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7 INTERVIEW OF: JIM MALATRAS, PH.D.

8 Tuesday, May 20, 2024

9 U.S. House of Representatives

10 Select Subcommittee on the Coronavirus Pandemic

11 Committee on Oversight and Accountability

12 Washington, D.C.

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16 The interview of the above matter

17 was held at 711 Third Avenue, Suite 1502, New

18 York, New York, commencing at 9:55 a.m.

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

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28 ON BEHALF OF JIM MALATRAS, PH.D.

29

30 Michael J. Connolly, Esquire

31 Of: Hinckley, Allen & Snyder, L.L.P.

32 28 State Street

33 Boston, Massachusetts

34

35

36 ON BEHALF OF THE SELECT COMMITTEE ON

37 THE CORONAVIRUS PANDEMIC:

38

39 FOR THE REPUBLICAN STAFF (MAJORITY):

40 MITCHELL BENZINE, Staff Director

41 JACK EMMER, Counsel

42 ERIC OSTERHUES, Chief Counsel

43

44 FOR THE DEMOCRATIC STAFF (MINORITY):

45  Staff Director

46  Senior Counsel

47  Counsel

48

49

50

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

227 MR. EMMER: We can go on the record.

228 This is a transcribed interview of Dr.

229 Jim Malatras, conducted by the House Select

230 Subcommittee on the Coronavirus Pandemic under the

231 authority granted to it by House Resolution 5, and

232 the rules of the Committee on Oversight and

233 Accountability. Further, pursuant to House

234 Resolution 5, the Select Subcommittee has

235 wide-ranging jurisdiction, but specifically to

236 investigate the implementation or effectiveness of

237 any federal law or regulation applied, enacted or

238 under consideration to address the coronavirus

239 pandemic and prepare for future pandemics.

240 Can the witness please state his name,

241 and spell his last name for the record.

242 THE WITNESS: My name is Jim Malatras,

243 and it's spelled M-a-l-a-t-r-a-s.

244 EXAMINATION BY

245 MR. EMMER:

246 Q. Thank you, Dr. Malatras.

247 My name is Jack Emmer, and I am a senior

248 counsel for the Majority staff of the Select

249 Subcommittee. I want to thank you for coming in

250 today for this interview. The Select Subcommittee

251 recognizes that you're here voluntarily and we
252 appreciate that. Under the Select Subcommittee
253 and Committee on Oversight and Accountability's
254 rules, you are allowed to have an attorney present
255 to advise you during this interview.

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

258 A. I do.

259 MR. EMMER: Will counsel please identify
260 themselves for the record.

261 MR. CONNOLLY: Michael Connolly with
262 Hinckley, Allen & Snyder in Boston.

263 MR. EMMER: Thank you.

264 For the record, starting with the
265 Majority staff, can the additional staff members
266 please introduce themselves with their name, title
267 and affiliation.

268 MR. BENZINE: Mitch Benzine, I'm the
269 Staff Director for the Republican staff.

270 MR. OSTERHUES: Eric Osterhues, Chief
271 Counsel, Republican staff.

272 MR. BENZINE: [REDACTED] Counsel,
273 Democratic Staff.

274 MR. [REDACTED] [REDACTED]
275 Democratic Staff Director.

276 THE WITNESS: [REDACTED] Senior
277 Counsel for the Democratic Staff.

278 MR. EMMER: Thank you all.

279 BY MR. EMMER:

280 Q. Dr. Malatras, before we begin, I'd like
281 to go over the ground rules for this interview.
282 The way this interview will proceed is as follows:

283 The Majority and minority staff will
284 alternate -- alternate asking you questions one
285 hour per side, per round until each side is
286 finished with their questioning. The Majority
287 staff will begin and proceed for an hour, and then
288 the minority staff will have an hour to ask
289 questions. We will, then, alternate -- alternate
290 back and forth in this matter until both sides
291 have no more questions.

292 If either side is in the middle of a
293 specific line of questions, they may choose to end
294 a few minutes past an hour to ensure completion of
295 that specific line of questioning, including any
296 pertinent follow-ups. In this interview, while one
297 member of the staff for each side may lead the
298 questioning, additional staff may ask questions.

299 There is a court reporter taking down
300 everything I say, and everything you say to make a

301 written record of the interview. For the record
302 to be clear, please wait until the staffer
303 questioning you finishes each question before you
304 begin your answer. And the staffer will wait
305 until you finish your response before proceeding
306 to the next question.

307 Further, to ensure the court reporter
308 can properly record this interview, please speak
309 clearly, concisely and slowly. Also, the court
310 reporter cannot record non-verbal answers, such as
311 nodding or shaking your head. So it is important
312 that you answer each question with an audible,
313 verbal answer.

314 Exhibits may be entered into the record.
315 Majority exhibits will be identified numerically,
316 minority exhibits will be identified
317 alphabetically. Do you understand?

318 A. Yes.

319 Q. We want you to answer our questions in
320 the most complete and truthful manner possible.
321 So we will take our time. If you have any
322 questions or do not fully understand the question,
323 please let us know. We will attempt to clarify,
324 add context to, or rephrase our questions.

325 Do you understand?

326 A. Yes.

327 Q. If we ask about specific conversations
328 or events in the past, and you are unable to
329 recall the exact words or details, you should
330 testify to the substance of those conversations,
331 or events to the best of your recollection. If
332 you recall only a part of a conversation or event,
333 you should give us your best recollection of those
334 events, or parts of conversations that you do
335 recall.

336 Do you understand?

337 A. Yes.

338 Q. Although you are here voluntarily, and
339 we will not swear you in, you are required
340 pursuant to Title 18, Section 101 -- or 1001 of
341 the United States Code to answer questions from
342 Congress truthfully. This applies to questions
343 posed by congressional staff in this interview.

344 Do you understand?

345 A. Yes.

346 Q. If at any time you knowingly make false
347 statements, you could be subject to criminal
348 prosecution. Do you understand?

349 A. Yes.

350 Q. Is there any reason you are unable to

351 provide truthful testimony in today's interview?

352 A. No.

353 Q. The Sub -- Subcommittee follows the
354 rules of the Committee on Oversight and
355 Accountability. Please note that if you wish to
356 assert a privilege over any statement today, that
357 assertion must comply with the rules of the
358 Committee on Oversight and Accountability.

359 Pursuant to that, Committee Rule 16(c)(1) states:

360 "For the Chair to consider assertions of
361 privilege over testimony or statements, witnesses
362 or entities must clearly state the specific
363 privilege being asserted, and the reason for the
364 assertion on or before the scheduled date of
365 testimony or appearance."

366 Do you understand?

367 A. Yes.

368 Q. Ordinarily, we take a five-minute break
369 at the end of each hour of questioning, but if you
370 need a longer break or break before that, please
371 let us know, and we will be happy to accommodate.
372 However, to the extent that there is a pending
373 question, we ask that you finish answering the
374 question before we take the break.

375 Do you understand?

376 A. Yes.

377 Q. Do you have any other questions before
378 we begin?

379 A. No.

380 Q. I want to thank you again for taking
381 part of this interview voluntarily, and for your
382 years of public service. Let's start by
383 discussing your education and experience.

384 Where did you attend undergraduate
385 school?

386 A. I began my college career at the State
387 University of New York at Potsdam. And then, I
388 transferred to the University of Albany, where I
389 received my bachelor's, my master's, and my Ph.D.
390 in political science.

391 Q. Where did you get your doctorate?

392 A. At University of Albany.

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

395 A. My current employer is the Fedgap --
396 Fedcap Group -- I'm going to say it slowly for you
397 -- and the chief strategy officer and senior vice
398 president for education.

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

401 A. Brief, okay. This will take an hour.

402 No.

403 Q. Briefly.

404 A. I began my career with a number of jobs
405 and internships, but I got my start in the New
406 York State Assembly as a legislative policy
407 advisor, and I made my way up the ranks there to
408 become the legislative director and chief of staff
409 for a member. I spent about approximately seven
410 years in the New York State Assembly.

411 Then, I transitioned to the New York
412 State Attorney General's office, where I ran the
413 Legislative Affairs office and served as the
414 executive policy director. I had a short stint on
415 the 2010 gubernatorial campaign as deputy policy
416 director. And then, I served as deputy secretary
417 for policy under Governor Andrew Cuomo.

418 I had a stint at SUNY in between as
419 chief of staff and vice chancellor for policy
420 under Chancellor Nancy Zimpher. I came back to
421 the governor's office as director of state
422 operations, which is the state's chief operating
423 officer for the state. And then, I went into
424 academia. I was the president of Rockefeller
425 Institute of Government, which is the State

426 University of New York's research and think tank,
427 and public policy think tank.

428 I became president of SUNY Empire State
429 College after a search -- that search process, and
430 then became Chancellor of the State University of
431 New York.

432 Q. Just a few questions for clarification.
433 You mentioned that --

434 A. And a couple of kids in between all
435 that.

436 Q. Of course. You mentioned that you
437 worked in the Attorney General's office.

438 A. Yes.

439 Q. Was that when Andrew Cuomo --

440 A. Yes.

441 Q. -- was the Attorney General?

442 A. Yes.

443 Q. And --

444 A. I was an intern under Attorney General
445 Spitzer, but I was an intern in the Consumer
446 Frauds office as an intern; but I spent -- the
447 years I was talking about was with Attorney
448 General Cuomo.

449 Q. Okay. And you'd mentioned this before,
450 but you were employed by Empire State College.

451 That was at the beginning of the
452 pandemic --

453 A. Correct.

454 Q. -- when you were still employed with
455 them?

456 A. I was.

457 Q. And once you started there, did you have
458 a role in -- with the Executive Chamber or did you
459 volunteer? Can you just explain.

460 A. I was an informal advisor to the
461 governor.

462 Q. Okay.

463 A. I would often help on policy issues.
464 The State of the State -- which is the New York
465 State version of the State of the Union Address --
466 was something that I often helped participate in
467 because I have deep policy experience. Things
468 like that.

469 Q. And were you paid by the State --

470 A. No.

471 Q. -- for that work?

472 Okay. Now, I want to ask if you spoke
473 with or e-mailed any of the following people
474 regarding COVID-19 and nursing homes, particularly
475 interested in the March 25th order, the July 6th

476 report or the data surrounding.

477 A. So any -- any person e-mailed on the --

478 Q. E-mail --

479 A. I just want to make sure I'm being --

480 Q. And between January 1, 2020, and

481 present.

482 A. Okay. That's a long time, but I will

483 try my best.

484 Q. Absolutely. We'll walk through each

485 one.

486 A. Okay. Thank you.

487 Q. So first, former governor, Andrew Cuomo?

488 A. No e-mails, no.

489 Q. Did you --

490 A. I spoke to him. Speak or e-mail?

491 Q. Yes.

492 THE REPORTER: I'm sorry, you guys are

493 talking over each other.

494 BY MR. EMMER:

495 Q. I'll just start that prompt over again

496 --

497 A. Yes.

498 Q. -- just so we're clear.

499 So it's spoke with or e-mailed any of

500 the following people regarding COVID-19 and

501 nursing homes between January 1st, 2020 --

502 A. Yes.

503 Q. -- and the present.

504 A. Yes.

505 Q. So first, former governor, Andrew Cuomo?

506 A. Yes.

507 Q. Former secretary of the governor,

508 Melissa DeRosa?

509 A. Yes.

510 Q. Mr. Gareth Rhodes?

511 A. Yes.

512 Q. Mr. Rich Azzopardi?

513 A. Yes.

514 Q. Mr. Peter Ajemian?

515 A. Ajemian, yes.

516 Q. Ajemian.

517 Ms. Dani Lever?

518 A. Yes.

519 Q. Ms. Beth Garvey?

520 A. Yes.

521 Q. Ms. Judith Mogul?

522 A. On nursing homes, I don't recall. I

523 have -- I don't know. I don't remember.

524 Q. Ms. Megan Baldwin?

525 A. Yes.

526 Q. Mr. Larry Schwartz?

527 A. Yes.

528 Q. Ms. Jill DesRosiers?

529 A. DesRosiers, yes.

530 Q. Ms. Annabel Walsh?

531 A. Yes.

532 Q. Ms. Linda Lacewell?

533 A. Yes.

534 Q. Dr. Howard Zucker?

535 A. Yes.

536 Q. Dr. Eleanor Adams?

537 A. Yes.

538 Q. Ms. Sally Dreslin?

539 A. I don't remember. She may have been

540 gone, but I don't remember.

541 Q. Mr. Gary Holmes?

542 A. He was -- yeah, he was.

543 Q. Mr. Kenneth Raske?

544 A. Yes.

545 Q. Mr. Lee Perlman?

546 A. I don't recall.

547 Q. Mr. Michael Dowling?

548 A. Yes.

549 Q. Dr. Anthony Fauci?

550 A. No.

551 Q. Mr. Alex Azar?

552 A. No.

553 Q. Ms. Seema Verma?

554 A. No.

555 Q. Dr. Deborah Birx?

556 A. No, not on nursing homes.

557 Q. And Dr. Robert Redfield?

558 A. No.

559 Q. So -- and I -- there's a couple things
560 related to nursing homes that we're obviously
561 concerned with here. So there's a wide net, but
562 let's first discuss Andrew -- or the former
563 governor.

564 You said you spoke and e-mailed with him
565 regarding nursing homes. Were those -- the nature
566 of those conversations, did they surround the
567 March 25th order?

568 A. No, not the -- well, be precise about
569 the question, please. What about the 25th order?

570 Q. Well, the issue -- let's start with the
571 issuance of the order.

572 A. No.

573 Q. And did you have conversations regarding
574 the enforcement of the March 25th order, while it
575 was still in effect?

576 A. Yes.

577 Q. Can you just generally describe what
578 type of conversations you would have been having
579 with him regarding the March 25th order?

580 A. I don't remember exactly. Most of the
581 conversations were with Melissa DeRosa or other
582 folks on the staff, not the governor.

583 Q. Okay.

584 MR. BENZINE: And you said never
585 e-mailed with the governor.

586 THE WITNESS: He doesn't e-mail.

587 MR. BENZINE: That was my next question
588 of whether or not he had a State e-mail.

589 THE WITNESS: There's times where his
590 assistant, Stephanie Benton, would e-mail, which
591 we would think was from him, but he does not have
592 an e-mail.

593 MR. BENZINE: And then, you said no
594 conversations on the issuance. Any conversations
595 on the drafting?

596 THE WITNESS: Of it, no. I just want to
597 be clear. I've had -- I had no role whatsoever in
598 the issuance, drafting of the March 25th order.

599 MR. BENZINE: Okay.

600 THE WITNESS: So I -- you can ask those

601 questions, but I won't be able to answer because I
602 wasn't a part of any of that.

603 MR. BENZINE: Okay. And on enforcement,
604 what -- what was your role in -- or what was the
605 nature of those conversations on enforcing the
606 order?

607 THE WITNESS: So I want to be clear
608 about what enforcement is. If it's the order was
609 in effect, I did research about the order compared
610 to other states and things like that. So I wasn't
611 involved necessarily in the enforcement of the
612 order. I did research around what other states
613 and other things -- and other people were doing.

614 BY MR. EMMER:

615 Q. And we can return more specifically to
616 the order later on, if that might be easier.

617 A. Yeah.

618 Q. All right. Can you just generally
619 describe what type of conversations you were
620 having with Melissa DeRosa, related to COVID and
621 nursing homes. Were they related to the March
622 25th order? The July 6th report data?

623 A. We -- March -- the March 25th order
624 after there was some -- I think this is in, like,
625 April when it came up in the press is when I first

626 started having conversations with people. And on
627 the -- on the July 6th report -- was that the date
628 of the report?

629 Q. Uh-huh.

630 A. Yes, numerous conversations about the
631 report.

632 MR. BENZINE: Any conversations where --
633 and this is an awkwardly-phrased question, but
634 where the order came from with any of these
635 people? Understanding you weren't involved, but
636 were you in the room where they were like, hey, we
637 heard from x, y and z?

638 THE WITNESS: No.

639 BY MR. EMMER:

640 Q. And you stated previously that you --

641 A. I still don't know where the order came
642 from, by the way. So...

643 Q. Okay. You spoke to Larry Schwartz
644 regarding -- well, can you describe the nature of
645 your conversations with Larry Schwartz on this --

646 A. Yeah. I mean, I think for some time --
647 I mean, we spoke. It's hard in the generalities
648 about questions. We worked -- a lot of us worked
649 on a lot of things at the same time. So Larry and
650 I often talked. We sat in the same -- we're this

651 close to each other. He was dealing a lot with
652 the PPE distribution and things like that. And I
653 was doing a lot of the data analytics about how to
654 distribute PPE and things like that to the nursing
655 facilities, as well as hospitals and things like
656 that. So it's in that context that we often
657 spoke. Vaccination. I mean, there was like a lot
658 of conversations.

