agrees, were accurate. And if
3526 hospitals or nursing homes were lying on the HERDS
3527 report, you know, we considered that a false filing with
3528 a state agency and we would have pursued that against
3529 the nursing home or hospital.

3530 Q. So focusing on the second part of that paragraph,
3531 why did the administration use alternating methodologies
3532 to account for nursing home deaths?

3533 A. At one point, we said confirmed. At a later
3534 point, we asked presumed. And I believe that at some
3535 point we asked for a retrospective presumed death count.

3536 Adding in presumed deaths was, from our
3537 perspective, a necessary data to have because testing
3538 was not widely available at this time. And we wanted to
3539 make sure that in our effort to be precise and
3540 scientific, we weren't actually creating a blind spot.

3541 So we wanted to know from the nursing home
3542 operators, are you presuming, you know, 30 COVID
3543 patients, which because of a lack of testing, you know,
3544 we don't know about, that we could be facing a bigger
3545 problem than we realized.

3546 So I think that was relevant and necessary
3547 data for us to ask for. And we started, you know,
3548 bringing that data in so that we could analyze it from a
3549 capacity and needs assessment basis.

3550 Q.I want to direct your attention to the next
3551 paragraph underneath the graph, and we are going to
3552 start with the second sentence. And just get into more
3553 specifics as far as the methodology.

3554 A.Mm-hmm.

3555 Q.And I'll read this into the record.

3556 "From April 15th to May 2, 2020, the
3557 Department added reporting of presumed deaths by county,
3558 as well as both confirmed and presumed deaths by
3559 individual facility but only if the facility had five or
3560 more deaths. That's over 50 percent of the deaths that
3561 should have been reported at the end of the period were
3562 not. An error rate of over 100 percent."

3563 Ms. Garvey, do you know why deaths totaling at
3564 facilities with less than five deaths were not included?

3565 A.So I believe -- and again, it's hard to know
3566 because this is long after I left government in 2022,
3567 but it's hard to know exactly what he is basing that
3568 figure on. But I do believe that we had, like, you
3569 could look up a specific nursing home and see a death
3570 count, but we never wanted to potentially reveal patient
3571 specific information.

3572 And so if it was a very low number, I think we
3573 would suppress it. It was included in the total, but
3574 not attributed to the facility because that could, if it

3575 was one or two people, tend to identify who the decedent
3576 was. And we did not want to -- we wanted to keep the
3577 data, but I think not create the risk of distributing
3578 protected health information.

3579 Q.Do you know who would have made the decision as
3580 far as you just said, privacy reasons, exclude these
3581 deaths from the count?

3582 A.I remember conversations about when we could and
3583 couldn't. This was in consultation with Department of
3584 Health attorneys who were more well versed in HIPAA
3585 concerns.

3586 But we had a conversation. I don't remember
3587 specifically a decision or determination that five is
3588 adequate. I think it was very situational, but we were
3589 conscious throughout the pandemic both with positive
3590 tests. And when we got to facility level information
3591 that it might not be to where it was one or two people
3592 that would be easily identifiable.

3593 So there were conversations. I don't remember
3594 specifically if it was within this period, but I was
3595 part of some of those conversations and DOH
3596 recommended --

3597 Q.You said DOH attorneys.

3598 A.Yeah.

3599 Q.Can you be more specific?

3600 A.Um, April 15th would have been probably still
3601 Rick Zahnleuter. Rick Zahnleuter was the Department of
3602 Health General Counsel. He left fairly early on in the
3603 pandemic and his deputy became acting GC, who was a guy
3604 named Mike Bass.

3605 THE WITNESS: B-A-S-S.

3606 EXAMINATION BY

3607 MR. BENZINE:

3608 Q.I'm trying to -- and we have heard this from
3609 multiple places too, of the under five, it's not that
3610 they weren't counted, it's just that they weren't
3611 publicized.

3612 A.They weren't linked to the specific facility.

3613 Q.Yeah. Putting aside the kind of the, like, out
3614 of facility in facility situation --

3615 A.(Nodding.)

3616 Q.-- were they counted in the total state deaths or
3617 were they counted in the total nursing home deaths?

3618 A.If they died in the nursing home, they were in
3619 that total nursing home deaths I believe.

3620 Q.So if it was two people at one nursing home that
3621 died, it would say less than five or something on the
3622 spreadsheet if I were to look it up, something like
3623 that?

3624 A.I don't remember, but yes. Somehow I think it

3625 was -- I don't believe that it just said zero, but I
3626 could be wrong.

3627 Q.I think it said less than five. I'm wracking my
3628 memory on looking back at the Excel spreadsheets too,
3629 but the two would go into the total?

3630 A.It would fall into the bottom, the sum.

3631 Q.Okay.

3632 A.So you might not have all the specific numbers
3633 that added up to that sum on any given day, but it would
3634 total up.

3635 Q.Right.

3636 EXAMINATION BY

3637 MR. EMMER :

3638 Q.I want to direct your attention to the next
3639 sentence.

3640 The report continues, "Subsequently from
3641 May 3, 2020, to February 3, 2021, the Department
3642 excluded deaths that occurred at other locations and
3643 separated confirmed presumed deaths, failing to report
3644 about 30 percent of the total COVID-19 nursing home
3645 deaths at the end of that period at a 45 percent error
3646 rate."

3647 Ms. Garvey, what necessitated making this
3648 change?

3649 A.I'm not even sure I understand the sentence. I'm

3650 sorry.