659 MR. EMMER: And, Mitch, I don't know if
660 you agree, but I think we'll probably move
661 forward. There's just a few names I just want to
662 touch on really quick just because I don't think
663 they've come up within our prompt.

664 THE WITNESS: But if you have a specific
665 question. It's harder in the generalities to
666 answer. I mean, there was so much. I mean, I was
667 just -- I did a note before I got here today. It
668 was hospital capacity, ventilators, data
669 dashboards, elective surgery, volunteer portal.
670 You know, the reopen. There's so much that we
671 were all talking about. So if you have specific
672 questions, I'd be happy to answer it. It's hard
673 to...

674 Q. Can you -- do you recall the nature of
675 your conversations with Mr. Raske?

676 A. The -- the conversations that I remember
677 with Mr. Raske was with respect to moving -- in
678 the context of nursing home patients was moving --
679 this was after the order in -- sometime after the
680 order, and I think after the order was then
681 changed. The hospitals still want to discharge
682 residents from the nursing facilities -- from the
683 hospital facilities. And we were trying to
684 establish specific nursing convalescence for
685 people with COVID for nursing homes, but there was
686 a disagreement among -- especially Dr. Zucker and
687 Mr. Raske and others from the nursing -- the
688 hospital industry about the ability to do that in
689 an effective manner.

690 And Dr. Zucker had real concerns that
691 you -- it was hard to transport someone who's in
692 their later years, who already has a medical
693 condition with COVID on top of that to be moved
694 even 10 miles down the road from one facility to
695 another. So there was a lot of talk around what's
696 the best way of keeping those people in -- what
697 facilities should we keep them in, can you move
698 those individuals who are medically -- they have
699 already had medical needs and that type of
700 conversation. That was around what I remember

701 talking to Mr. Raske about.

702 Q. While the July 6th report was being
703 drafted, do you recall Raske having any input or
704 involvement?

705 A. Yes, I was on -- Ms. DeRosa was the one
706 communicating with Mr. Raske on that report, and I
707 believe she forwarded me. I mean, this is my
708 recollection from four years ago. She forwarded
709 me some comments. I do not remember the sum or
710 substance of what those comments were.

711 MR. BENZINE: Did you have a -- as
712 you're saying, you were volunteering. Did you
713 have a State e-mail address while you were --

714 THE WITNESS: I used my Empire State
715 College address.

716 MR. BENZINE: And then, I have one
717 specific question on Dr. Adams. She testified to
718 us that she was on a phone call in kind of the
719 fall of 2020, where Governor Cuomo ordered her
720 firing. Were you on that phone call?

721 THE WITNESS: No.

722 MR. BENZINE: Okay.

723 THE WITNESS: For the record, I think
724 Dr. Adams is a great public servant, and she did a
725 lot of great work. So I was on that conversate --

726 I was not a part of that conversation.

727 BY MR. EMMER:

728 Q. Finally, we'll -- and we'll move on
729 after this, but can you -- do you recall the
730 nature of your conversations with Michael Dowling?

731 A. Again, it was around the report, and I
732 wasn't the -- I was a conduit of comment. I was
733 not having those direct conversations. It was
734 either Ms. DeRosa or Commissioner Zucker that I
735 recall.

736 Q. Since January 2023, have you had any
737 conversations with the former governor or Melissa
738 DeRosa about our investigation?

739 A. No. I have had no conversations with
740 the governor since sometime early in 2021. He did
741 text me several times to check in. The latest
742 time he texted me was February 18th of this year,
743 I believe, just to say I hope you're doing well,
744 things like that. I did not respond. And I have
745 not spoken with Ms. DeRosa since 2021.

746 Q. And for the record, I believe our -- the
747 letter that we sent you was sometime in February.
748 I don't have the exact date, but was this text
749 message that you received after we had sent you
750 the letter?

751 A. Yes.

752 MR. BENZINE: And you didn't respond?

753 THE WITNESS: I did not.

754 BY MR. EMMER:

755 Q. Now, I want to ask if you had any
756 interactions with any of the following
757 institutions related to nursing homes and COVID
758 between January 1st and -- or January 1st, 2020,
759 and present.

760 So first, U.S. Centers For Medicare and
761 Medicaid Services?

762 A. No.

763 Q. U.S. Department of Health and Human
764 Services?

765 A. No.

766 Q. U.S. Centers for Disease Control and
767 Prevention?

768 A. No.

769 Q. The Office of the New York State
770 Attorney General?

771 A. No, not that I recall. I -- I believe
772 that was Ms. Lacewell. It was not me.

773 Q. New York State Comptroller?

774 A. No.

775 Q. New York State Assembly Judiciary

776 Committee?

777 A. Can I go back. Can you go back -- go
778 back to the Attorney General one, please, again.

779 Q. So I'm asking if you had any
780 interactions with --

781 A. Yes. The Attorney General's Office
782 because you're a net -- I was on a telephone call,
783 where I listened between the Attorney General and
784 Melissa DeRosa. That was February of 2021.

785 MR. BENZINE: After the Attorney
786 General's report came out?

787 THE WITNESS: After -- the morning of
788 the report issuance, I believe.

789 MR. BENZINE: And I believe Ms. DeRosa
790 wrote about that call in her book, but also there
791 was a transcript that was publicly reported.

792 Was there some colorful language
793 exchanged between Ms. DeRosa and the Attorney
794 General's office?

795 THE WITNESS: It was a very passionate
796 conversation is how I would characterize it.

797 MR. BENZINE: And was Ms. James on the
798 phone call, as well?

799 THE WITNESS: She was. It was largely a
800 conversation between Ms. DeRosa and Attorney

801 General James.

802 MR. BENZINE: Do you recall any of the
803 specific -- any of the specifics?

804 THE WITNESS: I just remember it being
805 very animated. I was also -- I was traveling that
806 day in Upstate New York -- in Adirondacks and my
807 cell reception wasn't all that great, but I was
808 listening. If any of you've been to the
809 Adirondacks, you would know what I mean.

810 BY MR. EMMER:

811 Q. So continuing down the list. The New
812 York State Assembly Judiciary Committee?

813 A. Yes.

814 Q. And the nature of those conversations or
815 did -- were you interviewed as part of their
816 investigation?

817 A. Much like we are today.

818 Q. Did they interview -- there was a wide
819 net that they had, also. Were they interviewing
820 -- or did you answer questions related to nursing
821 homes?

822 A. I did.

823 Q. U.S. Department of Justice?

824 A. No -- well, U.S. Department of --

825 MR. CONNOLLY: When?

826 THE WITNESS: When? Yes. So, sorry --

827 MR. CONNOLLY: What's your timeframe on
828 this?

829 THE WITNESS: Yes.

830 MR. EMMER: From the letter that they
831 sent, I believe, in mid-August of 2020, through
832 January or -- well, until the present.

833 THE WITNESS: Precisely, I was
834 interviewed by the Eastern District, unassociated
835 with the letter sent by the DOJ about nursing
836 homes specifically. I wasn't involved in that
837 interaction, nor response. That was -- this was a
838 post hoc question.

839 BY MR. EMMER:

840 Q. Yeah, I appreciate the context.

841 Greater New York Hospital Association?

842 A. Yes.

843 Q. And we discussed Mr. Raske earlier, but
844 were the nature of those conversations related to
845 the same --

846 A. Yes.

847 Q. -- that we already talked about?

848 A. Very much so. As I recall, yes.

849 Q. McKinsey & Company?

850 A. Yes.

851 Q. And what were the nature of your
852 conversations with McKinsey & Company?

853 A. McKinsey & Company did the data
854 analytics for the State of New York generally,
855 nursing homes -- nursing homes specifically, in
856 consultation with the Department of Health.

857 Q. And we'll be getting to the July 6th
858 report. But the data that they are put -- putting
859 together, that was subsequently used in the July
860 6th report; is that right?

861 A. It was from McKinsey, yes.

862 Q. Thank you. And now I'd like to move on
863 to asking some general operational questions.

864 And you already touched on this
865 previously, but how did the governor's team
866 typically communicate with each other?

867 A. Throughout the pandemic?

868 Q. Yes.

869 A. I mean, a number of different ways.
870 E-mails, telephone calls, in-person meetings. It
871 was -- you know, many times it was in person. It
872 was 24 hours a day, seven days a week.

873 Q. Did you ever conduct official Executive
874 Chamber, or task force business via personal
875 e-mail?

876 A. I don't recall. No, I -- there could
877 have been an e-mail from -- some people from the
878 outside would e-mail my Gmail sometimes; we need
879 PPE, something like that. I would often forward
880 it to my official account.

881 Q. Did you have a state-issued cell phone?

882 A. No.

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

885 A. Yes, I -- I didn't have a state-issued
886 cell phone.

887 MR. BENZINE: Are those -- what I -- you
888 may not know, but did you have to retain the
889 records from your personal cell phone?

890 THE WITNESS: Yes.

891 MR. BENZINE: All right.

892 BY MR. EMMER:

893 Q. Did you ever conduct official business
894 via encrypted messaging app, like Signal or
895 WhatsApp?

896 A. No.

897 MR. EMMER: Thank you. I'd now like to
898 introduce what we've marked as Majority Exhibit 1.

899 (Majority Exhibit Number 1 was marked
900 for identification.)

901 THE WITNESS: This is all the same
902 paper?

903 BY MR. EMMER:

904 Q. Yes.

905 This is an e-mail thread -- that you're
906 not a part of -- between Melissa DeRosa, Linda
907 Lacewell, Judith Mogul, Gareth Rhodes, Beth
908 Garvey, Rich Azzopardi and other -- other
909 Executive Chamber and health department officials.

910 A. Okay.

911 Q. And I want to direct your attention to
912 the top e-mail from Ms. DeRosa on Thursday,
913 January 28th, at 8:43 a.m., where she states in
914 all caps: "Delete this chain. Don't respond to
915 it."

916 Again, I know that you're not part of
917 this e-mail thread; but were you aware of requests
918 from the Executive Chamber to delete e-mails or
919 official documents?

920 A. I'm not -- no, I'm not aware of that
921 request.

922 Q. Are you aware of any Executive Chamber
923 task force officials deleting official documents?

924 A. I am not aware.

925 Q. Have you ever instructed anyone to

926 delete official records?

927 A. No.

928 Q. Did any --

929 A. Just for the record, I -- when many of
930 these things were happening, I would tell --
931 especially the younger staff to preserve
932 everything and tell the truth about everything,
933 actually.

934 Q. With that being said, did you ever have
935 concerns that Executive Chamber staff or task
936 force members were deleting official documents?

937 A. I -- at that time, no, I was not at all.

938 Q. Okay. Did anyone ever instruct you to
939 delete official records?

940 A. No one ever instructed me to delete
941 official records.

942 Q. And finally, did you ever delete e-mails
943 or official records and/or documents?

944 A. No.

945 Q. Okay. Thank you.

946 Let's talk about the COVID Task Force
947 and your role with them. You were a member of the
948 COVID-19 Task Force for the State of New York; is
949 that right?

950 A. That is true.

951 Q. Do you recall who the other members of
952 the COVID Task Force were?

953 A. It's a hard question to answer because
954 we weren't actually -- many of us weren't
955 officially, like, appointed to a task force. It
956 kind of -- we got wrapped in. The world kind of
957 happened, right? I think Larry Schwartz was a
958 member of the Task Force, Linda Lacewell, Gareth
959 Rhodes, Beth Garvey, Melissa DeRosa. I mean,
960 there's a whole -- there's lots of people; but
961 that list that you mentioned, I would say most of
962 those people were dealing COVID response. And
963 there was many more. Camille Varlack and Peter
964 Kiernan, and there were hundreds of people working
965 on this. What was constituting a task force,
966 that's a -- you know, it's an amorphous concept.

967 Q. Was Rich Azzopardi a member of the Task
968 Force?

969 A. He was part of the executive staff. I
970 -- I don't know if he would consider himself
971 officially a member of the Task Force, but he was
972 a part of the staff, part of COVID's response.

973 Q. Can you elaborate on what his role was
974 within the Executive Chamber. Is it specifically
975 related to COVID-19?

976 A. What I recall is he was primarily
977 communications and press, but that -- you have to
978 ask -- all right. That's my understanding of his
979 role.

980 Q. Absolutely. Can you -- this is a
981 general question: Can you briefly describe what
982 role the Task Force played in the governor's
983 response to COVID-19?

984 A. It was an all-hands-on-deck approach. I
985 mean, we -- every -- many people dealt with many,
986 many things. It's kind of hard -- this is a very
987 general question. For instance, I'll give you,
988 like, how I got involved.

989 Originally, I was, in the beginning of
990 March, giving advice on schools. I primarily
991 started with education, and I started more
992 officially on what -- how to wind down the
993 operations of our 700 school districts in the
994 State of New York with two primary problems, which
995 was how do we deal with the childcare issues for
996 our first responders. So we had to set up child
997 care facilities all across the state, particularly
998 in New York city. And the other concern that we
999 had was what about the children who go to school
1000 on free and reduced-price lunch? How do they eat?

1001 So how my entry into this Task Force was
1002 dealing with the wind down, especially Downstate
1003 of the closure of the K-through-12 schools, then
1004 the private colleges and public universities, and
1005 then childcare issues and food. And so that's
1006 one. Then, it was ventilators and how to adjust
1007 ventilators because we didn't think we would have
1008 enough ventilators. So we did a lot of that. And
1009 then, I did modeling on the capacity -- what we
1010 thought the surge and the numbers of COVID cases
1011 would be. So it was pretty broad.

1012 Q. So as you just laid out for us, would it
1013 be correct to assume that members of the Task
1014 Force had distinct roles, or areas of COVID policy
1015 that they were responsible for managing?

1016 A. I would say in some cases, yes. In
1017 other cases, it was we -- we -- everybody was kind
1018 of there. I mean, I -- it's hard to answer that
1019 question in a way. I was just -- because I'm
1020 thinking of -- there was an associate of ours who
1021 came to volunteer, Camille Varlack. She was the
1022 former deputy director of state operations. She
1023 came back to volunteer. She was kind of like a
1024 utility player. So she would deal with PPE
1025 distribution. Was that, like, listed? No. She

1026 just happened to be sitting there, and we're like,
1027 we could use your operational capacity.

1028 Q. And I know this --

1029 A. Schools for me?

1030 Q. Yeah.

1031 A. Yes. I come from an education
1032 background. As a former director of state
1033 operations, I know the K-12 system and
1034 post-secondary system pretty well. That was like
1035 a role that people had me look into.

1036 Q. Are you aware of whether there was -- or
1037 whether there were any members that were
1038 responsible for overseeing nursing homes --
1039 COVID-related policy on nursing homes?

1040 A. Specifically on nursing homes, the --
1041 Linda Lacewell was primarily responsible for
1042 collection from the nursing home facilities,
1043 etcetera, etcetera.

1044 Q. And by "collection", are you referring
1045 to data --

1046 A. Data.

1047 Q. -- that they were receiving?

1048 A. Yeah.

1049 Q. Were there any members on the Task Force
1050 that had more authority to make decisions?

1051 A. Ultimately, the non-governmental --
1052 officially non-governmental people didn't really
1053 have authority to make decisions. It was --
1054 Melissa DeRosa would ultimately make the call on
1055 any policy consideration because she was in a --
1056 she was a formal member of the administration. We
1057 could make recommendations, but we could not
1058 actually implement.

1059 MR. EMMER: Of course. Thank you.

1060 At this time, I would like to introduce
1061 what will be marked Majority Exhibit 2.

1062 (Majority Exhibit Number 2 was marked
1063 for identification.)

1064 BY MR. EMMER:

1065 Q. This is the Impeachment Investigation
1066 Report to Judiciary Committee Chair Charles Lavine
1067 and the New York State Assembly Judiciary
1068 Committee, published on November 22nd, 2021.

1069 Dr. Malatras, do you recognize this
1070 report?

1071 A. I do recognize this report.

1072 Q. And correct me if I'm wrong, but you
1073 previously testified that you were interviewed by
1074 the Judiciary Committee?

1075 A. I was, yes.

1076 Q. Okay. So I want to direct your
1077 attention to Page 41.

1078 A. Okay.

1079 Q. And we are looking at the first
1080 paragraph, second sentence. And when you're
1081 ready, I will read it into the record.

1082 A. I'm ready.

1083 Q. "The COVID-19 Task Force was composed
1084 of senior state officials from various state
1085 agencies, as well as former state officials.
1086 There was only one health care professional on the
1087 Task Force, a senior DOH official. And that
1088 senior DOH official did not have regular meetings
1089 with the former governor during the pandemic, and
1090 found it difficult to speak directly with the
1091 former governor, as senior Executive Chamber
1092 employees guarded access to the former governor."

1093 Dr. Malatras, do you know who the senior
1094 DOH referenced in this excerpt is?

1095 A. I do not.

1096 Q. When Dr. Zucker testified to us this
1097 past November, he -- he believed that it was
1098 referring to himself.

1099 Does that sound correct to you?

1100 A. I -- it's hard -- I mean, I don't know.

1101 Q. Okay.

1102 A. Dr. Zucker was often in many of the
1103 meetings and in the room, but that's not to say he
1104 tried to communicate without me there and how that
1105 -- it's all for him -- that's on him to describe
1106 his own actions.

1107 Q. Who facilitated access to the governor?

1108 A. I would say two primary people. That
1109 would be the secretary to the governor at the
1110 time, Melissa DeRosa; and his director of
1111 governor's offices, Stephanie Benton.

1112 Q. So as -- this excerpt characterizes that
1113 there was one healthcare professional that was
1114 advising the governor within the inner-agency Task
1115 Force. So related to healthcare issues, who was
1116 the governor being advised by?

1117 A. So I don't know how they came up with
1118 that sentence. We had a -- I can -- let me speak
1119 from --

1120 Q. Yep.

1121 A. -- how we approached this on the staff
1122 level.

1123 I don't know on some level who the
1124 governor spoke to, to get advice from. I think he
1125 cast a pretty wide net, and sometimes we didn't

1126 even know who he was talking to, which often
1127 happens with principals, but I -- I'm sure you can
1128 all appreciate. We on the staff side cast a
1129 fairly wide net. We could bring in outside
1130 experts, faculty members, medical professionals on
1131 a whole host of issues during COVID.

1132 So it wasn't as if it was just Dr.
1133 Zucker, and then there's a whole infrastructure at
1134 the Department of Health that we did rely on.
1135 They had good medical expertise. Operationally,
1136 we were -- we found the more operational people.
1137 They had trouble operationalizing things, but we
1138 did rely on -- I don't know. Was it the widest
1139 net cast? I -- you know, that's for you to
1140 determine, but we did rely on others than just Dr.
1141 Zucker.

1142 Q. To the best of your recollection, can
1143 you list names and entities that may have --

1144 A. We -- there was a professor from Harvard
1145 University. I think his name was Dr. Brodsky.
1146 There was -- I'm going to get his name wrong and
1147 it's going to be terrible for me -- Dr. Olmstead
1148 -- so anyway, we had a list. Osterhow?

1149 Q. Dr. Michael Osterholm from the
1150 University of Minnesota?

1151 A. Correct, Osterholm.

1152 So we had a series of those individuals
1153 that we would rely on for things. And then, even
1154 on data analytics, which we were particularly -- I
1155 was particularly concerned about, like, what that
1156 curve actually was. We relied on a whole wide net
1157 of folks to help us, including -- we relied on the
1158 White House, too, which I thought was important.
1159 They're actually very good. They had a great
1160 staff team, they made everybody available to us.
1161 The admiral was the head of -- Admiral --

1162 MR. BENZINE: Giroir?

1163 THE WITNESS: Giroir, who had a whole
1164 team, and he made people available to us on all
1165 sorts of things and it was great.

1166 MR. BENZINE: You had said that you
1167 talked to Dr. Birx, but not about nursing homes.

1168 THE WITNESS: It was at the White House
1169 in April. I don't remember the exact date. I
1170 apologize. And it was with respect to building
1171 out testing capacity in New York State. We were
1172 trying to get more tests for New York State. It
1173 was in that capacity.

1174 BY MR. EMMER:

1175 Q. Dr. Malatras -- and if you're not able

1176 to answer this question, you can testify to that,
1177 but can you explain how Health Department guidance
1178 was developed and issued during the pandemic?

1179 A. That's a tough question. If you can ask
1180 it in the specific, I think -- I wouldn't know in
1181 some cases how it was developed. Sometimes it was
1182 probably -- a lot of people were involved in
1183 certain things, including the Executive Chamber,
1184 counsel's office and others.

1185 Q. Did you ever play a role in developing
1186 Health Department guidance?

1187 A. What I participated in was specific --
1188 that I remember -- what I recall was the school
1189 re-opening plans because I was a member of -- I
1190 was a chair of the Task Force on re-opening
1191 schools. So our Task Force actually help inform
1192 what the state was doing.

1193 MR. BENZINE: It was reported that --
1194 and I could be getting this wrong. You obviously
1195 know way more about the New York State Assembly
1196 than I do. But that the assembly or governor,
1197 vice versa, kind of suspended some of the
1198 authorities of the assembly and transferred them
1199 to the governor's office. Do you recall that
1200 sequence of events?

1201 THE WITNESS: I was not involved in the
1202 -- that emergency order, to grant the authority
1203 under COVID response. So I -- I can't really
1204 answer that question.

1205 MR. BENZINE: Okay.

1206 BY MR. EMMER:

1207 Q. Dr. Malatras, are you aware of guidance
1208 ever being issued independently from the
1209 Department of Health, that is, without their
1210 knowledge or consultation prior to issuance?

1211 A. A Health Department guidance coming out
1212 from the health department about this, I'm not
1213 aware of it. I don't recall any.

1214 MR. EMMER: At this time, I would like
1215 to introduce what will be marked as Majority
1216 Exhibit 3.

1217 (Majority Exhibit Number 3 was marked
1218 for identification.)

1219 BY MR. EMMER:

1220 Q. And this is a Wall Street Journal
1221 article entitled, "In Worst-Hit COVID State, New
1222 York's Cuomo Called All the Shots", published on
1223 September 11th, 2020.

1224 I want to direct your attention to the
1225 last paragraph of the fifth page.

1226 A. All right. Maybe you could read it
1227 because the fifth -- I think it's numbered -- are
1228 you looking at this one, where it says 5 out of 16
1229 or --

1230 Q. Right here.

1231 A. Okay.

1232 Q. All right. And I will read it into the
1233 record. "The governor and his team micromanaged
1234 the work of the state Health Department, and
1235 phoned agency officials when their requests
1236 weren't immediately fulfilled. They viewed the
1237 agency as sleepy and bureaucratic, officials
1238 involved in the response said. State agencies,
1239 including the Health Department, needed permission
1240 from the governor's office before issuing policies
1241 in their areas of expertise. Agency personnel and
1242 local elected officials were (sic) sometimes
1243 surprised to learn about a new initiative from Mr.
1244 Cuomo's news conferences, they said."

1245 Do you agree with Wall Street Journal's
1246 characterization of how the executive viewed the
1247 Department of Health?

1248 A. I -- I don't -- I don't want to use
1249 adjectives, because I think adjectives -- I don't
1250 want to cast -- that's the Wall Street Journal

1251 reporting. I think there was a high level of
1252 coordination among various agencies and the
1253 Executive Chamber, given the importance of the
1254 response. Like many other policies that come out
1255 of agencies, even in regular times, these were
1256 often reviewed and approved by the executive.
1257 That's not out of the ordinary.

1258 Governor Cuomo is a pretty hands-on guy,
1259 no matter the issue. So that doesn't strike me as
1260 unusual. As I -- I don't -- sleepy and
1261 bureaucratic -- I don't want to characterize the
1262 Health Department. I think the Health Department
1263 was facing a crisis that they'd never had to deal
1264 with before. And I was the director of city
1265 operations during a couple of big ones, like
1266 Ebola, when we worked with the state of New Jersey
1267 and Governor Christie's office on how to deal with
1268 that crisis. Even that paled in comparison to
1269 this. So, yes, there was an urgency across the
1270 board constantly 24 hours a day, but I don't want
1271 to -- I'll let the Wall Street Journal
1272 characterize that.

1273 Q. I believe you partly answered this, but
1274 it says that agencies, including the Health
1275 Department, needed permission from the governor's

1276 office to issue guidance.

1277 Are you aware of that occurring?

1278 A. Guidance, legislation, program builds.

1279 Things often went through counsel's office for
1280 review, much like any other executive agency in
1281 the pandemic or non-pandemic times.

1282 Q. Thank you.

1283 MR. BENZINE: For -- and again, it's the
1284 Wall Street Journal's words, not yours or ours.
1285 Review and permission seem to be a little bit
1286 different. Like, if review would be -- you know,
1287 if the governor's counsel office wanted to review
1288 the legality of something, that's a little bit
1289 different than I need to go ask the governor in
1290 order to issue something.

1291 Did you see kind of both?

1292 THE WITNESS: It was a review, and there
1293 was permission, regardless of the topic, pandemic
1294 or not.

1295 MR. BENZINE: Okay.

1296 THE WITNESS: Which is not atypical from
1297 my experience in Albany of any administration,
1298 whether it be a press release or program bill, or
1299 guidance because it was an executive agency, and
1300 ultimately, the governor's responsible for that.

1301 That's how I -- that's characterizing it --

1302 MR. BENZINE: No, no, that's very
1303 helpful.

1304 THE WITNESS: I would not -- I would
1305 care -- for the record, I didn't think the
1306 Department of Health was sleepy. I think they
1307 worked their tails off during the COVID response.

1308 BY MR. EMMER:

1309 Q. I would like to now pivot to the
1310 beginning of COVID-19 in New York.

1311 When did you learn about COVID-19?

1312 A. That's -- I -- I don't recall
1313 specifically. I -- I did know at some point in
1314 February, I was on an international trip visiting
1315 our international programs as president of Empire
1316 State College, and it was clearly an issue that it
1317 was spreading. We didn't know where. We thought
1318 it was in China and other places, but there was
1319 still travel and things like that. In New York,
1320 when it became a problem, like, early March.

1321 Q. To the best of your recollection, when
1322 did you learn that elderly populations were
1323 particularly vulnerable to COVID-19?

1324 A. I don't exactly remember.

1325 Q. Can you generally describe the initial

1326 acts that the administration took to protect
1327 nursing homes?

1328 A. What I recall, a lot of this was we were
1329 trying find alternative locations. PPE being an
1330 issue. PPE was in short supply for everyone,
1331 including hospital facilities, nursing facilities
1332 that we were trying to get access to. Ventilators
1333 was a key issue that we were concerned about
1334 because they thought it was a respiratory issue.
1335 That was causing a lot of the issues of getting
1336 access to ventilators.

1337 Many of those things that we worked on
1338 -- or some of the things we worked on especially,
1339 not just to specific nursing homes, but broadly.
1340 Testing -- and testing would be the other one,
1341 which was in short supply at the time.

1342 MR. EMMER: Thank you. At this time, I
1343 would like to introduce what we marked as Majority
1344 Exhibit 4.

1345 (Majority Exhibit Number 4 was marked
1346 for identification.)

1347 BY MR. EMMER:

1348 Q. This is the nursing home guidance,
1349 entitled, "Advisory, Hospital Discharges and
1350 Admissions to Nursing Homes", issued by the New

1351 York State Department of Health on March 25th,
1352 2020.

1353 A. Uh-huh.

1354 Q. You've already answered this, but just
1355 so the record is clear. Did you play any role in
1356 developing this guidance?

1357 A. No.

1358 Q. And you previously testified that you
1359 don't know who was involved in drafting this
1360 guidance; correct?

1361 A. That's correct, I do not know who was
1362 involved in drafting this guidance.

1363 Q. Do you know why this guidance was
1364 drafted?

1365 A. I do not know why this guidance was
1366 drafted.

1367 Q. When did you learn about this guidance?

1368 A. Not immediately. I don't know the
1369 specific -- I don't recall the specific date.
1370 This was four years ago. It was when we were
1371 starting to get some press about nursing homes.
1372 That's when it became -- so April -- mid-April
1373 sometime. I don't know. I don't recall exactly
1374 the date.

1375 Q. Do you recall who told you about the

1376 guidance, or it was just the press?

1377 A. I think it was raised in -- I -- I don't
1378 specifically recall, but I -- I -- to the best of
1379 my knowledge, it was from the press inquiries.

1380 Q. When you did learn about it, did you
1381 express any concerns with it?

1382 A. The first thing I wanted to do was
1383 understand what it was and read it. That's the
1384 first thing I did, and try to see what was
1385 happening in other states.

1386 Q. So after you learned about it, and once
1387 it received attention in the media, did the cast
1388 -- or COVID Task Force ever meet regarding this
1389 guidance?

1390 A. We met on a lot of things. I don't
1391 remember a specific -- we met about this guidance
1392 by e-mail -- over e-mail and things like that
1393 about how to -- what is going on and potentially
1394 how to address the issue, yes.

1395 Q. And I want to rewind to your -- to the
1396 -- your previous --

1397 A. Yes.

1398 Q. -- statement about once you did learn
1399 about the guidance, you wanted to learn how it --
1400 how it operated or how it was intended to work.

1401 Can you just describe generally how you
1402 interpreted this guidance at that time?

1403 A. That's a really general -- do you have a
1404 specific -- I'm not --

1405 MR. BENZINE: You said -- you said that
1406 you went and did research across states to see if
1407 there were other similar. Did you find others
1408 that were similar?

1409 THE WITNESS: Other states were doing
1410 it. I can't recall all of them. I believe, like,
1411 New Jersey and Illinois and California had similar
1412 types of orders. I did want to see what the
1413 history was of these types of orders. I don't
1414 recall exactly the conversation when that -- some
1415 of this could be conflated over date and time. It
1416 was so long ago.

1417 Dr. Zucker was really concerned about
1418 the health of the individuals from nursing homes
1419 because they already -- besides being older and in
1420 a facility to begin with, they also had COVID.
1421 And that was impacted -- in his mind, impactful.
1422 So I wanted to see other times where there was
1423 similar health crises, where another group may
1424 have been potentially discriminated against. It
1425 was -- the AIDS epidemic was one of those examples

1426 that I found, where there were certain orders like
1427 this because they wanted to protect individuals
1428 who -- AIDS patients, and there was some level of
1429 discrimination of people being brought in.

1430 And I looked at some of -- I don't know
1431 if I got it, or someone sent it to me. It could
1432 have been counsel's office -- how this comported
1433 with other rules and regulations, that if you did
1434 this, you had to do it in concert with other
1435 things, like cohorting of patients separate from
1436 the facility -- separate from the people in the
1437 general population and things like that.

1438 MR. BENZINE: Uh-huh.

1439 THE WITNESS: I mean, that's over --
1440 it's a couple of -- but I might forget --

1441 MR. BENZINE: Yeah.

1442 THE WITNESS: -- it's hard to give a
1443 specific time with so much timing past.

1444 MR. BENZINE: The interaction between
1445 this and other regulations and policies, right,
1446 mostly state regulations; but there was various
1447 CDC transmission guidances at the time, too.
1448 There was some regulations regarding nursing homes
1449 that were suspended. In your review, did you ever
1450 find that the cohorting or isolation ones were

1451 previously suspended?

1452 THE WITNESS: I don't recall that.

1453 MR. BENZINE: All right.

1454 THE WITNESS: I would not say I was an
1455 expert in this.

1456 BY MR. EMMER:

1457 Q. Dr. Malatras, I would like to return to
1458 the impeachment report.

1459 A. Okay.

1460 Q. And we are looking at Page 41,
1461 Subsection G, in the second paragraph.

1462 MR. BENZINE: One second. Before that,
1463 I'm sorry, I have one other question.

1464 You said you hadn't spoken with CMS or
1465 CDC. Were you in any conversations in the
1466 governor's office, where they were like -- where
1467 they expressed that they had just picked up the
1468 phone and talked to CMS about the guidance?

1469 THE WITNESS: I recall -- I can't give
1470 you dates or times --

1471 MR. BENZINE: Yeah.

1472 THE WITNESS: -- vaguely that -- there
1473 was several occasions where Ms. DeRosa said to
1474 Howard, you should reach out to CMS or CDC. I
1475 can't remember which agency, but it was that type

1476 of thing.

1477 MR. BENZINE: Okay.

1478 BY MR. EMMER:

1479 Q. Continuing with the impeachment report.

1480 Page 41, Subsection G, second paragraph.

1481 A. Okay.

1482 Q. I will read it into the record:

1483 "During testimony before the New York
1484 State Senate in August 2020, a senior Executive
1485 Chamber official, who was in the room where a
1486 senior DOH official was remotely testifying, wrote
1487 a message on a white board, suggesting that the
1488 senior DOH official testify in effect that the
1489 March 25th directive was authored by DOH, and that
1490 the Executive Chamber was not involved. This
1491 statement was not true, and the senior DOH
1492 official did not make such a statement in the
1493 testimony."

1494 Dr. Malatras, do you know who the senior
1495 DOH official is that this excerpt is referring to?

1496 A. I don't know who the senior DOH official
1497 is. I mean, the senior DOH official from the
1498 above paragraph was -- you said it was Dr. Zucker.
1499 I can only surmise, but I don't know for certain.

1500 Q. When Dr. Zucker testified to us in

1501 November, he testified that it was him that that
1502 was referring to.

1503 Do you -- did you see this occur? I
1504 know that you testified -- or I believe that you
1505 testified with Dr. Zucker in August of 2020. I do
1506 not have the exact date.

1507 A. These -- I believe these were two
1508 different hearings. One was on -- I don't know
1509 what the first one was on. It may have been PPE
1510 or something like that. It was separate from this
1511 hearing.