3651 So the Department excluded deaths that

3652 occurred at other locations, but I'm not sure --

3653 (Perusing).

3654 -- I'm not sure why or what that includes.

3655 Q.My understanding, how I read it, is that the
3656 count only -- the death count only was included deaths
3657 that occurred at the nursing home and did not include
3658 deaths of residents of nursing homes that occurred at
3659 the hospital or other locations.

3660 A.Okay. But I read this whole paragraph as saying,
3661 initially, it was at all nursing homes and then at other
3662 locations, which to me, would be hospitals.

3663 So there were in-facility deaths, which were
3664 hospitals and nursing homes. Then there was other,
3665 which were -- at some point we started cataloging deaths
3666 at home because that had also become a significant
3667 source of COVID deaths for us.

3668 So it was sort of three different categories.
3669 There was an overall county number, not in any facility,
3670 a hospital number and a nursing home number. From May
3671 3rd to February 3rd, 2021 they excluded deaths that
3672 occurred at other locations and separated confirmed and
3673 presumed deaths.

3674 I'm familiar that we separated out confirmed

3675 and presumed because we wanted to be more granular about
3676 what our level of confidence was in these numbers. But
3677 I don't -- I'm not familiar with excluding deaths that
3678 occurred at other locations or what the Comptroller is
3679 really referring to here; if he is referring to no
3680 longer counting hospital deaths -- like, we continued to
3681 count hospital deaths and we added in this other
3682 category for deaths at home too.

3683 Q.When you are referring to -- when you said that
3684 you were counting hospital deaths, that is in the
3685 context of nursing home residents?

3686 A.Any deaths that occurred in the hospital facility
3687 but not in a category of nursing home residents. It was
3688 two silos. Nursing home in-facility deaths, hospital
3689 in-facility deaths and at some point, a third category
3690 of other.

3691 EXAMINATION BY

3692 MR. BENZINE:

3693 Q.Do you recall what made the decision to separate
3694 them? I largely agree that it would be hard to trace
3695 back based off of initials, but do you recall who made
3696 the decision it would not be categorized that way?

3697 A.I don't. I remember really getting into this
3698 level of detail as, you know, we had already sort of
3699 gotten to, let's call it this, like, April-May period

3700 later on.

3701 And questions started to be raised about why
3702 not just add in hospital deaths, back those hospital
3703 deaths back into the nursing home number. And being
3704 part of these different conversations about the
3705 different complexities. And functionally,
3706 I think the goal was to try to be able to do that if it
3707 was possible. And it was, you know, throughout these
3708 conversations, it just became clear that there were so
3709 many fallibilities in the data. The
3710 data collection, the data processing and then to be able
3711 to validate it, I think that ultimately we did not
3712 change the methodology because it was just not going to
3713 give us anything more reliable than what we already had.

3714 Q.Did the reliability concerns go through July?

3715 A.Um, yeah. I mean, I believe that the reliability
3716 concerns continued to, you know -- into 2021 even, that
3717 it was just the numbers that we were getting and the way
3718 we were getting them were not clean enough. The data
3719 was not clean or able to be verified in a fashion that
3720 really permitted us to do that.

3721 EXAMINATION BY

3722 MR. EMMER:

3723 Q.Do you recall it coming to the administration's
3724 attention that deaths occurring after 5:00 p.m. were not

3725 being included in the daily counts?

3726 A.Yes.

3727 Q.And do you have an idea or approximate date that
3728 that would have come to the administration's attention?

3729 A.I do think it was fairly early on. So, you know,
3730 if pressed, I would guess it was still sometime in
3731 March. But you know, I recall seeing mail from Megan
3732 Baldwin that there was some glitch in the reporting that
3733 was causing that miscount.

3734 Q.Do you recall whether there was reluctance to
3735 report the numbers that weren't included?

3736 A.I think there were reluctance to all of a sudden,
3737 dump, you know, a data correction. It was not like this
3738 wouldn't happen throughout the pandemic. States would
3739 revise their data and sometimes you would see wide
3740 swings.

3741 But I think at the time there was a fear that
3742 if you just threw out another hundred deaths with the
3743 numbers being as low as they had been to this point and
3744 with the focus on it, it would look as if there was
3745 suddenly a catastrophic event as opposed to something
3746 that would have occurred over several weeks.

3747 Q.Do you recall whether there were Executive
3748 Chamber employees who were more reluctant to release
3749 that data?

3750 A.Yes.

3751 Q.Can you name them?

3752 A.Um, I believe we are getting into privilege
3753 territory.

3754 EXAMINATION BY

3755 MR. BENZINE:

3756 Q.Who showed reluctance is not legal advice, and if
3757 they are not a lawyer, they are not furnishing legal
3758 advice.

3759 MR. KEHOE: Let me just talk to her for a
3760 second.

3761 MR. BENZINE: Yes. We can go off the
3762 record.

3763 (Whereupon, an off-the-record discussion
3764 was held.)

3765 MR. BENZINE: We can go back on the record.

3766 MR. KEHOE: So embedded in the question is
3767 attorney-client privileges, so we are going to decline
3768 to answer.

3769 MR. BENZINE: How?

3770 MR. KEHOE: Excuse me?

3771 MR. BENZINE: How is it privileged?

3772 MR. KEHOE: Because it is privilege in the
3773 fact that you are saying that there was a discussion on
3774 how this information is going to be disclosed and you

3775 are linking it back to the individual. So embedded in
3776 your question is attorney-client privileged
3777 information.

3778 Listen, if these guys want to waive on
3779 this, that's fine. She'll answer the questions.

3780 MR. BENZINE: Well, I'm going to ask
3781 questions to your client after this.

3782 Q.But was it Melissa DeRosa that expressed --

3783 MR. KEHOE: I'm going to --

3784 MR. BENZINE: She's not a lawyer.

3785 Q.Was it Melissa DeRosa that expressed --

3786 MR. KEHOE: We are going to decline to
3787 answer that.

3788 MR. BENZINE: All right.

3789 Q.I'm going to ask you some questions about your
3790 awareness of this committee and congressional rules and
3791 then we'll move on.

3792 Are you aware that Congress does not recognize
3793 common law privileges?

3794 MR. KEHOE: Wait a second.

3795 We are getting afar here, Mitch. And
3796 listen, I will gladly have these answers if they are
3797 willing to waive privilege. I will gladly do that.

3798 As far as what Ms. Garvey is trying to do
3799 at this point here is trying to navigate ethical

3800 concerns. So I have explained to her the legalities of
3801 what is going on here so we really don't need to do
3802 that.

3803 MR. BENZINE: I understand that, but if I
3804 need to subpoena the Governor, I need to have a record
3805 in order to do so, so I'm going to ask her these
3806 questions.

3807 MR. KEHOE: Okay. I'm going to have her
3808 decline to answer.

3809 MR. BENZINE: Okay. I'm going to ask the
3810 questions. You can decline to answer every time.

3811 MR. KEHOE: Yes.

3812 Q.Are you aware that Congress does not recognize
3813 the common law of attorney-client privilege?

3814 MR. KEHOE: You can answer that question if
3815 you know one way or another.

3816 A.I don't know one way or another.

3817 Q.Are you aware that the Committee on Oversight and
3818 Accountability has the authority to subpoena your
3819 testimony returnable to the Select Subcommittee?

3820 MR. KEHOE: Stipulated.

3821 MR. BENZINE: All right.

3822 Q.Are you aware if that were to happen, it would be
3823 a deposition, and if you were to continue to refuse
3824 based on privileges not recognized, the chairman of the

3825 committee could compel you to answer?

3826 MR. KEHOE: Well, we'll talk about that in
3827 another legal arena, but I'll have her decline to
3828 answer that.

3829 MR. BENZINE: All right.

3830 Q.And if the chairman were to compel you to answer
3831 and if you continue to refuse to answer, it is within
3832 our right to hold you in contempt of Congress?

3833 MR. KEHOE: Same objection.

3834 MR. BENZINE: All right. Thank you.

3835 We can keep going.

3836 MR. KEHOE: And again, I just want to say
3837 as we said from the beginning, Mitch, we will gladly
3838 answer these questions, and if we can navigate this
3839 attorney-client privilege stuff, I'm all for it.

3840 MR. BENZINE: And all I'm saying is, I
3841 expect rational exertions of the privilege. A non-
3842 attorney saying, whoa, there is political
3843 considerations in here, which is what I'm assuming it
3844 is --

3845 MR. KEHOE: They are not political
3846 considerations as far as I'm concerned.

3847 As representing Ms. Garvey, I don't care
3848 about political considerations, honestly. It is of no
3849 consequence to me. My only concern is this lack of

3850 clarity as to what the Executive Chamber says is
3851 covered by the privilege or not.

3852 And I am not trying to be a, you know, get
3853 in the way of your investigation because I appreciate
3854 what you are trying to do. I do.

3855 MR. BENZINE: Thank you.

3856 MR. KEHOE: And all I'm saying is if we
3857 could go back to the individual questions, go back to
3858 the Executive Chamber and say we would like to ask
3859 Ms. Garvey questions on this, this, this and this,
3860 everything that we have exercised previously, do you
3861 guys have a problem with any of this? And if they say
3862 no, we'll be right back.

3863 MR. BENZINE: And I understand some of it
3864 is answering questions to get on the record, so if I
3865 have to send a subpoena to the Governor, I have to send
3866 a subpoena to the Governor.

3867 MR. KEHOE: I just want you to appreciate
3868 where we are coming from that standpoint.

3869 MR. BENZINE: No. I do understand.

3870 MR. KEHOE: Okay.

3871 MR. BENZINE: Sometimes we just have to ask
3872 the questions.

3873 MR. KEHOE: I understand and we don't want
3874 to get in the way of what you are trying to do. We are

3875 just trying to answer your questions, not violate
3876 privilege and let you get to the place where you think
3877 you need to be.

3878 I'm sorry. Eric, go ahead.

3879 MR. OSTERHUES: No, all I was going to say
3880 is, you know, I think why we are interested and I think
3881 why we are pursuing this is, you know, earlier in the
3882 hour -- I'm paraphrasing, but your client testified
3883 that we always try to tell the public what we are
3884 reporting.

3885 MR. KEHOE: Right.

3886 MR. OSTERHUES: And, you know, I get the
3887 concern about the large dump, you know, at once, but it
3888 would seem like, you know, where we wanted to go with
3889 that was, what were the concerns with a large dump as
3890 long as you were being transparent and telling the
3891 public what you were reporting and why you were
3892 reporting it.

3893 MR. KEHOE: Eric, I understand what you are
3894 talking about, some of the overlapping concerns being
3895 legal and political. I get it. I get it.