1512 Q. Do you know who the senior Executive
1513 Chamber official was --

1514 A. I don't know for certain who the senior
1515 executive official was, but Ms. DeRosa was writing
1516 on the white board during -- throughout many of
1517 the hearings.

1518 Q. Do you believe that she was acting under
1519 the orders of the governor?

1520 A. I don't know if she was acting under the
1521 orders of the governor. I have no way of knowing
1522 that.

1523 MR. BENZINE: She was -- so you're
1524 testifying remotely on your hearing in August of
1525 2020; is that right?

1526 THE WITNESS: When I testified?

1527 MR. BENZINE: Yeah.

1528 THE WITNESS: When I testified, Dr.

1529 Zucker and I were via Zoom, I believe. And the
1530 legislators provided a Zoom, and we sat at the
1531 same table together.

1532 MR. BENZINE: And in that one, Ms.
1533 DeRosa also had a white board?

1534 THE WITNESS: I -- I don't recall
1535 actually. I was -- they -- they were -- set up
1536 white boards and stuff like that.

1537 MR. BENZINE: Okay. I -- this gets
1538 awfully close, and Dr. Zucker pretty much went
1539 there in his testimony, to Ms. DeRosa instructing
1540 him to commit perjury.

1541 Did you ever have any interactions where
1542 Ms. DeRosa instructed you to lie under oath?

1543 THE WITNESS: No.

1544 MR. BENZINE: Okay.

1545 MR. EMMER: Can we go off the record.

1546 (Short break was taken off the record.)

1547 EXAMINATION BY

1548 MS. [REDACTED]

1549 Q. Good morning, Dr. Malatras. I want to
1550 echo the sentiments of my Republican colleagues

1551 for you agreeing to speak with us voluntarily
1552 today. I'm [REDACTED] I'm senior counsel for
1553 the Democrats on the Select Subcommittee.

1554 As an initial matter, I just want to go
1555 into a little more detail about some of your prior
1556 roles that you spoke about in the previous hour.
1557 First being your role as director of state
1558 operations. It sounds like in that role, you had
1559 your hands on a lot of things. So I would like to
1560 hear a little bit more about what exactly that
1561 role entailed?

1562 A. The director of state operations job --
1563 like I mentioned -- is the chief operating officer
1564 for the state, so we -- the director of state
1565 operations managed the day-to-day activities of
1566 all state agencies in the workforce, which there
1567 are about 130, 140,000, if you don't count the
1568 state university and the City University of New
1569 York systems.

1570 We -- all operational issues that come
1571 from in -- at least an agency like DMV, which is
1572 always a popular agency. We never got a call from
1573 the DMV saying everything is going great. It was
1574 always something terrible. We were always -- you
1575 never got the -- this a job where you never got

1576 the everything is going great call. This is
1577 always at the top, where you were dealing with
1578 some crisis or another. And I had the -- so the
1579 day-to-day operations, and then I still had the
1580 policy hat. So I did most of the gubernatorial
1581 policy, agency policy as director of operations.

1582 And when I was there, we had some big
1583 things. I mentioned Ebola, the Zika virus. We
1584 had a huge snowstorm in Buffalo, where we had
1585 eight feet of snow, which we dealt with that
1586 emergency, and other things like that.

1587 Q. Great. And then, when you joined the
1588 COVID Task Force -- I know this is a loose term.

1589 A. Right, there was no point -- and it
1590 wasn't like we had a party. It was we were just
1591 --

1592 Q. Helping out, yeah.

1593 So you were still on the payroll for the
1594 Empire College --

1595 A. Correct.

1596 Q. -- at that time?

1597 When did you start working with the
1598 COVID Task Force?

1599 A. More officially, we -- I was having
1600 conversations. They would ask me -- there was an

1601 issue of how to return in early March -- how to
1602 return the college students of -- brought home.
1603 That was one issue that I helped with. Some early
1604 issues with the K-12 schools, specifically what
1605 happens if there's a confirmed case of COVID.

1606 Sorry, I have a backache.

1607 So I was helping with that. And I would
1608 say middle of March, like, March 18th is when I
1609 more day-to-day came on, specifically around the
1610 shutdown of the Downstate schools. And then, like
1611 I mentioned, the childcare issues and the food
1612 delivery issues for students bought -- who were on
1613 free and reduced-price lunches.

1614 Q. Sure. And how did you split your time?
1615 Although I'm sure there was some overlap between
1616 your responsibilities for Empire and your roles
1617 and responsibilities of the COVID Task Force.

1618 A. It was not easy. The college that I ran
1619 was a college without borders. So it was a
1620 distributed model, where we had at the time around
1621 30 locations, including in Manhattan, which was
1622 the epicenter of the virus at the time. So
1623 winding those -- those procedures down took a lot
1624 of effort. I had a really strong team, which I
1625 relied upon. We were in the middle of a Middle

1626 states accreditation review, which was not an
1627 optimal time to get your college accreditation
1628 done. And, in fact, we were the first college to
1629 have a remote review of our academic program. So
1630 we were in the middle of that in March and April.
1631 So that was a large part of what I was still
1632 doing. And it was my inauguration of president,
1633 which got cancelled, of course.

1634 So it was a balance. It was hard.
1635 Basically, there was so much overlap between what
1636 you were doing. I had a strong chief operating
1637 officer. I had a great chief of staff, I had a
1638 great finance team. I had a great academic and --
1639 team. There was -- you never -- you worked all
1640 the time.

1641 Q. And you mentioned sitting with other
1642 folks who were on the COVID Task Force. So you
1643 were working out of Executive Chamber offices?
1644 Where were you doing most of your work?

1645 A. I would say the end of March, April, and
1646 probably through May, I was at -- well, and many
1647 times at the Executive Chamber, in one of the --
1648 we had small, little offices. We jokingly
1649 referred to them as the intern offices, the
1650 windowless offices, where many of us sat hours on

1651 end.

1652 Q. Gareth Rhodes mentioned to us that he
1653 shared office space with you.

1654 A. Yes, I shared an office space with Larry
1655 Schwartz at first, and then I shared an office
1656 with Gareth Rhodes.

1657 Q. I'm sure that was interesting in an
1658 pandemic to be sharing office space?

1659 A. Well, both -- this is -- you didn't ask
1660 me this question. Those two guys are honorable,
1661 great, public servants. It was -- I liked being
1662 in the office space with them, not as -- we were
1663 this close. I didn't appreciate that.

1664 Q. Right. And you talked a lot about your
1665 educational responsibilities with the COVID Task
1666 Force. What other big-issue areas were you
1667 involved with, in terms of COVID?

1668 A. One of the first things I did -- and I
1669 was working with Mike Schmidt, who was the tax
1670 commissioner at the time. McKinsey and others --
1671 this was before I was really involved on the
1672 education issues. There was a lot of discussion
1673 about the wave and the curve of when we were going
1674 to have the apex of the virus here, and as well as
1675 how many hospital beds would be needed and things

1676 like that. And they were really high estimates.
1677 I think at -- at one point, it was 140,000 beds
1678 needed. I wasn't so sure that was actually
1679 accurate.

1680 Now, understandably, McKinsey and others
1681 were building models around what they knew at the
1682 time, what was on the ground. So Mike and I spent
1683 a lot of time at first really trying to figure out
1684 what the wave would be, when the apex would come,
1685 what the total amount of beds would be; things
1686 like that. And we worked with many others. I
1687 mentioned the White House Task Force, they
1688 provided a lot of analysts. We worked with people
1689 from the University of Washington. And we helped
1690 on that front because my academic -- I'm not a
1691 health expert, but this was statistical analysis,
1692 things like that. Something I had experience with
1693 as an academic.

1694 So we did a lot of activity -- we did a
1695 lot of effort and work on that. And in the end,
1696 we did adjust what the wave would be on, in terms
1697 on -- based on the analysis that we had be run.

1698 Q. Great. And it sounds like that work was
1699 early on in the pandemic.

1700 A. It was late March, early April -- or

1701 into the April.

1702 Q. And then, you had the winding down of
1703 the schools, taking care of the state lunches,
1704 reduced-price lunches; all of those important
1705 issues?

1706 A. And the volunteer data portal was
1707 another thing that we -- I was early on deeply
1708 involved. And I would say those three things, I
1709 remember -- there was a fourth thing, too, I'll
1710 add. The volunteer database because we were
1711 having trouble finding work force in our
1712 hospitals. There were a couple of terrible --
1713 you know, this is like a tragic -- this is not
1714 happy times, right? I mean, there was a nurse at
1715 one of the hospitals here who passed away from
1716 COVID. There was a lot of challenges in finding
1717 workforce. So I helped run that portal. I think
1718 we found 30,000 people volunteering. We had
1719 people come from, like, Pennsylvania and other
1720 places to really help in New York. So I helped
1721 stand up that portal. And there's lots of issues
1722 that go along with that, so I helped with that --
1723 with that piece, as well, especially on the
1724 licensing piece and then academics, and working
1725 with the state education department. And then,

1726 PPE was another one of the major areas that I
1727 helped deal with working with Larry Schwartz.

1728 Q. Great. And when -- I know, again, this
1729 wasn't a formal appointment to the Task Force, but
1730 when would you say your time on the Task Force
1731 sort of ended or petered out?

1732 A. I spent the -- the greater concentration
1733 of time at the end of March, April, and towards
1734 the middle of May. By June, I was back at my
1735 college campus basically full-time. By June, I
1736 was in our main offices at SUNY Empire College,
1737 which is in Saratoga Springs, which is about 45
1738 minutes north of Albany. There were times where I
1739 did come to the chamber specifically, because I
1740 was the chair of the Task Force on reopening of
1741 schools, creating the policies for that.

1742 Q. Great. Thank you.

1743 I'm going to turn things over to my
1744 colleague [REDACTED] for some questions.

1745 EXAMINATION BY

1746 MR. [REDACTED]

1747 Q. Good morning, Dr. Malatras.

1748 A. Good morning.

1749 Q. Thank you for your voluntary
1750 participation in today's interview. I'm [REDACTED]

1751 [REDACTED] counsel for the minority.

1752 A. Okay.

1753 Q. I would just like to ask you a few
1754 questions about nursing home data.

1755 A. Okay.

1756 (Minority Exhibit A was marked for
1757 identification.)

1758 BY MR. [REDACTED]

1759 Q. And I would like to start with an
1760 exhibit. Minority Exhibit A is a May 19, 2020,
1761 e-mail chain amongst yourself and a few other
1762 people. I have a few questions about the e-mails,
1763 so --

1764 A. Sure.

1765 Q. -- spend the time you need there
1766 refreshing your memory. And there's an attached
1767 article there. You don't need to read anything
1768 other than the title.

1769 A. Okay.

1770 Q. For now.

1771 A. Okay.

1772 Q. Okay.

1773 A. You said only read the headline?

1774 Q. Yeah, that's fine.

1775 It looks like this chain started when

1776 Melissa DeRosa forwarded -- forwarded this post
1777 standard article. If you could turn to the third
1778 page here.

1779 A. Okay.

1780 Q. I think the central claim in this
1781 article would be the fifth paragraph, which I'll
1782 just read. "Each day, before April 16th, they
1783 asked nursing homes how much sanitizer they had,
1784 but not how many people died in the facilities."

1785 I think "they" is referring to DOH. If
1786 we can flip now to the second page. And your
1787 e-mail, it looks like a 6:43 a.m. e-mail?

1788 A. Yes. You note the time, right.

1789 Q. In response to a question from Ms.
1790 DeRosa about when DOH started asking nursing homes
1791 to report deaths, you respond: "That started even
1792 before I got here. It was early March that they
1793 began to get those questions."

1794 Do you disagree that the articles
1795 claimed that pre-April 16th, 2020, DOH hadn't
1796 asked nursing homes about in-facility deaths?

1797 A. I'm going to -- let me -- I want to do
1798 this in a way. Can I give you context --

1799 Q. Of course.

1800 A. -- because I think it's unfair how they

1801 treated this.

1802 Q. Yes.

1803 A. The HERDS data -- which a lot of this is
1804 reliant on -- was a system created. It was before
1805 I got there. By the way, I was director of the
1806 state -- I didn't know what the HERDS system was
1807 until the pandemic. It was survey data that the
1808 Department of Health put out to all healthcare
1809 facilities on census information. How many
1810 residents do you have? What's the general
1811 conditions of the operation? Who's in your
1812 hospital?

1813 I don't think it was even done daily. I
1814 think it was a quarterly report. This was when
1815 they -- when the pandemic started in March, they
1816 started using the HERDS survey as the sort of
1817 vehicle, by which to collect more realtime data
1818 about what was going on, including what -- the
1819 feed into the McKinsey system about how many
1820 hospital beds there were. But in looking at it
1821 early on, this is something where Mike Schmidt and
1822 I and others are looking at it. To us, it was
1823 garbage in, garbage out. It's not critical of the
1824 health department, that's why it's too little
1825 created for what it ultimately had to become,

1826 which is how do you see in realtime what's going
1827 on, on the ground as much as you can -- can know.
1828 And this was at a time when there wasn't testing.
1829 So there's presumed -- many states were running
1830 into this issue of some reported confirmed, some
1831 reported -- because, right, there was a mess
1832 everywhere you went.

1833 So in the middle of April, the HERDS
1834 survey was recast in a way to be a daily tool
1835 asking more specific questions. So it's almost
1836 unfair to the Department of Health to say, well,
1837 before that, they never asked this question.
1838 They're asking about hand sanitizer. Even if they
1839 asked the question at the time, testing wasn't
1840 very good. They didn't know -- and what they were
1841 finding with the numbers, though -- and what I
1842 meant in my e-mail was the system -- what -- they
1843 were collecting it through HERDS, but it was
1844 undeniable data. Hospitals and nursing homes, for
1845 instance, were reporting data. Here's a death.
1846 Here's all of our deaths, but it could have been
1847 months ago. So what they were finding was someone
1848 from, like, four months ago, but that doesn't help
1849 people like McKinsey and others to see what's
1850 actually going on in the system.

1851 So, yes, the more refined system of
1852 questions came in the middle of April to ask all
1853 sorts of questions. Hospitals being more refined,
1854 nursing homes, PPE distribution because that was
1855 another major area, ventilator distribution in
1856 need in order to try to get that realtime analysis
1857 to see what was going on, on the ground and how to
1858 mitigate for it, which was different in some areas
1859 like the City of New York, which used survey data,
1860 which was they did a random sampling and that's
1861 how they were getting the data. We wanted as much
1862 data coming in as possible. So it was unfair to
1863 the Health Department. I would not agree with
1864 this assessment that they were somehow asking the
1865 wrong questions. It was never geared to ask those
1866 questions. It was never meant to ask those types
1867 of questions.

1868 Q. Thanks, that's helpful context.

1869 On the first page, Megan Baldwin lays
1870 out a timeline of changes to the HERDS data
1871 collection system.

1872 A. Right.

1873 Q. Is that basically what you're talking
1874 about here --

1875 A. Okay. I mean, high-level yes.

1876 Q. -- that in April there was refinement?

1877 A. High level, yes. I'm not reading this
1878 for a lot of specificity, but some different
1879 things in there could potentially; but, yes.

1880 Q. Great. We heard elsewhere that there
1881 was a data influx of death data from nursing homes
1882 in April 2020, as a result of DOH's more
1883 comprehensive data collection?

1884 A. Correct.

1885 Q. And that -- that influx presented some
1886 challenges for DOH to sort out that data and
1887 report it --

1888 A. It was very challenging. In April and
1889 May, I would say it was very challenging at first.
1890 Remember, that was just one component. There's
1891 also the hospital data still coming in. I think
1892 our apex was in the middle of April anyway. So
1893 you're in the middle of the response, while trying
1894 to sort this all through. Yes, there was a lot of
1895 that, as well. And then, the PPE data was also an
1896 overwhelming piece. So yeah, a lot of data came
1897 in.

1898 Q. Can you just talk about the challenges
1899 that you were aware of, in terms of sorting out
1900 the data and reporting it out.

1901 A. I mean, high level was just getting
1902 facilities in the middle of a crisis to report,
1903 right? That was one thing that was not always --
1904 it seemed. I wasn't in the middle -- I wasn't the
1905 data collector, right, so I -- you got to ask
1906 people who were in the data collection piece. But
1907 looking at it and understanding what some of the
1908 facilities were going through, they're actively in
1909 the middle of a crisis. And that they also have
1910 to report a lot of data at the same time. And
1911 they have to do something that they've never done
1912 before, while actively reporting through a pretty
1913 major crisis. Yeah, it was messy at first. It
1914 was really messy at first.

1915 And I don't think any state was really
1916 doing it well, and I would say we probably weren't
1917 doing it perfect, neither, but this was a way to
1918 try to get as much realtime data as possible.

1919 Q. At the bottom of this first page, Ms.
1920 Baldwin writes -- and I'll just read it -- "On
1921 April 17th, 2020, DOH issued a retrospective
1922 survey back to March 1st, on all previously
1923 reported deaths to collect the location and COVID
1924 status presumed, or confirmed for each death. The
1925 reconciliation process took a few days to verify."