3896 And as far as we're concerned, we'll tell
3897 you exactly anything you want to know with regard to
3898 those conversations. If these guys say it is okay for
3899 Ms. Garvey to answer the questions, then we'll be back

3900 in a heartbeat to do it.

3901 MR. BENZINE: I'll ask the questions that
3902 way.

3903 Q.What were the concerns with a large dump?

3904 A.If the public were to get information that could
3905 mislead them as to their level of risk, that was viewed
3906 as a primary concern.

3907 So a large dump, which would appear as if
3908 there was a catastrophic fatality event all at once, um,
3909 was viewed as potentially being misleading the public as
3910 to their level of risk --

3911 Q.And who --

3912 A.-- as opposed to being fully transparent about
3913 what was happening on the ground so that people could
3914 properly assess risk.

3915 Q.So who expressed the concern about it would show
3916 a catastrophic event?

3917 A.Um, I think it was shared by multiple people and
3918 I think beyond going into the specifics of who said
3919 what, when and in what context, I think that is when we
3920 are intruding too much on the privilege.

3921 Q.Okay. This is where we are confused.

3922 A.Yeah.

3923 Q.The concern of showing a catastrophic event is a
3924 health concern. You just said you were worried about

3925 the public being concerned about their health. They are
3926 being concerned that a wave just swarmed through a
3927 nursing home. That is not a legal concern. If someone
3928 expressed a concern about a public health crisis, you
3929 can answer that question.

3930 MR. KEHOE: What I'm saying -- and I have
3931 tried to let this go and I understand what you're
3932 talking about. And all I am going to ask you for at
3933 this point is just if you will ask if they will waive
3934 the privilege and she'll answer the question.

3935 At this point, can we just put this one on
3936 ice?

3937 MR. BENZINE: Okay.

3938 Q.I'll ask a similar question.

3939 Dr. Malatras, PhD not MD, said that Ms. Baldwin
3940 brought the concern to him. Is that consistent with
3941 your recollection?

3942 A.Um, I-- I was alerted by Ms. Baldwin.

3943 Q.And Dr. Malatras testified that Ms. Baldwin
3944 brought it to him because Ms. Lacewell was not receptive
3945 of the concern; is that consistent with your
3946 recollection?

3947 MR. KEHOE: Again, this is rehashing what
3948 we did. Again, with a waiver coming forward, we'll
3949 gladly answer it. I just ask that be put on ice too.

3950 MR. BENZINE: Okay.

3951 Q. Did you express concern?

3952 A. I --

3953 MR. KEHOE: Do you want to chat about this?

3954 A. I believe I was asked in my capacity as an
3955 attorney, and so I can't think of a non-privileged way
3956 to answer that question.

3957 Q. Okay. I'll ask it this way: Did you share the
3958 concern that it could have been viewed as a catastrophic
3959 health event?

3960 MR. KEHOE: Well, that's the same. That's
3961 literally the same thing. I mean, it is one thing if
3962 opinion. She is giving what she actually said that
3963 would fall into that category, which again, we'll
3964 answer if you get that waived.

3965 MR. BENZINE: Okay. I don't understand how
3966 this privilege is being asserted right now, but you can
3967 continue asking other questions.

3968 MR. KEHOE: Okay. That's fine.

3969 EXAMINATION BY

3970 MR. EMMER:

3971 Q. I want to fast forward to August 3rd when
3972 Dr. Zucker declined to provide the New York legislature
3973 with the number of nursing home residents who died.

3974 Do you recall Dr. Zucker's testimony?

3975 A.I recall that he gave testimony that day. But
3976 you said he declined --

3977 Q.To provide the full accounting for nursing home
3978 fatalities?

3979 A.I believe he was asked for a number that he did
3980 not have.

3981 Q.Okay. Gareth Rhodes testified to us that he was
3982 ordered to conduct an audit of the Department of Health.
3983 After this hearing, were you aware that he conducted an
3984 audit?

3985 A.Yes.

3986 Q.Do you know who ordered Mr. Rhodes to conduct an
3987 audit of the nursing home numbers?

3988 A.Um, yes. I believe that was Melissa.

3989 Q.Do you know why she instructed him to do that?

3990 A.I believe that it was in an effort to try to
3991 tease out the problem that we talked about earlier,
3992 which was if JS was a positive case in a nursing home
3993 and several weeks later in another county a JS died, was
3994 that the same person that we could then back the death
3995 out of the hospital.

3996 Q.Do you know what Mr. Rhodes' audit found as far
3997 as inconsistencies within the data?

3998 A.I don't.

3999 Q.He testified to us that his audit found 600

4000 entries that had some sort of inconsistency suitable for
4001 follow-up. And he never mentioned that to you?

4002 A.I don't remember having a conversation with him
4003 about his findings, no.

4004 Q.I want to spend some time talking about the
4005 July 6th report. I believe that is Minority Exhibit --

4006 MR. OSTERHUES: It's A.

4007 MR. BENZINE: A. Do you need it?

4008 MR. EMMER: Yeah.

4009 MR. BENZINE: (Handing).

4010 Q.I might make you repeat yourself here, but can
4011 you describe what role you had in the drafting of this
4012 report?

4013 A.So as I said earlier, I believe that we got a
4014 pretty complete draft from the Department that folks in
4015 the Department drafted. It was shared with a group
4016 within the Chamber. And that, you know, edits were made
4017 for consistency, readability, that, you know, a lot of
4018 folks had a lot of back and forth on it. And I recall
4019 seeing several different versions of the report in my
4020 inbox.

4021 Q.Do you recall whether there were any individuals
4022 or organizations outside the government that was
4023 involved in the July 6th report?

4024 A.Um, I remember people talking about McKinsey

4025 being involved in the data. Um, I had, you know,
4026 assumed that there were probably other folks that, um,
4027 you know, the folks at the Department of Health might
4028 have been consulting with.

4029 But I don't know specifically. I mean, other
4030 than sort of the group that I was linked with the
4031 report, I don't know of anyone outside of, I'll say,
4032 government, but it was really Chamber, DOH, Gareth,
4033 Linda, Jim.

4034 Q.You just mentioned some names that were involved.
4035 Did these individuals have distinct roles in the
4036 drafting? Different areas of the report?

4037 A.No. I don't -- it wasn't like, you know, Beth,
4038 your lane is this and Jim, you are going to review for
4039 that. I think people were trying to supplement to the
4040 best of their ability, right?

4041 So for instance, if I remembered, oh, we also
4042 did this piece of guidance, we should include that,
4043 that's relevant here, right? Those would be the kinds
4044 of edits that I would be offering here. But there was
4045 never anything, you know, formal.

4046 Q.You testified that the DOH started drafting the
4047 report. Did you review the initial draft that they sent
4048 over?

4049 A.I got to be honest, I don't think I looked at it

4050 for the first several times it hit my inbox.

4051 EXAMINATION BY

4052 MR. BENZINE:

4053 Q.Do you know if the Governor ever made any edits?

4054 A.I don't.

4055 EXAMINATION BY

4056 MR. EMMER:

4057 Q.Ms. Garvey, do you believe that the July 6th
4058 report was fully transparent regarding the total numbers
4059 of nursing home residents who died as a result of
4060 COVID-19?

4061 A.Again, I think it is fully transparent of the
4062 number of deaths that we were confident of in nursing
4063 homes this -- I think we were always clear about what we
4064 were reporting.

4065 Q.Do you recall during the drafting process whether
4066 you reviewed a draft that included out-of-facility
4067 deaths?

4068 A.Yes.

4069 Q.And I believe Mr. Malatras testified that the
4070 decision to not include this subset in the report was
4071 made around June 27th. Do you recall who made the
4072 decision to leave it out of the report?

4073 MR. KEHOE: I objected on attorney-client
4074 privilege to that question when asked by the Democrats,

4075 so I'm objecting here.

4076 EXAMINATION BY

4077 MR. BENZINE:

4078 Q.Were you on the phone call on June 27th?

4079 A.I was on a phone call. I don't recall the
4080 specific date.

4081 Q.Were you on a phone call with Dr. Malatras and
4082 Ms. DeRosa on June 27th?

4083 A.I recall a phone call. They were present. I
4084 don't know if that phone call happened that date.

4085 Q.What's your recollection of the phone call with
4086 Dr. Malatras and Ms. DeRosa?

4087 A.I think that's privileged.

4088 MR. KEHOE: That's privileged.

4089 MR. BENZINE: The whole phone call?

4090 MR. KEHOE: Yeah, the whole phone call.

4091 Q.You said that you saw a draft of the report with
4092 out-of-facility numbers in it, 9,844 I believe is what
4093 it was.

4094 A.Again, I don't recall specifically what the
4095 number was.

4096 Q.Do you recall about when you saw that draft?
4097 We'll say before or after June 27th?

4098 A.I'm sorry. It's four years later. I can't say
4099 with specificity. It was before July 6, 2020.

4100 Q.Okay.

4101 A.But I couldn't hazard a date.

4102 Q.Okay.

4103 EXAMINATION BY

4104 MR. EMMER:

4105 Q.Ms. Garvey, for the purposes of the March 25th
4106 order and the July 6th report, can you define a
4107 readmission versus an admission?

4108 A.A readmission would have been a person who left a
4109 nursing home who was a resident and returning from the
4110 hospital back to that nursing home. An admission would
4111 have been a new patient.

4112 Q.The July 6th report shows that approximately
4113 6,326 COVID positive patients were admitted to
4114 facilities between March 25th, 2020 and May 8th, 2020.

4115 Are you aware that that number didn't include
4116 2,279 patients who were readmitted to nursing homes
4117 where they were already residents?

4118 A.Um, no, I'm not.

4119 Q.Do you recall whether there were any discussions
4120 related to which population or subset admissions versus
4121 readmissions to include in the July 6th report?

4122 MR. KEHOE: Ask that again?

4123 I'm sorry.

4124 Q.Do you recall whether there were any discussions

4125 related to which subset admissions or readmissions to
4126 include in the July 6th report?

4127 A.Um, I don't recall.

4128 Q.Do you recall concerns from Department of Health
4129 employees about the changes that the Executive Chamber
4130 was making to the July 6th report?

4131 A.No.

4132 Q.At this time I would like to introduce what will
4133 be marked as Majority's Exhibit 11.

4134 MR. EMMER: (Handing).

4135 MR. KEHOE: Thank you. (Handing).

4136 MR. EMMER: Yep.

4137 THE WITNESS: (Handing).

4138 (Whereupon, a statement from Beth Garvey
4139 was marked as Majority's Exhibit 11 by Mitch Benzine.)