1926 What do you understand the
1927 reconciliation process to refer to?

1928 A. I -- I -- this is old. This is -- I
1929 believe this was just trying to get the most
1930 up-to-dated data previous to even when the HERDS
1931 survey was updated, just to get a sense of what
1932 was going on in the field prior, right? COVID at
1933 the time, people thought it came to New York
1934 February, March -- more March. Of course, come to
1935 learn -- to find out, it was here probably way
1936 before that. It was just trying to get a better
1937 understanding on the ground of what was actually
1938 happening.

1939 Q. Do you recall the reconciliation process
1940 taking a few days to verify?

1941 A. I don't remember -- recall that, but it
1942 does not surprise me, given the scope. There's a
1943 few hundred nursing homes, I think, in New York
1944 State.

1945 Q. Would it surprise you if the process
1946 took longer than a few weeks?

1947 A. It would not surprise me.

1948 Q. Okay. Just zooming out --

1949 A. There was a retrospective issue, and
1950 then there was going forward. Both of those

1951 things were still happening at the same time, and
1952 there were challenges on both. Even the day of
1953 reporting was still challenging, getting an
1954 accurate view.

1955 Q. Okay. Is it generally correct that at
1956 this time of April and May 2020, you were trying
1957 to maintain awareness about the data that was
1958 coming in from nursing homes, specifically related
1959 to deaths?

1960 A. Yes.

1961 Q. What prompted you to begin maintaining
1962 awareness of that data?

1963 A. What do you mean by "awareness"? I
1964 guess, the -- like, it's an interesting word. I'm
1965 just trying to understand what you mean.

1966 Q. Just --

1967 A. I was asked by Melissa DeRosa, as part
1968 of understanding the curve and things like that to
1969 understand where deaths were coming from.

1970 Q. What curve are you referring to?

1971 A. I can't draw, right? It was the -- the
1972 major concern for the State of New York at the
1973 time was when the height of the number of cases
1974 would be at in the state. The apex of the curve,
1975 which would put the most pressure on healthcare

1976 institutions dealing with the curve. We were, at
1977 the time, worried about running out of hospital
1978 and other capacity. And early projections
1979 suggested there would be a need for 110 to 140,000
1980 hospital beds, as which the City of New York did
1981 not have a 110 or 140,000 hospital beds just for
1982 COVID. We -- I think we had 50,000 beds total.
1983 So that was the issue.

1984 So it was managing for how to address
1985 the actual -- making sure the healthcare system
1986 did not collapse. Sorry, that's what I meant by
1987 the curve and the apex.

1988 Q. Who did you talk to, to inform your
1989 awareness about death data?

1990 A. That's a fairly -- that -- that usually
1991 through -- Megan Baldwin was the person who was
1992 the -- she was the -- I don't know if her official
1993 role was deputy secretary for health, but she was
1994 the conduit between the Department of Health and
1995 the HERDS system and the Chamber.

1996 Q. Who did Megan Baldwin report to?

1997 A. Well, ultimately, it would be secretary
1998 to the governor, Melissa DeRosa, because she's a
1999 deputy secretary, and deputy secretary system in
2000 the chamber often -- they all report to Melissa.

2001 In many cases for these issues, she was working
2002 closely -- I can't say she was reporting to, but
2003 working very closely with Linda Lacewell.

2004 Q. At this time, did you frequently
2005 interact with DOH employees about death data?

2006 A. I interacted with potentially Howard
2007 Zucker and Eleanor -- what time? Give me the
2008 timeframe.

2009 Q. April 2020.

2010 A. It would be more Howard Zucker with --
2011 with Megan and those folks on the...

2012 Q. What were those conversations like?

2013 A. We were trying to respond to a crisis,
2014 and was trying to understand what was going on.
2015 And we were trying to get as much clarity in the
2016 data as possible.

2017 Q. Just back to the very first e-mail in
2018 the chain.

2019 A. Uh-huh.

2020 Q. What is your understanding of why Ms.
2021 DeRosa chose to include you in asking Ms. Baldwin
2022 and Ms. Lacewell about the nursing home death
2023 numbers?

2024 A. Because I was helping on the HERDS
2025 survey side.

2026 Q. Okay.

2027 MS. [REDACTED] How were you helping with the
2028 HERDS survey?

2029 THE WITNESS: With questions and things
2030 like that, which we were -- because we were
2031 feeding the data analytics on the curve, so we
2032 wanted to help get the realtime data.

2033 MS. [REDACTED] Thank you.

2034 THE WITNESS: And the we -- sorry -- I
2035 was saying pronouns. That's Mike Schmidt.

2036 MR. [REDACTED] Sorry, I --

2037 THE WITNESS: Mike Schmidt.

2038 MR. [REDACTED] Mike Schmidt, okay.

2039 (Minority Exhibit B was marked for
2040 identification.)

2041 BY MR. [REDACTED]

2042 Q. Minority Exhibit B is an April 25, 2020,
2043 e-mail, and nursing home spreadsheet attachment,
2044 Ms. Baldwin sent to you and Ms. Lacewell and some
2045 other individuals. I'll just introduce that now
2046 for identification.

2047 Are the -- are you ready?

2048 A. Yes, go ahead.

2049 Q. On the first page, if we could go down
2050 to the "By County" paragraph.

2051 A. Uh-huh.

2052 Q. Okay. It looks like Ms. Baldwin is
2053 relaying that DOH's public reporting is at a
2054 question point. She writes: "We can post the
2055 presumed and confirmed deaths. The question there
2056 is whether we are using in-facility and
2057 out-of-facility deaths. When DOH first started
2058 posting By County chart, it included confirmed and
2059 presumed, and in and out-of-facility deaths.
2060 However for the past week, we have only been
2061 adding confirmed and facility deaths to the April
2062 15th base."

2063 What do you understand the April 15th
2064 base to refer to?

2065 A. That's prior -- it's -- I -- what I
2066 recall, if you're looking at the other e-mails,
2067 it's the old survey versus the updated survey. So
2068 the base would be April 15th, I think. It's
2069 before the new HERDS survey went to effect, so it
2070 was reconciliation on those older numbers.

2071 Q. Okay. And what do you know about the
2072 decision to add only confirmed, in-facility deaths
2073 to the April 15th base at the time of this e-mail?

2074 A. I don't really recall, but it would be a
2075 call that only Melissa could choose what numbers

2076 got posted -- not the actual numbers, but the
2077 types of categories. So I don't recall like, why.
2078 I know there was some confusion. There's lots of
2079 confusion at this point. What date is this? It's
2080 April 25th. County reporting. Some were
2081 reporting confirmed, some were reporting because
2082 it was a -- it wasn't a in-facility, out-of-
2083 facility. It was presumed and confirmed, too. So
2084 it was a whole mess of things going on.

2085 So on this, the how it was getting
2086 posted was largely determined by -- I don't know
2087 this for certain, but Melissa would have final
2088 authority on all of it.

2089 Q. Who would be the person reporting the
2090 status of the numbers up to Melissa DeRosa?

2091 A. It depends. Often in this case, it was
2092 Linda Lacewell.

2093 Q. Were you aware of any specific
2094 discussions about the decision to add only
2095 confirmed, in-facility deaths to the April 15th
2096 base at the time of this e-mail?

2097 A. I think the early discussion was less to
2098 do -- what I recall was, moreover, should you
2099 include presumed and confirmed or just the
2100 confirmed cases. And the decision was made to do

2101 confirmed cases because we had absolute certainty
2102 that they were confirmed. The in-facility versus
2103 out-of-facility, I'm not as sure about. Some of
2104 the early conversations was they're worried about
2105 double-counting the numbers.

2106 Q. Who -- who made the decision to report
2107 confirmed -- I think that's what you said -- there
2108 was --

2109 A. Melissa DeRosa.

2110 Q. Melissa DeRosa.

2111 Who was involved in that conversation?

2112 A. I -- well, I don't know if it was one --
2113 you're saying one conversation?

2114 Q. Sure.

2115 A. I don't recall one conversation. There
2116 was a lot of -- in the fog of all of this stuff --
2117 conversations happening, so I don't -- I can't
2118 give you any one specific. I don't remember any
2119 one conversation where they said this is how we're
2120 doing it.

2121 Q. I guess, in the aggregate, who would be
2122 involved in those conversations?

2123 A. I -- people -- I think you would have
2124 probably Commissioner Zucker, Ms. Baldwin, Ms.
2125 Lacewell because Ms. Lacewell was doing the actual

2126 day-to-day collection opening that -- from the
2127 Health Department. I don't know if Mike Schmidt
2128 would have been a part of those conversations.
2129 Rachel Baker is the assistant to Ms. Baldwin.

2130 Q. What do you mean by Ms. Lacewell was the
2131 person doing the collection?

2132 A. She was the person overseeing from the
2133 Department of Health how nursing homes were
2134 reporting up every day. She was actually -- she
2135 was the -- she wasn't collecting the data, but the
2136 Department of Health and Ms. Baldwin were
2137 reporting to her those data collection efforts
2138 from the nursing homes and hospitals, and things
2139 like that.

2140 Q. Do you know what divisions within DOH
2141 Ms. Lacewell was getting that information from?

2142 A. No, I don't know any of that. I don't
2143 know.

2144 MS. [REDACTED] Do you know why she was
2145 involved in that process? She was officially with
2146 the Department of Financial Services; correct?

2147 THE WITNESS: Right, she came in on the
2148 Task Force. She was in a lot of -- a number of
2149 different things.

2150 MS. [REDACTED] Do you know why -- was there

2151 a particular reason she got involved in nursing
2152 home data and health data?

2153 THE WITNESS: I mean, no, I don't. I
2154 don't have a specific reason why.

2155 MS. [REDACTED] Okay.

2156 THE WITNESS: I would -- I could
2157 surmise, but I don't want to -- that's not fair to
2158 her.

2159 BY MR. [REDACTED]

2160 Q. So going back to that "By County"
2161 paragraph. Ms. Baldwin writes: "The question
2162 there is whether we are using in-facility and
2163 out-of-facility deaths."

2164 What did you understand that to mean?

2165 A. The place of death of the nursing home
2166 resident.

2167 Q. Okay. Do you -- when Ms. Baldwin says
2168 the question, do you understand that to mean a
2169 question that she is posing to you or Ms. Lacewell
2170 for an answer?

2171 A. I don't -- I don't recall what -- the
2172 question is whether to use that. It would be
2173 ultimately to Ms. DeRosa. Well, she's not on this
2174 e-mail thread, but I don't know.

2175 Q. Okay.

2176 A. If anything, at this time, April and
2177 May, it would be Ms. Lacewell who was determining
2178 these questions. I was often a back channel for
2179 Ms. Baldwin when they thought Ms. Lacewell was
2180 being -- not listening.

2181 Q. So Ms. Baldwin would tell you something,
2182 and then you would tell Mrs. Lacewell?

2183 A. Or I would raise it with Ms. DeRosa, or
2184 someone like that.

2185 Q. Do you recall some examples of --

2186 A. There was one example. I can't -- I
2187 believe it was May, where there was actually --
2188 there's many different questions. How you
2189 categorize the actual deaths, that's up for --
2190 that's a policy call. The secretary doesn't have
2191 to deal with that. There was actual a bona fide
2192 undercounting in the nursing-home death report
2193 that Ms. Baldwin called me about. I remember this
2194 -- I don't remember the day, but I was running
2195 because it was the first day that I was taking a
2196 run. And she called and said there was this
2197 issue, and Ms. Lacewell isn't listening about
2198 this.

2199 So I raised with Ms. Lacewell, and then
2200 I ultimately went to Ms. DeRosa and said these are

2201 actual numbers that you have to report. These are
2202 fatalities, we have them. You have to add them to
2203 the public report. This is a -- we did it as a
2204 retrospective. We put them all back to those
2205 dates -- put them in the same exact dates, but I
2206 went in and said you have to change the numbers.
2207 I made a recommendation very strongly they have to
2208 change the numbers.

2209 Q. This is about the July 6th report?

2210 A. No, it was unrelated. No.

2211 Q. What report is --

2212 A. It's not a report. It's just a daily
2213 report of nursing home deaths.

2214 Q. Oh, I see.

2215 Do you know what time frame this was?

2216 A. It was in May.

2217 Q. In May.

2218 A. Beginning of May, middle -- I don't
2219 know. The times are, you know.

2220 Q. Did you use the word "undercount" just
2221 now?

2222 A. Did I?

2223 MR. CONNOLLY: Under-reporting.

2224 THE WITNESS: Under-reporting, which was
2225 rectified in the reports after I intervened.

2226 BY MR. [REDACTED]

2227 Q. Okay. Could you explain what the
2228 underreporting you saw was, and how it was
2229 rectified?

2230 A. It wasn't -- this is why this stuff gets
2231 really complicated and it's, like, unfair to
2232 certain people. So I want to be very precise
2233 about -- like, how -- it wasn't how things were
2234 categorized; presumed, unconfirmed, confirmed, in
2235 the facility, out of the -- the total numbers were
2236 still the same number. And how you categorized
2237 the same number. Just say 20,000 deaths. I can't
2238 remember what the number of deaths were at the
2239 time in New York State totally. I think we ended
2240 up at 34,000. This is, like, really old
2241 information.

2242 It wasn't how to replace -- instead of
2243 34, it would have said 32. My point was we know
2244 there are 2,000. You have to put them in the
2245 total. How to characterize them is up to you as a
2246 policy -- but you have to add those numbers. We
2247 know 2000 not to be included. You have to add
2248 those. So that was my very strong recommendation.
2249 I went to Ms. Lacewell, and I also went to Ms.
2250 DeRosa about that.

2251 Q. And how did they respond to that?

2252 A. It ultimately was published.

2253 Q. Was there resistance on their end?

2254 A. I don't remember resistance. I don't
2255 remember. I can't cat -- I cannot characterize
2256 how Ms. Lacewell responded, but I went -- Ms.
2257 Baldwin came to me, I think, for a reason, and I
2258 ultimately went to Ms. DeRosa.

2259 Q. And, sorry, what was the reason Ms.
2260 Baldwin came to you?

2261 A. Because I think there was an
2262 unreceptivity to listen about the problem.

2263 Q. Okay.

2264 A. Does that make sense? I mean, there's a
2265 difference between how do you categorize the total
2266 number, and actually the -- not including a
2267 certain number in the total. I'm talking about
2268 the latter.

2269 Q. Yeah.

2270 A. I utterly confused you. I can see.

2271 Q. I think I can take it.

2272 A. Okay.

2273 Q. Do you know why -- I think you said that
2274 the figure was 2,000?

2275 A. I made that number up.

2276 Q. Okay. Do you know why that figure had
2277 not been included in the reporting?

2278 A. To be fair to everyone, this is April
2279 and May. We're still doing realtime reporting.
2280 We're still trying to figure out how to get this
2281 HERDS survey data, like, done in a way that it's
2282 coming in a -- you know, in a way, that makes
2283 sense. You're still getting a lot of reports from
2284 facilities who are overwhelmed giving us still
2285 information from months prior to. There was like
2286 a swirl of stuff happening. So all of a sudden, I
2287 think what was happening was, as they -- as
2288 certain facilities -- whether you're in a nursing
2289 facility or whatever was catching up. They would
2290 say, oh, by the way, here are ten from two weeks
2291 ago. They did it two weeks later. My point was
2292 you have to take the two weeks ago, and you have
2293 to still add it to the total. Even though they
2294 reported it two weeks later, you have to still add
2295 it to the total. I think there was a question of
2296 what do you do with those, and there wasn't an
2297 understanding or receptivity. Maybe she just
2298 didn't understand the issue. I said, but you
2299 still have to add those numbers, even if it was
2300 reported two weeks later.

2301 Q. So you spoke to Ms. Lacewell and Ms.
2302 DeRosa?

2303 A. Yeah, I remember vaguely a meeting in
2304 Ms. DeRosa's office, but it wasn't just Ms.
2305 Lacewell. It was Ms. Garvey who's in the room,
2306 and other Mr. -- Mr. Mujica was the budget
2307 director. I went in and said you have to add
2308 these numbers.

2309 Q. And how long after that conversation --

2310 A. I don't remember -- it could -- it
2311 probably wasn't that long. I mean, I can't give
2312 you an actual time frame. It would be unfair for
2313 me. I don't remember. I don't really remember.

2314 Q. Okay.

2315 A. I couldn't give you the date of the -- I
2316 mean, it's just -- it's so long ago. I don't
2317 remember.

2318 Q. And when you mentioned reporting, are
2319 you referring to, like, the PDF or some type of
2320 document?

2321 A. The publicly-reported report.

2322 Q. Okay. Let's return to this exhibit.

2323 A. Okay.

2324 Q. If we could continue to the bottom of
2325 the -- yeah, if you could continue to the bottom

2326 of the first page. Ms. Baldwin begins a section
2327 headed by "Update to the Numbers". Turning to the
2328 second page, there is a section headed by "Post
2329 Reconciliation". If we can go to the sentence
2330 beginning with, "The attached files".

2331 A. Okay.

2332 Q. Yeah, here.

2333 A. Okay.

2334 Q. And then, now, a few lines below that,
2335 Ms. Baldwin was talking about a county chart.

2336 A. Right.

2337 Q. Okay. So Ms. Baldwin tells you and your
2338 group that adding the reconciled data as of April
2339 23, to the publicly-available county chart would
2340 increase nursing home deaths from 2,124 to 5,616.

2341 A. Okay.

2342 Q. An increase of 2,692.

2343 And for adult care facilities, there
2344 would be an increase by 257. Do you see that?

2345 A. I do.

2346 Q. Okay. Do you recall how you reacted
2347 when you saw these increases from the post
2348 reconciliation numbers?

2349 A. Well, that's a very general question.
2350 What do you mean how did I feel, or how I reacted?

2351 It's so broad.

2352 Q. Okay. Do you feel that these numbers
2353 should be posted?

2354 A. These numbers were posted.

2355 Q. The reconciled --

2356 A. Right. I think you're -- what this was
2357 -- was after April 16th, they changed the HERDS
2358 survey. They did that survey you were talking
2359 about -- the retrospective survey. This was a
2360 reflection of a retrospective survey, by which
2361 nursing homes didn't actually report this data
2362 because we weren't asking the right questions.
2363 They asked the right questions, and now this was
2364 posting in a post hoc way from before April 15th,
2365 those nursing home numbers. So that's added to
2366 the base. That's adding to the new nursing home
2367 numbers publicly.

2368 Q. Okay.

2369 A. So when you say the county chart will
2370 show an increase of over 24 because you're adding
2371 these increases, that makes sense, because they
2372 did a reconciliation where they did a survey with
2373 the nursing homes, which found more fatalities.
2374 So they're adding that to the publicly-reported.

2375 Q. Okay. So Ms. Baldwin continues. In the

2376 last line, she says: "When you take in April 24th
2377 data, we will report that there were 198
2378 additional deaths, bringing the number to 6,711."

2379 A. Yes.

2380 Q. Is it your understanding that -- let's
2381 say on April 25th because this e-mail was sent at
2382 1:00 a.m. that day, is it your --

2383 A. You note the time.

2384 Q. Huh?

2385 A. You note the time.

2386 Q. Yeah.

2387 A. Yes. And you note the 6:43 a.m., right?
2388 You note these times. There's an exhaustion also
2389 for people, but go ahead, please.

2390 Q. Is it your understanding that 6,711
2391 number was publicly reported?

2392 A. Yes, I would -- I look -- looking at
2393 this e-mail, yes, this would be what was -- what
2394 they're talking about is posting it to the
2395 publicly-available website, yeah.

2396 Q. Okay. And if it were, in fact, not
2397 posted, would that have been a decision made by
2398 Ms. Lacewell and Ms. DeRosa?

2399 A. Correct.

2400 Q. Okay.

2401 A. Well, let me be clear. I cannot say
2402 that it was Ms. -- the formal authority lied with
2403 Ms. Lacewell, to be fair to her. It would be Ms.
2404 DeRosa.

2405 Q. Sure.

2406 A. So you said Ms. Lacewell or Ms. DeRosa.
2407 I cannot say Ms. Lacewell.

2408 Q. Okay. If we can go back to Exhibit A.

2409 A. Which one was that?

2410 Q. It was the -- the March 19, 2020, e-mail
2411 chain.

2412 MR. CONNOLLY: This one.

2413 THE WITNESS: May 19th, yes. Okay.

2414 Thank you.

2415 BY MR. [REDACTED]

2416 Q. Sorry, May 19th.

2417 At the top of the second page, Ms.
2418 Baldwin writes here on May 4th: "We switched to
2419 posting in-facility, confirmed deaths only using
2420 the retrospective, reconciled data."

2421 Is it your understanding or recollection
2422 that in early May 2020, DOH switched to posting
2423 only in-facility deaths?

2424 A. I don't actually recall that, but it --
2425 she's saying it. I think it was -- this was after

2426 the -- this was May 19th. So this was after the
2427 HERDS survey came out on the reconciliation. So
2428 they were more confident about the numbers
2429 afterwards. I think that prior to April 14th, it
2430 was everything and the kitchen sink, no matter the
2431 date. So they threw every death in there,
2432 regardless of date, time, presumed, confirmed.
2433 All that stuff, yeah.

2434 Q. Do you have any understanding of why you
2435 or the DOH switched to reporting only in-facility
2436 deaths?

2437 A. I think the question -- now, I don't
2438 know if it's in reaction to this e-mail because I
2439 don't want to conflate the change.

2440 Q. So this is after.

2441 A. No, I don't want to -- what I'm about to
2442 say, like, I don't know if it's -- there was some
2443 concern from Ms. DeRosa about double-counting of
2444 deaths in reports. The county gets posted, then
2445 you have the in-facility, out-of-facility. They
2446 were worried about double-counting both the
2447 in-facility and out-of-facility deaths twice.
2448 That was the main concern.

2449 A nursing home would report a death. A
2450 hospital would report a death. It would be the

2451 same death that got reported twice. That was the
2452 concern. So they bifurcated until we reported all
2453 of the nursing home deaths in one place, and all
2454 the hospital deaths in another place so you could
2455 add up the total, and you know you weren't double
2456 counting.

2457 You're talking about April and May after
2458 the initial HERDS survey, that's -- I'm assuming
2459 why they did -- I presume that's why they -- I
2460 recall that's why they did it.

2461 Q. Wasn't the HERDS survey at this time,
2462 also -- well, it asked for in-facility deaths and
2463 out-of-facility deaths?

2464 A. Correct.

2465 Q. How would there be double-counting based
2466 on the HERDS survey?

2467 A. There was still concern by all the data
2468 coming in, whether it's reported from a facility
2469 or not. I'm a nursing home, I'm in a hospital --
2470 this was early April and May. The hospital would
2471 report the death, the nursing home would report
2472 the death to the same place. The person at the
2473 nursing home, they report the death, even though
2474 it was -- that was the double-count potential that
2475 they were worried about.

2476 It wasn't that the survey didn't ask it.

2477 Both sides could answer the same question
2478 differently, that was the problem. That took time
2479 to figure out. You're talking about April and
2480 May. I'm Hospital A.

2481 Q. Okay.

2482 A. I'm Joe Smith. Joe Smith is in nursing
2483 home A. He's sick with COVID. He gets sent to
2484 hospital B. He passes unfortunately in hospital
2485 B. They report it as a death on the HERDS survey.
2486 Nursing home A also reports it in the HERDS survey
2487 as a death. One person now becomes two people in
2488 the reporting. That was the concern at the
2489 initial -- at the initial in May, that was the
2490 initial concern. Instead of one death, you have
2491 the same person dying twice in the public report.

2492 Q. Sure. For these -- for this nursing
2493 home county chart --

2494 A. Yeah.

2495 Q. -- would the data source for that chart
2496 be the reporting from the hospital, or from the
2497 nursing home?

2498 A. Say that one more time, sorry.

2499 Q. For the county chart, would that be
2500 taking into account reporting from the nursing

2501 home --

2502 A. Both.

2503 Q. -- or the health department?

2504 A. Both.

2505 Q. Both?

2506 A. Both. That was the concern. The county

2507 was just an aggregation -- the county breakdown,

2508 too. Some people -- I'm in New York County, which

2509 is in Manhattan. I go to a hospital in facility

2510 in Brooklyn. Brooklyn reports the fatality.

2511 Manhattan reports the fatality. You now

2512 double-counted a geographic problem. It's all

2513 coming from the same source, but everyone is

2514 reporting it differently potentially. The was the

2515 problem in the beginning of April and May. That's

2516 what they were trying to work through.

2517 By the way, they put up a system --

2518 realtime system in three weeks. They did a

2519 reconciliation of thousands of deaths. We're

2520 trying to manage in realtime what the crisis was.

2521 That was the initial concern about doing

2522 in-facility only. All the deaths were reported.

2523 It was categorized differently to make sure you

2524 weren't double-counting. That was the reason for

2525 it. That was why the policy call was made by the

2526 secretary to the governor.

2527 Geographic was also an issue. You go to
2528 a small, Upstate rural community or Upstate
2529 county, there's one nursing home. You die in a
2530 different county, they're counting it differently
2531 in the same -- in two different counties at the
2532 same time. I bet you -- I don't know. I haven't
2533 done the retrospective audit. I bet you they
2534 found some cases like that, though. And the data
2535 was messy. We were asking -- people died at home.
2536 And I mean this is -- this was like a crisis. And
2537 I don't mean to be passionate, but they were
2538 trying to figure out what time it was -- but in
2539 this -- are you talking about May -- middle of
2540 May? We were still -- like, we're still -- you
2541 know, lots of stuff going on. That toll was going
2542 to be higher.

2543 We weren't counting -- we weren't asking
2544 people who were dying at home. States weren't
2545 asking that question. Was it because it wasn't
2546 part of the emergency response about hospital
2547 capacity? But eventually, we wanted to know. I
2548 would want to know in the totality of this -- the
2549 pandemic. I'm sure they could ask that question
2550 now. That was the concern at the first level.

2551 Q. And just one more question about this --
2552 the HERDS survey --

2553 A. Yes, sir.

2554 Q. -- results coming from the hospital.

2555 A. Of course.

2556 Q. Did that -- did hospitals report that
2557 the patient who died had originally come from --

2558 A. I don't know.

2559 Q. -- the nursing home?

2560 A. That, I don't remember. I don't
2561 specifically recall that. I would have to go back
2562 and go through the survey. I don't recall.

2563 Q. Okay. If that wasn't the case, why
2564 would those results go into the nursing home --

2565 A. If you don't know --

2566 Q. -- county chart?

2567 A. If you don't know, I'm a hospital in the
2568 middle of dealing with a crisis. Someone just
2569 died at my hospital. I reported the death.
2570 You're put -- you're not -- this is not a -- we're
2571 doing this with the -- with time on our side in
2572 retrospection. These guys are doing -- you know,
2573 the nursing homes and the hospitals and whatever
2574 other -- Veterans facilities, they're doing this
2575 stuff in realtime. They're managing a crisis.

2576 They're managing PPE distribution, they're
2577 managing testing. They're managing workforce
2578 problems because workforce -- remember, there was
2579 quarantine time for two weeks. So you'd lose a
2580 person for two weeks, then you lose another one
2581 for two weeks. They're trying to fill staffing
2582 while they're also trying to do this. Yes, I --
2583 who knows at the time what they would have been
2584 reporting, not reporting. There could have been
2585 mistakes. That was the reason for the
2586 categorization as of -- in April and May, which is
2587 different than later.

2588 Q. What can you tell us about later, in
2589 terms --

2590 A. Well, if you ask me the question, I'll
2591 answer the question. I don't want to be too
2592 general with that. I feel like it's unfair to
2593 people. If you want to ask the question, I'm
2594 happy to answer specific questions. But you're
2595 asking April and May, so I'm talking in this
2596 context only. You're asking very specific
2597 questions. You're talking about a time where they
2598 actually reconciled numbers. They added thousands
2599 of fatalities to a list. They just redid a
2600 survey. That's the context at which you're

2601 talking about, that time.

2602 Q. Okay. So let's move forward from April
2603 and May.

2604 A. Okay. Sorry.

2605 Q. What do you know about the input
2606 provided by Ms. Baldwin or Ms. Lacewell to Ms.
2607 DeRosa, or anyone higher in the chain of command
2608 about whether or not DOH should report
2609 out-of-facility deaths?

2610 A. I don't know those conversations that
2611 Ms. Lacewell would have, or Ms. Baldwin would
2612 have. I don't know.

2613 Q. Okay. Do you know how Ms. Baldwin or
2614 Ms. Lacewell felt about whether DOH should report
2615 out-of-facility deaths after this April 2020 time
2616 frame?

2617 A. I don't remember, recall. Really, I
2618 don't remember how Ms. Lacewell felt about it.
2619 It's unfair for me to say what she felt about it.
2620 I mean, you should ask her. I don't feel like
2621 it's fair.

2622 Q. I'm going to ask a general question now.

2623 A. Okay.

2624 Q. At any point in time, were you aware of
2625 a member of chamber -- an employee -- an employee

2626 of chamber, or a member of the COVID Task Force
2627 providing input to DOH about DOH's public
2628 reporting, where at least in part, the input was
2629 provided with the intent that DOH report a lower,
2630 rather than higher number?

2631 A. Are you referring to June or should I --
2632 I mean, do you want to ask questions about the
2633 report or --

2634 Q. The July -- no, I --

2635 A. Okay.

2636 Q. I'll save that for later.

2637 A. Okay.

2638 Q. But without specific reference to the
2639 July 6th report, are you aware of that type of
2640 input being provided?

2641 A. Yes.

2642 Q. Could you tell us about that.

2643 A. There was a June 27th call.

2644 Q. Okay.

2645 A. And Ms. DeRosa said she wanted to keep a
2646 different number -- she wanted to use a different
2647 number than what we had in the report.

2648 Q. Who was on that call?

2649 A. It was -- I believe it was me, Beth
2650 Garvey, Linda Lacewell, Howard Zucker, Melissa

2651 DeRosa, and there could have been some others. I
2652 don't know. It was also my commencement day, so
2653 there was lots going on.

2654 Q. Why was that call called?

2655 A. It was about the nursing home report.

2656 Q. The --

2657 A. July -- what ultimately became the July
2658 6th. It was before that, though.

2659 Q. And could you just explain, like, why
2660 Ms. DeRosa said what she said and specifically
2661 what she said?

2662 A. The sum and substance of the call was
2663 she became aware that we were using a number
2664 provided by the Department of Health and McKinsey,
2665 that reported the higher number that included
2666 in-facility and out-of-facility fatalities in the
2667 report. She questioned Mr. Zucker, if I remember
2668 correctly, strenuously and aggressively about why
2669 that was and whether she could trust it. And she
2670 ultimately said she wanted the number pulled out
2671 until they could verify the numbers.

2672 Q. Okay.

2673 A. I responded after that because it was a
2674 frustrating call, suggesting somehow that I want
2675 to make clear that these were the numbers provided

2676 by me, by Ms. DeRosa, Ms. Lacewell, and everyone
2677 else that remained in the report.

2678 Q. Did Ms. DeRosa's suggestion face any
2679 resistance from anyone on the call?

2680 A. At first, and then it was -- I would --
2681 I'm sure Mr. Zucker -- Commissioner Zucker can
2682 characterize the activities. There wasn't really
2683 at the end much option for rebuttal.

2684 Q. Why not?

2685 A. It was a really aggressive call.

2686 Q. Okay. Do you --

2687 A. And she's the secretary to the governor.

2688 MS. [REDACTED] We can go off the record.

2689 (Short break was taken off the record.)

2690 MS. [REDACTED] We're going to shift topics
2691 for just a little bit.

2692 THE WITNESS: Okay.

2693 MS. [REDACTED] We just have a few minutes
2694 left. This won't be very long.

2695 THE WITNESS: Okay.

2696 EXAMINATION BY

2697 MS. [REDACTED]

2698 Q. There was some talk earlier about the
2699 March 25, 2020, order. I know you said you
2700 weren't involved.

2701 A. I wasn't involved in the -- just for the
2702 record, I wasn't involved in the creation or
2703 implementation of the order.

2704 Q. Right, but we are going to discuss it a
2705 little bit.

2706 A. Okay.

2707 MS. [REDACTED] I'm sorry, I only have a few
2708 copies of the exhibit, but I think you all are
2709 familiar with it. So we'll introduce this as
2710 Minority Exhibit C.

2711 (Minority Exhibit C was marked for
2712 identification.)

2713 BY MS. [REDACTED]

2714 Q. So this is federal guidance from the
2715 Centers for Medicare & Medicaid services, as you
2716 can see on the top. And recognizing that in March
2717 2020, everyone was scrambling, there was not a lot
2718 of information. You referred to that several
2719 times. Everyone was gathering information, trying
2720 to learn how to deal with COVID and how to limit
2721 the spread.

2722 But in your experience working in New
2723 York State, would federal guidance, such as
2724 guidance from the Centers for Medicare & Medicaid
2725 Services inform state-level policy making?

2726 A. Generally?

2727 Q. Yes, generally.

2728 A. Perhaps at times, perhaps not at times.

2729 I mean, it depends on the issue, I guess.

2730 Q. But particularly for an area, where the
2731 state maybe doesn't have all the information they
2732 would need, would it make sense they would look to
2733 federal guidance?