4140 Q.This is entitled statement from Beth Garvey,
4141 Special Counsel to the Governor from March 5, 2021.

4142 I'll let you review the document.

4143 A.(Perusing).

4144 Q.Do you recall issuing this statement?

4145 A.Yes.

4146 Q.Why did you have to issue this statement?

4147 A.Um, I believe it was in response to press stories
4148 that talked about altering data to clarify that there
4149 was no altering of the data.

4150 Q.Dr. Malatras testified that this statement was
4151 made in response to a statement that he made in response
4152 to a New York Times article introduced by my colleagues
4153 as Minority Exhibit B, New York Times article, "Cuomo
4154 aides rewrote nursing home report to hide high death
4155 total."

4156 And it was in response to a statement where he
4157 effectively said that what was being reported in the
4158 Times was true.

4159 Do you recall Dr. Malatras making a statement
4160 in response to the New York Times article?

4161 MR. KEHOE: Hang on a second. Did he say
4162 that to you guys or did he say it to someone else?

4163 MR. EMMER: He testified to us he had
4164 issued a statement in response to this article, in
4165 which he said it was all true.

4166 MR. KEHOE: Do you have that?

4167 I'm trying to find the article where he
4168 said that.

4169 MR. BENZINE: Dr. Malatras's statement, we
4170 don't have that.

4171 MR. KEHOE: Did Malatras or Zucker say that
4172 this article was true and he told you guys that?

4173 MR. BENZINE: Malatras.

4174 MR. KEHOE: Malatras. Oh, okay. So it's

4175 not a public statement?

4176 My mistake.

4177 MR. BENZINE: Yeah. Malatras issued a
4178 public statement and according to him, Ms. DeRosa, Ms.
4179 Garvey and someone else called him to get him to
4180 retract the statement. He didn't and then this
4181 statement was issued.

4182 MR. KEHOE: Okay.

4183 Q.Do you recall Dr. Malatras making this statement?

4184 A.Um, I don't recall the content of his statement,
4185 no. But I recall that there was a conversation with
4186 him, that there was a concern that there was this, you
4187 know, idea of altered fatality data.

4188 I should be clear, you know, it's not as if
4189 the Department said there's 6,000 deaths and we said no,
4190 there's 5,337. We like that number better. There was a
4191 dataset that was the 6,000 and there was a larger
4192 dataset that contained some number of deaths that the
4193 Department thought could be attributed to nursing homes.

4194 This was -- it was a choice between one data
4195 set or another dataset. There was no alteration of
4196 either number. It was an editorial choice of which data
4197 set to use.

4198 Q.Let's focus first on responding to Dr. Malatras's
4199 statement.

4200 He testified to a phone call. Do you recall
4201 being a part of that and who else would have been on
4202 this call?

4203 MR. KEHOE: This is a phone call going into
4204 attorney-client privilege information?

4205 MR. BENZINE: I don't know if he could. He
4206 didn't work for the Governor.

4207 THE WITNESS: He was covered by our
4208 privilege. He was a State employee.

4209 MR. BENZINE: Not when he issued this
4210 statement. If Ms. DeRosa was calling him to retract
4211 his statement --

4212 MR. KEHOE: Are we talking about a phone
4213 call when he is working for the State of New York?

4214 THE WITNESS: Yes.

4215 MR. BENZINE: Is SUNY the State of New
4216 York?

4217 THE WITNESS: Yes.

4218 MR. KEHOE: So if he is talking about that,
4219 that is privileged, which we'll gladly answer if we get
4220 a waiver.

4221 EXAMINATION BY

4222 MR. BENZINE:

4223 Q.Do you recall a phone call with Dr. Malatras
4224 after his statement?

4225 A.I recall that there was a phone call.

4226 Q.Do you recall who was on the phone call?

4227 A.No. I know Jim was on the call. Beyond
4228 that -- (Nodding in the negative.)

4229 Q.Do you recall if anyone on the phone call asked
4230 Dr. Malatras to retract his statement?

4231 MR. KEHOE: Going to object to that as
4232 well.

4233 MR. BENZINE: Okay.

4234 Q.Do you recall if anyone on the phone call asked
4235 Dr. Malatras to amend his statement?

4236 MR. KEHOE: Same.

4237 Q.Do you recall if anyone on the phone call asked
4238 Dr. Malatras why he issued the statement?

4239 MR. KEHOE: I'm thinking for a second.

4240 As you are going through the
4241 conversations -- I understand that you are going to
4242 raise a question of whether it is attorney-client
4243 privilege, but I'm going to have to invoke the
4244 privilege on that and just get back to it.

4245 Q.Do you recall who told you to issue your
4246 statement?

4247 A.No.

4248 Q.Did you draft your statement?

4249 A.I worked on the statement myself. I don't

4250 believe I wrote the first draft.

4251 Q.Did you approve the statement?

4252 A.Yes.

4253 Q.Okay.

4254 EXAMINATION BY

4255 MR. EMMER:

4256 Q.To conclude our review of your statement, and I
4257 may be making you repeat yourself, but what concerns
4258 were there with the accuracy of the unpublished data?

4259 A.Our concerns were that we did not have access to
4260 the level of information to make sure that we were not
4261 double counting deaths.

4262 Q.Do you recall whether you had an idea within that
4263 subset of the number of nursing home fatalities that
4264 were questionable that you would have had concerns with
4265 or was it just the entire subset?