2734 A. It's hard to talk in the abstract. I
2735 would say there was a lot of interaction between
2736 state and federal governments during the crisis.
2737 I --

2738 Q. Okay. This is --

2739 A. I mean, that's -- I mean, it's hard to
2740 -- I mean, it's a -- I guess, sometimes yes, and
2741 sometimes no to -- you know, we're a federal
2742 system. So sometimes states didn't, and sometimes
2743 states did.

2744 Q. This is a March 4th, 2020, order, so
2745 before --

2746 A. Okay.

2747 Q. -- the March 25th New York State order.

2748 A. Okay.

2749 Q. And we are going to look at one section
2750 on Page 3.

2751 A. Okay.

2752 Q. Under the header, "When should a nursing
2753 home accept a resident who was diagnosed with
2754 COVID-19 from a hospital?"

2755 Do you see that question?

2756 A. That's the second full subheader? Is
2757 that --

2758 Q. Yes.

2759 A. Okay.

2760 Q. So I'm going to read a part of that
2761 paragraph here. It begins: "A nursing home can
2762 accept a patient diagnosed with COVID-19, and
2763 still under transmission-based precautions for
2764 COVID-19, as long as it can follow CDC guidance
2765 for transmission-based precautions. If a nursing
2766 home cannot, it must wait until these precautions
2767 are discontinued."

2768 I know you weren't responsible for
2769 drafting the guidance or issuing the guidance, but
2770 you did say you became familiar with it later.

2771 Do you agree, looking at this and
2772 knowing what you know about what was going on with
2773 nursing homes, do you agree that this guidance
2774 does not bar the readmission of COVID-19 positive
2775 patients to nursing homes?

2776 A. As a non-lawyer, that was my
2777 understanding after the March 25th order was
2778 issued.

2779 Q. Okay. And on the flip side, do you
2780 agree that this federal guidance establishes a
2781 premise that COVID-19 positive hospital patients
2782 could be re-admitted to nursing homes under
2783 certain circumstances?

2784 A. Correct.

2785 MS. [REDACTED] Thank you very much.

2786 EXAMINATION BY

2787 MR. [REDACTED]

2788 Q. Earlier, you mentioned I think it was a
2789 June 27, 2020, call?

2790 A. I believe that was the time -- around
2791 then. Was that a Saturday?

2792 Q. I don't know.

2793 Was the former governor on that call?

2794 A. He was not.

2795 Q. Was Ms. Lacewell on the call?

2796 A. She was. I recall her being on the
2797 call.

2798 Q. Okay. Was it your understanding that
2799 after that call, in terms of DOH's daily public
2800 reporting, the public reporting would not include

2801 out-of-facility deaths?

2802 A. I just want to be precise with the
2803 answer. After they called, the question was not
2804 to be -- the question was not a going-forward
2805 discussion. It was what -- what was included in
2806 the report.

2807 Q. Okay.

2808 A. I do not recall it being a going-forward
2809 discussion. I don't remember what was in the
2810 report at the time.

2811 MR. CONNOLLY: Sorry, what call was
2812 this? What was the date of the call?

2813 MS. [REDACTED] The June 27th call.

2814 MR. [REDACTED] It was a Saturday.

2815 THE WITNESS: I remember because it was
2816 my commencement.

2817 MS. [REDACTED] And that confirms how much
2818 you had going on at the time. We understand that.

2819 THE WITNESS: Correct.

2820 MS. [REDACTED] I believe now we can go off
2821 the record.

2822 (Short break was taken off the record.)

2823 MR. EMMER: We can go back on the
2824 record.

2825

2826 BY MR. EMMER:

2827 Q. Dr. Malatras, I know the previous hour,
2828 we discussed the March 25th order. And I just
2829 want to spend some time just going through it.
2830 It's Exhibit 4. Do you have it in front of you?

2831 A. I can find it. Hold on. Yes, I have
2832 it.

2833 Q. Again, I know that you weren't part of
2834 the implementation, the issuance, but you did say
2835 that you did take time to go through it and try to
2836 understand it. So I just want to ask you some
2837 general questions.

2838 First, I'd want to focus on the fifth
2839 paragraph, and I will read it into the record.

2840 "No resident shall be denied readmission
2841 or admission to the nursing home solely based on a
2842 confirmed or suspected diagnosis of COVID-19.
2843 Nursing homes are prohibited from requiring a
2844 hospitalized resident, who is determined medically
2845 stable to be tested for COVID-19 prior to
2846 admission or readmission."

2847 Can you briefly explain from your
2848 understanding how nursing homes were to interpret
2849 that requirement?

2850 A. I don't -- this is not not answering the

2851 question. I don't know how they were supposed to
2852 interpret that. I think retrospectively, looking
2853 at this, it was in the totality of all sorts of
2854 guidance that you had to be able to deal with
2855 people coming back. There was a reason for people
2856 coming back to the places where they lived, that
2857 they were stable, et cetera.

2858 Q. And you mentioned the totality of
2859 guidances. Do you think it would have been
2860 helpful to reference -- I mean, we talked about
2861 CMS and CDC guidance. Do you think it would have
2862 been helpful to reference those guidances on the
2863 order itself?

2864 A. I mean, this is hard for me because I
2865 wasn't part of this -- you know, creation of this
2866 order. In retrospect, could language be done
2867 differently? Of course. Ultimately, it was
2868 changed several weeks later to be more precise,
2869 but, you know, in the middle of -- end of March,
2870 while there's a crisis at hand, lots of guidance
2871 was going out. Was it the most artful always?
2872 Probably not.

2873 MR. BENZINE: Some of the intertwining
2874 guidances or the cohorting and isolation guidance,
2875 and a prerequisite of a -- knowing whether or not

2876 to cohort or isolation is that the person has
2877 COVID-19. In the March 25th guidance,
2878 specifically barred testing. And I don't know.
2879 It's a question -- I don't know -- if you would
2880 know the answer to, but that just seems to not --
2881 not work together. If the nursing home is -- is
2882 not allowed to test them, how would they know to
2883 cohort them?

2884 THE WITNESS: I don't know why that
2885 language is the way it is. Again, you're asking
2886 the guy who didn't develop this guidance. Seeing
2887 it in retrospect, I think at the time it was -- we
2888 just had this whole discussion from the Minority
2889 questions about presumed and confirmed. Most of
2890 this was people were presumed to be COVID positive
2891 even without test. I think if you're talking
2892 about March 25th, we were doing maybe -- I'm now
2893 making it up, it's within the ballpark -- 2000
2894 tests for the entire of New York a day. There are
2895 20 million people in the State of New York.
2896 Hundreds of thousands of people in a nursing home
2897 facility.

2898 So there weren't even enough tests to
2899 get at this, so I think there -- I think if you're
2900 looking at this, how they were writing this was --

2901 the most precise language to use, I don't know.
2902 It was even if you're presumed to be COVID
2903 positive, you still have to let them back in
2904 because if they're home, you can't test -- come up
2905 with a test because there weren't enough tests, if
2906 that becomes a barrier for re-entry. I assume
2907 that's what they meant by it, but you would have
2908 to ask the authors of this.

2909 I can see the policy reasons for doing
2910 it, and this was like -- like, this is -- because
2911 I know this has been out there in the news and
2912 things like that. This is all a tragic situation.
2913 Just so we're clear. I mean, I don't think
2914 anybody -- at least the people I worked with on
2915 the ground, whether they're in the Health
2916 Department or other places, people wanted to solve
2917 problems. Right now, they're dealing with a
2918 crisis. Right? It wasn't if they were like, you
2919 know, callously coming up with guidance to hurt
2920 people. I get that sometimes there are bad policy
2921 outcomes, but there's a difference there. I just
2922 wanted to say that because this wasn't even me.

2923 MR. BENZINE: No, absolutely. It wasn't
2924 the Department of Health, either.

2925 THE WITNESS: I'm just -- I'm just

2926 saying, but it -- Dr. Zucker -- you know, it's
2927 important to say that.

2928 MR. BENZINE: Yeah, yeah. No, I
2929 definitely appreciate that. It's one of the
2930 things that we're trying to figure out is: Dr.
2931 Zucker didn't write this, Mr. -- Dr. Dreslin
2932 didn't write this. We have no idea where this
2933 came from.

2934 THE WITNESS: That is not a question for
2935 me, unfortunately, I can answer.

2936 MR. BENZINE: Yeah.

2937 THE WITNESS: Or fortunately, depending
2938 on your point of view.

2939 MR. BENZINE: Yeah.

2940 BY MR. EMMER:

2941 Q. Just circling back to the answer you
2942 provided. You were describing readmissions. That
2943 is the residents who were returning back to their
2944 -- the nursing home that they were previously at.
2945 And if you're not able to answer this question,
2946 your -- that's fine, but do you know who would
2947 have determined if an individual be sent to a
2948 nursing home as a new resident?

2949 A. I don't know.

2950 Q. Okay.

2951 MR. BENZINE: Were there -- and I don't
2952 know if this was data collected. Were there
2953 nursing home residents that were readmitted into
2954 nursing homes that were not their original nursing
2955 home?

2956 THE WITNESS: I don't know for certain.
2957 I'm not saying there wasn't. I just don't know
2958 for certain. Sitting here, I don't remember.

2959 MR. BENZINE: Yeah.

2960 MR. EMMER: At this time, I would like
2961 to introduce what will be marked as Majority
2962 Exhibit 5.

2963 (Majority Exhibit Number 5 was marked
2964 for identification.)

2965 BY MR. EMMER:

2966 Q. This is entitled, "Guidance for
2967 Infection Control and Prevention of Coronavirus
2968 Disease 2019 in Nursing Homes", issued by CMS on
2969 March 13th.

2970 A. Okay.

2971 Q. In the previous hour, you briefly
2972 reviewed CMS guidance that was issued, I believe,
2973 a week before. And I -- again, I don't want to
2974 make -- I'm sorry to make you repeat yourself, but
2975 are you able to answer today whether this guidance

2976 is consistent with the March 25th order?

2977 A. This, that you've just handed to me?

2978 Q. Yes.

2979 A. I don't know for certain.

2980 Q. Okay. Do you know who would have made
2981 the determination within the administration that
2982 the March 25th order was consistent with CMS and
2983 CDC guidance?

2984 A. I don't know. There's counsel's office,
2985 there's a health department, but I don't know for
2986 certain who said it was conforming. I don't have
2987 any knowledge of that -- or I don't recall any
2988 knowledge of who said it conformed, nor do I know
2989 if there wasn't. I just don't know.

2990 MR. BENZINE: On the conforming
2991 question. And I don't know if we'll get to it
2992 later, but Dr. Verma gave a press statement that
2993 was -- in essence, it didn't conform to CMS
2994 guidance. Oh, is that this exhibit?

2995 MR. EMMER: Yes. You're an exhibit
2996 ahead. I got it in front of him.

2997 THE WITNESS: You're all of the same
2998 mind.

2999 MR. EMMER: At this time, I would like
3000 to introduce what will be marked as Majority

3001 Exhibit 6.

3002 (Majority Exhibit Number 6 was marked
3003 for identification.)

3004 BY MR. EMMER:

3005 Q. And this is an e-mail thread between
3006 Executive Chamber and Health Department officials,
3007 including yourself, Secretary DeRosa, Ms.
3008 Lacewell, Dr. Zucker -- and Dr. Zucker on June
3009 22nd, 2020. And as mentioned, this is attaching
3010 an article from Seema Verma, saying that Cuomo
3011 contradicted federal nursing home guidance. And
3012 I'll give you a minute to refresh your
3013 recollection.

3014 A. Yeah, this is a long story. Okay.

3015 Q. As you can see, the e-mail in response
3016 to this article is heavily redacted. Do you
3017 recall how the administration reacted to
3018 Administrator Verma saying that the order
3019 contradicted federal guidance?

3020 A. I don't -- I don't really recall. I --
3021 I mean, I would -- I was -- would assume that
3022 given the timing of the assertion coming well
3023 after the March 25th order, and then the changes,
3024 that there's probably a subtext of larger
3025 political considerations that play between both

3026 administrations and the substance, but I don't
3027 know. I don't remember the reaction to people --
3028 the exact at the time from this thread.

3029 Q. And for the record, the article is from
3030 June 22nd, 2020. This was the period in which you
3031 and the administration were drafting the July 6th
3032 report. Do you recall any discussions -- I'm just
3033 going to restart the question.

3034 For the record, the article is from June
3035 22nd, 2020. Is this the period in which you were
3036 drafting the July 6th report?

3037 A. It has appeared by which the -- the
3038 report was being drafted.

3039 Q. Were there any discussions in response
3040 to Administrator Verma's statement that it
3041 contradicted federal guidance? Were there any
3042 discussions around the July 6th order to firmly
3043 say that the March 25th order was based on CMS and
3044 CDC guidance?

3045 A. I don't remember.

3046 MR. BENZINE: It's an odd question on
3047 the page marked 3479, which is the back of the
3048 first page.

3049 THE WITNESS: 3479, okay.

3050 MR. BENZINE: It says -- the middle

3051 e-mail is resending with MDR, Melissa DeRosa,
3052 correct e-mail.

3053 Did she have more than one e-mail, or do
3054 we think someone put a typo in her e-mail?

3055 THE WITNESS: If I remember correctly --
3056 now, this is four years ago, and it was not my
3057 e-mail address. She got another chamber e-mail,
3058 because her initial chamber e-mail was getting
3059 flooded with e-mails or something like that. So
3060 it was like an issue. She was getting so much
3061 e-mail that they switched e-mail accounts. I
3062 don't for 100 percent certainty know, but I think
3063 that's what that was.

3064 MR. BENZINE: Okay. Was her other
3065 e-mail like a public e-mail, and that's why it may
3066 have gotten flooded with stuff?

3067 THE WITNESS: I recall -- I think the
3068 governor gave out the e-mail at one of the events,
3069 and the telephone numbers.

3070 MR. BENZINE: Principals.

3071 THE WITNESS: And the governor also gave
3072 out our cell phones. I think Larry and my cell
3073 phone -- Larry Schwarz my cell phone was also
3074 given out at a press event, and we saw a strong
3075 uptick in calls.

3076 MR. EMMER: At this time, I would like
3077 to introduce what we marked as Exhibit 7.

3078 (Majority Exhibit Number 7 was marked
3079 for identification.)

3080 THE WITNESS: Thank you.

3081 BY MR. EMMER:

3082 Q. This is the guidance issued by the New
3083 York State Health Department on April 7th, 2020,
3084 entitled, "Adult Care Facility Administrators,
3085 Hospital Discharge Planners".

3086 Dr. Malatras, do you recognize this
3087 guidance?

3088 A. I recognize this guidance.

3089 Q. Did you also do a review of this
3090 guidance when you're doing your review of the
3091 March 25th order?

3092 A. Yes.

3093 Q. I should have asked this first, but do
3094 you recall when you learned of this guidance?

3095 A. I don't remember exactly.

3096 Q. But for the record, you weren't involved
3097 in the -- prior to its issuance?

3098 A. April 7th, I don't recall being involved
3099 in this, no.

3100 Q. Do you know who drafted this guidance?

3101 A. I don't. Wait. Hold on. This is April
3102 7th of -- I don't remember this one.

3103 Q. Okay.

3104 A. Was there another one after this --
3105 after the March 25th one? I just want to make
3106 sure I'm being precise. This wasn't directly in
3107 relation to March 25th. Was there another order
3108 directly in relation to March 25th that came
3109 later?

3110 Q. Yes.

3111 A. I'm not aware of this one, then. I got
3112 confused. I apologize. I don't recall this one,
3113 then.

3114 Q. Okay. We will move on.

3115 Dr. Malatras, do you recall how long the
3116 March 25th order was in effect?

3117 A. A couple of weeks at the -- I can't
3118 remember exactly the time frame, but several
3119 weeks.

3120 Q. And you were kind of getting to it
3121 before, but you mentioned that there was a
3122 subsequent order to the March 25th order.

3123 Do you characterize that -- did you
3124 characterize the May 11th order as rescinding the
3125 March 25th order, or terminating it? How would

3126 you characterize it?

3127 A. I called it like -- I would consider it
3128 clarifying what the administration was intending
3129 on the original order.

3130 MR. EMMER: At this time, I would like
3131 to introduce Majority Exhibit 8.

3132 (Majority Exhibit Number 8 was marked
3133 for identification.)

3134 THE WITNESS: I also haven't looked at
3135 this in a long time.

3136 BY MR. EMMER:

3137 Q. Yeah. This is a press statement
3138 entitled, "Amid Ongoing COVID-19 Pandemic,
3139 Governor Cuomo Announces New York is Notifying 49
3140 Other States of COVID-related Illness In
3141 Children", from May 10, 2020.

3142 This statement announces the Executive
3143 Order that mandated that hospitals cannot
3144 discharge a patient to a nursing home, unless that
3145 patient tests negative.

3146 A. Yes, the test requirement is different.

3147 Q. Yes.

3148 A. Okay. I see.

3149 Q. And the reason why I asked you how you
3150 characterize it, whether it was rescinding it or

3151 terminating it, is just there were numerous
3152 members of the administration, including Dr.
3153 Zucker himself, who argued that it was never
3154 terminated; that in effect, this just modified it
3155 to add the testing requirement. That's how you
3156 understood it?