4266 A.At the time we issued this statement or at the
4267 time we were preparing the July 6th report.

4268 Q.As this statement refers to the July 6th report,
4269 yeah?

4270 A.Yeah. So going back to July at the time it was
4271 unknown number. And that was part of the concern.

4272 EXAMINATION BY

4273 MR. BENZINE:

4274 Q.During the drafting process of the July 6th

4275 report did Dr. Malatras ever express an insistence of
4276 posting the full 9,000 number?

4277 MR. KEHOE: That's the same.

4278 MR. BENZINE: Okay.

4279 Q.During the drafting of the July 6th report, to
4280 your recollection did Dr. Adams express interest in
4281 posting the full 6,000 number?

4282 A.I don't recall ever having any conversation with
4283 Dr. Adams.

4284 Q.During the drafting part of the issuance of the
4285 report, was the different dataset presented to the
4286 Governor?

4287 A.I don't know.

4288 Q.Do you recall who made the decision on which data
4289 set to use?

4290 MR. KEHOE: I objected to that before and I
4291 object again.

4292 MR. BENZINE: Okay.

4293 Q.Do you recall if the Governor was involved in
4294 making that decision?

4295 A.If you are asking about the phone call where we
4296 have already asserted the privilege, you asked --

4297 Q.Was the Governor on that phone call?

4298 A.No, he was not.

4299 Q.Okay.

4300 A.Thank you.

4301 Q.So not asking about the phone call.

4302 A.(Nodding.)

4303 Q.To your recollection, was the Governor involved
4304 in the decision of which number to pick?

4305 A.Oh, I don't know.

4306 Q.Okay.

4307 MR. EMMER: We can go off the record.

4308 MR. BENZINE: Yep.

4309 (Whereupon, an off-the-record discussion
4310 was held.)

4311 MR. EMMER: We'll go back on the record.

4312 Q.Ms. Garvey, were you aware that the Governor and
4313 members of the staff were writing a book while
4314 simultaneously working on the July 6th report?

4315 A.No.

4316 Q.When did you become aware that the Governor was
4317 writing a book?

4318 A.Um, at the end of July, um, when I saw a finished
4319 manuscript of the book.

4320 Q.Were you asked to review the finished manuscript?

4321 A.Yes, I was.

4322 Q.And were you volunteering to review -- was this
4323 in your Special Counsel capacity or on your off time?

4324 A.I understood that I was in my off time, when I

4325 was reviewing the book.

4326 Q.Were there specific areas of the book that you
4327 were asked to review or just the entire book?

4328 A.Um, the review that I participated in was sort of
4329 going through the manuscript with his editors who had
4330 specific questions about different passages, and I was
4331 asked particular questions about executive orders or,
4332 you know, different meetings that I was part of.

4333 Q.Did any of the passages that you were asked about
4334 relate to nursing homes?

4335 A.I don't recall specifically any questions being
4336 directed at me about that.

4337 Q.You learned in late July. Do you know when the
4338 Governor started writing the book?

4339 A.I do not.

4340 Q.Do you know who else from the Executive Chamber
4341 was involved in the book?

4342 A.I do know now. I did not know at the time.

4343 Q.Ms. Garvey, did you feel that the release of the
4344 book influenced the administration to not release
4345 certain subsets of nursing home fatalities?

4346 A.I'm sorry. Can you give me that one more time?

4347 Q.I try to phrase it pursuant to how we discussed
4348 it earlier.

4349 A.(Nodding.)

4350 Q.Do you feel as far as the data is concerned that
4351 the book may have influenced the administration to not
4352 publicly disclose nursing home deaths that occurred out
4353 of facility?

4354 A.I do not feel that the use of only in-facility
4355 data or the other data set would have really changed any
4356 outcome of the July report because the ultimate
4357 correlation was the same.

4358 Q.Did you ever discuss the book with the Governor?

4359 A.Only after, you know, he was present when we
4360 discussed the book at the end of July.

4361 Q.Did discussions related to the book ever occur
4362 simultaneously while the administration was making
4363 policy decisions related to the pandemic?

4364 A.No.

4365 EXAMINATION BY

4366 MR. BENZINE:

4367 Q.The end of July was in the Governor's mansion?

4368 A.Correct.

4369 Q.Do you recall who else was there?

4370 A.Um, Melissa, Stephanie, two women who were the
4371 editors, Robert Mujica, Gareth Rhodes, myself and Jim
4372 Malatras and the Governor.

4373 Q.And I'm being just a touch nitpicky, but you
4374 didn't really answer the previous question about if the

4375 book drove policy. You said that the change in the
4376 numbers wouldn't have changed the outcome in the report,
4377 but were there any considerations -- were you a part of
4378 any discussions where the book was mentioned in regards
4379 to keeping the numbers down?

4380 A.No.

4381 Q.Okay.

4382 EXAMINATION BY

4383 MR. EMMER:

4384 Q.Just one last question related to the book and
4385 you already partly answered it.

4386 Do you feel that the Governor's book
4387 influenced the Governor's and the staff's decisions
4388 during the pandemic?

4389 A.No.

4390 Q.Let's talk about the immunity clause that was
4391 included in the budget in April of 2020.

4392 Are you familiar with that clause?

4393 A.Yes.

4394 Q.Why did the administration believe that that
4395 clause was necessary to include in the budget?

4396 A.The immunity clause first appeared in an
4397 executive order a little bit prior. So it was couched
4398 as sort of an expansion of the state's Good Samaritan
4399 laws. Because of the relative frailty of an executive

4400 order, it's not a statute. The legislature can pass a
4401 concurrent resolution to repeal any suspension or
4402 modification of any law made under 29A of the executive
4403 law. So it was really a placeholder for us to come back
4404 and do something more formal statutorily.

4405 But we -- it was actually first raised to me
4406 by my Deputy Counsel, Rebecca Wood, that you know, in
4407 terms of planning, I believe there were some consultants
4408 from McKinsey who were talking about different things
4409 that would need to be part of our emergency preparedness
4410 planning and they had mentioned needing some sort of
4411 immunity provision.

4412 When we did that first executive order,
4413 Department of Health took the reins drafting it. We
4414 made some edits to that immunity provision. But we knew
4415 there needed to be something more legally secure if we
4416 actually wanted to provide the protection.

4417 And at the time, you know, we were sort of
4418 unsure how best to go about it because we knew that this
4419 would be very controversial. New York State law gives a
4420 lot of protections for the plaintiff's bar. We seem to
4421 be a very litigious state so we asked for outside
4422 counsel's assistance in drafting it.

4423 So we got a draft and started working on it
4424 in-house, editing it with Alison Birzon, who I mentioned

4425 earlier was Assistant Counsel for Health. We reached
4426 out to both Senate and Assembly central staff to make
4427 sure they knew we were going to propose this as part of
4428 the budget.

4429 Q.It has been reported that the Greater New York
4430 Hospital Association was involved in the immunity
4431 clause. Do you recall what role they would have played?

4432 A.I recall that they took credit after it passed.
4433 Again, we can't control what other people say about
4434 their role in our internal deliberations.

4435 But we did -- um, you know, our partners in
4436 negotiating that were the Senate and Assembly. Those
4437 were the only entities that formally have a seat at the
4438 table.

4439 But we, you know, reached out to other
4440 stakeholders. I don't remember speaking specifically to
4441 Greater New York at all about this, but I do recall
4442 speaking with the trial lawyers association to try to
4443 get them to understand where we were coming from and see
4444 if they had any edits or concerns that we could try to
4445 incorporate to try to make this better or tighter.

4446 But it was certainly something that occupied a
4447 lot of my time in that negotiation.

4448 Q.Do you know who drafted the provision?

4449 A.Um, so the first draft, we asked Paul Weiss to

4450 do. They were working for us pro bono. We then edited
4451 it from there.

4452 I did -- I think Rebecca did and Alison
4453 Birzon did. And Assembly also offered edits.

4454 So it's hard to say sort of who really had the
4455 pen by the time it was all done, but I think it was a
4456 fair compromise between the parties.

4457 Q.I'm going to try not to make you have to repeat
4458 yourself. In the first hour that the minority asked
4459 questions, they talked about preferential testing
4460 program.

4461 A.(Nodding.)

4462 Q.Just so I don't mischaracterize your testimony,
4463 can you briefly explain if you had any knowledge or
4464 involvement in this program?

4465 A.Again, I don't remember there being -- you know,
4466 we are going to set up a VIP testing program. So one,
4467 there was not any sort of formal program that I was
4468 aware of.

4469 But you know, there were instances I was aware
4470 of a need for expedited testing. Some of these were,
4471 you know, our staff. We had a staff member who came
4472 down with COVID who would have been, you know, in
4473 contact with the Governor. A member of our press office
4474 required our entire press office to be quarantined for

4475 14 days.

4476 We had another, you know, individual who, you
4477 know, we were asked if we could get a test for a Board
4478 of Elections Worker who collapsed at work and they
4479 feared had COVID at the time they were reviewing
4480 petitions.

4481 So I was certainly aware that there was
4482 priority testing ability and that they were at various
4483 points in time, either very limited or as we got further
4484 on in the pandemic, much less, you know, limited because
4485 we had broader testing capacity.

4486 But as far as, you know, the level and extent
4487 to which tests were being done, I had no visibility into
4488 the entirety of that.

4489 Q.The article that was minority introduced, and I
4490 don't have it in front of me, but it refers --

4491 A.Mm-hmm.

4492 Q.-- it says this preferential program was extended
4493 to the Governor's brother. Did you have any knowledge
4494 of that?

4495 A.Um, no, not until -- I believe that I became
4496 aware that he had COVID when the Governor announced it
4497 in the press conference.

4498 EXAMINATION BY

4499 MR. BENZINE:

4500 Q.At the time you weren't aware that Dr. Adams
4501 drove out to Chris Cuomo's house to give him a test?

4502 A.I was not.

4503 Q.Okay.

4504 MR. EMMER: All right. Thank you. We can
4505 go off the record.

4506 (Whereupon, at 3:55 P.M., the Interview of
4507 this witness was concluded.)

4508

C E R T I F I C A T E

4509

4510

4511 STATE OF NEW YORK)

4512 : SS.:

4513 COUNTY OF SUFFOLK)

4514

4515 I, EILEEN MONTEAGUDO, a Notary Public for and within the
4516 State of New York, do hereby certify:

4517 That within the transcript is a true record of the
4518 proceedings taken on March 22, 2024.

4519 I further certify that I am not related to any of the
4520 parties to this action by blood or by marriage and that I
4521 am in no way interested in the outcome of this matter.

4522 IN WITNESS WHEREOF, I have hereunto set my hand this 30th
4523 day of May 2024.

4524

4525

4526

4527

4528

EILEEN MONTEAGUDO