3157 A. I -- that was my understanding of it
3158 because there were more -- also more tests at the
3159 time in May.

3160 Q. Okay. And you may have just answered my
3161 next question, but what prompted the governor to
3162 -- to -- to issue this executive order requiring
3163 tests?

3164 A. I don't know why the governor issued the
3165 order. You would have to ask the governor or Ms.
3166 DeRosa about why they issued the order.

3167 Q. So did you not have a role in this --
3168 the May 11th?

3169 A. I was part of this whole process because
3170 it was more than just this order. It was a whole
3171 number of different issues with respect to nursing
3172 homes; but why he issued this order at that time,
3173 you would have to ask him.

3174 Q. Can you clarify what you meant when you
3175 said that you were involved in this process, not

3176 specifically this order, but can you just
3177 elaborate.

3178 A. I think at the time, this was May --
3179 April and May, there was considerable press
3180 inquiries about this. That's not a secret. And
3181 it was why don't we just address and clarify.
3182 Some of us -- my position was why don't we just
3183 address and clarify some of these issues to make
3184 it clear what it should be, and be done with it.
3185 That was my overall position.

3186 MR. BENZINE: Was there any pushback to
3187 that position?

3188 THE WITNESS: It came out eventually May
3189 11th. So to my point, you would have to ask them
3190 why the timing was the timing. I'm not trying to
3191 be evasive. I just don't know the motivation of
3192 why at that time.

3193 BY MR. EMMER:

3194 Q. Dr. Malatras, do you know why the March
3195 25th order was removed from Department of Health
3196 website on April 28th, prior to the May 11th
3197 order?

3198 A. That, I don't recall.

3199 Q. Okay.

3200 MR. EMMER: At this time, I would like

3201 to introduce what we've marked as Majority Exhibit
3202 9.

3203 (Majority Exhibit Number 9 was marked
3204 for identification.)

3205 BY MR. EMMER:

3206 Q. This is an e-mail thread that was
3207 started by Ms. Stephanie Benton to you, Gareth
3208 Rhodes, Melissa DeRosa and Dr. Zucker on June 7,
3209 2020.

3210 A. Yes.

3211 Q. Ms. Benton attaches an article seemingly
3212 critical of the March 25th order, and writes:
3213 "This is going to be the great debacle in the
3214 history books. The longer it lasts, the harder to
3215 correct. We have a better argument than we made.
3216 Get a report on the facts because its legacy will
3217 overwhelm any positive accomplishment. Also, how
3218 many COVID people were returned to nursing homes
3219 in that period? How many nursing homes? Don't
3220 you see how bad this is, or do we admit error and
3221 give up?"

3222 First, who is Ms. Benton?

3223 A. Stephanie Benton is the director of the
3224 governor's offices.

3225 Q. Do you -- do you recall receiving this

3226 e-mail?

3227 A. I do recall receiving this e-mail.

3228 Q. What great debacle do you think she's
3229 referring to?

3230 A. I think she's referring to the whole
3231 issue surrounding the March 25th order and the
3232 nursing home issue. And this is because -- that's
3233 what the story attached is.

3234 Q. Then, she writes: "Give a report on the
3235 facts."

3236 Do you think she's referring to the July
3237 6th report?

3238 A. Yes.

3239 Q. Was Ms. Benton involved in the report?

3240 A. She was involved in submitting back
3241 comments from the governor at times in
3242 establishing meetings, and we took this e-mail as
3243 not coming from Ms. Benton. This was a message
3244 from the governor.

3245 Q. And that was going to be my next
3246 question.

3247 MR. BENZINE: Was that common?

3248 THE WITNESS: I don't know if it was
3249 common, but you could understand sometimes if it
3250 was coming from Ms. Benton, or if it was coming

3251 from the governor. "Debaacle".

3252 BY MR. EMMER:

3253 Q. Further up the page, Ms. DeRosa writes
3254 in response: "Tracy, please set call with this
3255 group for today after the press conference to go
3256 through."

3257 Do you recall having a call in response
3258 to this e-mail?

3259 A. I don't remember the call on that day,
3260 no. I'm not saying it didn't happen. I don't
3261 remember -- I don't specifically remember the
3262 call.

3263 Q. But around this period in this -- the
3264 number of it -- the people that this e-mail was
3265 sent to: Yourself, Gareth Rhodes, Howard Zucker,
3266 Ms. DeRosa. We have Linda Lacewell.

3267 Do you recall having calls with them
3268 regarding --

3269 A. Yes.

3270 Q. -- nursing homes?

3271 Was the governor ever also on these
3272 calls discussing the issue around nursing homes?

3273 A. He was never on these calls in the early
3274 parts of June, no.

3275 MR. BENZINE: When did he start joining

3276 the calls?

3277 THE WITNESS: For the planning of the
3278 event, I think he was on maybe one or two calls
3279 during the time of July when he was plan --
3280 they're planning the event. Mr. Zucker was having
3281 his event.

3282 MR. BENZINE: Which event?

3283 THE WITNESS: The July 7th, when he
3284 announced the report.

3285 MR. BENZINE: Oh, okay. And stemming
3286 back a little bit. You said that -- and apologies
3287 if it's mischaracterizing -- that Ms. Benton would
3288 also in the report -- and I'm sure we'll get in
3289 more detail later, but would send comments back
3290 from the governor.

3291 THE WITNESS: Correct.

3292 MR. BENZINE: In Track Changes in the
3293 report, or was it kind of general change this?

3294 THE WITNESS: He didn't off -- he didn't
3295 use a computer for those purposes. So it would be
3296 either handwritten notes, or they would -- he
3297 would have been handing changes to Ms. Benton.
3298 There was another assistant, Annabel Walsh, who
3299 would have done it, and then sent it back to a
3300 number of us.

3301 BY MR. EMMER:

3302 Q. You probably won't be able to answer
3303 this, but why didn't he use a computer?

3304 A. I -- you know, I -- generational, I --
3305 you know, so many people that do -- lots of
3306 principals don't use computers and e-mails.

3307 MR. EMMER: At this time, I'd like to
3308 introduce what we've marked as Majority Exhibit
3309 10.

3310 (Majority Exhibit Number 10 was marked
3311 for identification.)

3312 BY MR. EMMER:

3313 Q. This is the same e-mail thread, except
3314 Dr. Zucker replied directly to Stephanie Benton
3315 writing: "The data showing that the March 25th
3316 memo was not the cause of the nursing home deaths
3317 was reviewed on Thursday with a meeting that Linda
3318 oversees. Linda asked for a follow-up meeting on
3319 Monday with additional information. Rich A has a
3320 team working on messaging of this."

3321 To the best of your recollection, did
3322 you participate in this meeting?

3323 A. No, and I think some context is
3324 important because this is where there's thousands
3325 of e-mails. June 7th is when the governor sends

3326 to Stephanie Benton this note. They say get this
3327 report done. Shortly thereafter, if I remember
3328 correctly, on that same day, Ms. DeRosa loops in
3329 Ms. Lacewell, who then forwards a whole packet of
3330 information, a whole deck of information provided
3331 by McKinsey's, Department of Health. That was the
3332 first time I've seen it, so it suggests to me --
3333 this was -- this analysis had been going on for
3334 some time. I'm kind of coming in at the tail end
3335 of this. So that information, I -- I don't recall
3336 being on those calls early on until after that
3337 note.

3338 Q. And I apologize if I make you repeat
3339 yourself. We're going to be touching on some of
3340 the questions that the minorities have asked in
3341 the previous hour.

3342 A. Of course.

3343 Q. So we're going to talk about the data
3344 from nursing homes and how the administration was
3345 reviewing it.

3346 So just a quick question off the top.
3347 Yes or no, is accurate data important for
3348 informing public health decisions?

3349 A. Yes.

3350 Q. Do you think the former governor

3351 presented accurate data throughout the pandemic?

3352 A. The entire period of time, no.

3353 Q. Do you think the governor was fully
3354 transparent regarding nursing home data throughout
3355 the pandemic?

3356 A. No.

3357 Q. Can you elaborate on why you didn't --
3358 or why you don't think he was transparent related
3359 to nursing home data?

3360 A. Well, to -- this so -- it's only in
3361 relation to press reports; but at the end of
3362 August, into September, there was -- I read about
3363 this in the New York Times. I was already -- I
3364 was Chancellor at this time -- that an audit was
3365 conducted by Mr. Rhodes, which found that there
3366 were some discrepancies in the data; but overall,
3367 the numbers were roughly 9,000 something, and that
3368 that was the full view of the nursing homes
3369 through the audit.

3370 So in reading that, I would say at that
3371 point in time, that should have been made pub -- I
3372 -- if I was -- had authority to do something, I
3373 would have made that public.

3374 MR. BENZINE: And this is similar to
3375 what you were discussing before, the

3376 under-reporting, the gap? No?

3377 THE WITNESS: These are two different
3378 things.

3379 MR. BENZINE: Okay.

3380 THE WITNESS: In April -- this is why
3381 this stuff gets really confusing, and everybody --
3382 I understand in the press and political maelstrom,
3383 it looks one way. Early on in April and May,
3384 besides the data collection thing being a problem
3385 -- I mean, right questions weren't being asked.
3386 It wasn't being reported accurately on time for a
3387 whole host of reasons. The initial stuff, what I
3388 talked about, was an actual under-reporting. We
3389 did a retrospective look, the -- the state. The
3390 state did find through reporting early on. In
3391 retrospect -- they looked back after the new reach
3392 -- so they went out and did the old view.

3393 There were a hand -- there were -- I
3394 don't -- can't remember. 200, 3 -- whatever the
3395 number was. I don't remember exactly the number.
3396 So for the purpose of the testimony, I'm just --
3397 I'm making up that number. That was actually
3398 under-reported. We added that back to the thing.
3399 I insisted on that, which was different on how it
3400 was categorized. That number was a different

3401 thing and a moving target always, because of the
3402 concern about double reporting from different
3403 entities. I report the same number from a nursing
3404 home, I report the same number from a hospital.
3405 Two becomes -- one becomes two. Same thing for
3406 the county, et cetera, et cetera. What was your
3407 question? I forgot the --

3408 MR. BENZINE: Well, it was if the Rhodes
3409 audit and the under-reporting in the beginning --

3410 THE WITNESS: Two separate things.

3411 MR. BENZINE: -- that they were two
3412 separate things.

3413 THE WITNESS: Mr. Rhodes' audit in
3414 reading -- I mean, I knew he was doing it. I
3415 wasn't there for the finality of it. And reading
3416 the Times was -- in the end, when the question did
3417 become -- which was the minority's question --
3418 could you reconcile without double-reporting,
3419 double-counting the nursing home residents who
3420 passed away in a facility -- in a nursing facility
3421 or in a hospital without double-counting. At that
3422 point, they could have done that. They could have
3423 posted it.

3424 BY MR. EMMER:

3425 Q. Did you have any role in the governor's

3426 daily press briefings?

3427 A. I did.

3428 Q. Can you just briefly describe your role?

3429 A. We -- I was part of a team that often
3430 did the public presentations. We gathered all the
3431 information, and put the public presentations
3432 together for his daily press conferences.

3433 Q. And you said "information".

3434 Does that entail the data --
3435 specifically that data --

3436 A. Yes, reporting comes --

3437 Q. -- from nursing homes?

3438 A. Sorry. Yes, it included a whole host of
3439 numbers, yeah.

3440 Q. And were --

3441 A. At the -- let me -- until the end of
3442 May. By June, I was at -- I was at some of the
3443 briefings at times, but not all the times, and I
3444 came -- I was basically at the day-to-day, which
3445 was April and -- March, April, a little bit of
3446 May.

3447 Q. The data that you were using for the
3448 daily briefings, where were -- where was that data
3449 being retrieved from?

3450 A. The fatality data often came through

3451 Linda Lacewell or Megan Baldwin through the HERDS
3452 system or whatever, but that largely came up that
3453 way. And it depended on the different issues of
3454 the day. Frankly, depending on what the issue was
3455 that the governor was discussing.

3456 Q. When we -- or when Mr. Rhodes testified
3457 a few weeks ago, he described the process that
3458 McKinsey was involved in the daily briefings.
3459 They would provide slides that would provide
3460 numbers, and it was his -- his recollection of the
3461 -- of events was that the numbers that they were
3462 receiving, there was really no opportunity to
3463 manipulate them. It was just the slides that
3464 McKinsey produced.

3465 A. At the -- at the beginning, when -- yes,
3466 I would assume that they were often pulling the
3467 slides from McKinsey related to the curve, which I
3468 think was what he's talking about, that -- how
3469 many fatalities per day, when we're going to max
3470 out on hospital beds. That was coming directly
3471 from McKinsey.

3472 Q. To make sure the record is clear. When
3473 you were putting together the daily briefing, were
3474 there ever conversations not to include certain
3475 fatality data?

3476 A. The one -- the one early on that I
3477 remember specifically was the end size. There was
3478 a question of do you report fewer than five, or do
3479 you -- because you can then pinpoint back to an
3480 individual without talking to the family first. I
3481 think that was a thing that early on was one of
3482 the things that I remember came up.

3483 The McKinsey question, I just want to
3484 clarify. It's not even about -- I would --
3485 "manipulate", I think, is a wrong word for that
3486 question. They had a model that they used for
3487 projecting fatalities -- for -- for projecting the
3488 number of cases and the number of hospital beds
3489 used. Mike Schmidt and I did get involved in
3490 redoing the model, which we brought other experts
3491 in to reevaluate the model, because our model
3492 ended up being closer to the truth -- closer to
3493 what happened based on new information coming in.

3494 So I -- you can say it's early on, they
3495 plugged in just the McKinsey report based on what
3496 they knew, and the governor was reporting it.

3497 Q. I'm going to try to not have to make you
3498 repeat yourself too much here, but I want to
3499 return to the timeline that -- that period that
3500 you were discussing with minority, as far as the

3501 HERDS data.

3502 So April -- so at the very beginning,
3503 the HERDS survey did not ask about death data
3504 related to nursing homes; is that right?

3505 A. It asked for fatality data, but it -- if
3506 I recall, it wasn't a series of questions. It was
3507 who passed away from your facility, irrespective
3508 of a nursing home, hospital. It didn't -- I don't
3509 remember -- if I remember correctly, it didn't ask
3510 the date. So part of the issue you were getting
3511 was -- April 23rd, you would get a report -- let's
3512 say before that -- March 29th, you would get a
3513 report of five fatalities. What we were looking
3514 for -- what the state was looking for was on that
3515 day, so you can measure what the trend was going
3516 to be; but they were sending you was that person
3517 did die in our facility in February. So it didn't
3518 ask those sets of precise questions until April
3519 16th -- right in the middle of April.

3520

3521 MR. EMMER: At this time, I would like
3522 to introduce what will be marked as Majority
3523 Exhibit 10.

3524 MR. BENZINE: Eleven.

3525 MR. EMMER: Excuse me, that's 11.

3526 (Majority Exhibit Number 11 was marked
3527 for identification.)

3528 BY MR. EMMER:

3529 Q. This is the report issued by the Office
3530 of the New York State Comptroller entitled,
3531 "Department of Health Use, Collection and
3532 Reporting of Infection Control Data", issued in
3533 March of 2022.

3534 Dr. Malatras, do you recognize this
3535 report?

3536 A. I recognize this report. I will say for
3537 the record I have not read this report, but I
3538 recognize it.

3539 Q. And in the previous hour, you testified
3540 that you were not interviewed as part of the
3541 comptroller's review?

3542 A. I was not.

3543 Q. I want to direct your attention to the
3544 top of Page 13.

3545 A. Okay.

3546 Q. And I will read it out loud for the
3547 record. It writes: "When the department first
3548 started collecting information about deaths in
3549 nursing homes, data accuracy was poor. However,
3550 even as data accuracy improved, the department

3551 consistently underreported the total number of
3552 nursing home deaths to the public until February
3553 4th, 2021. Throughout the pandemic, the
3554 department used alternating methodologies to
3555 account for nursing home deaths."

3556 I just want to focus on the second part
3557 of that paragraph. Why did the administration use
3558 alternating methodologies to account for nursing
3559 home deaths?

3560 A. It depends on the time period. I -- I
3561 think I described in the -- in the early months
3562 when we actually did a more robust version of the
3563 HERDS report that actually asked more detailed
3564 questions, there were concerns about
3565 double-counting from senior officials, including
3566 with -- from mostly DeRosa.

3567 Q. So --

3568 A. After -- after the -- I don't -- you
3569 know, when it comes to, you know, posting the time
3570 period -- period, I talk about post-audit and
3571 things like that. I can't -- I can't describe why
3572 they did, or did not do what they did.

3573 Q. But to be clear, what you're testifying
3574 is that Melissa DeRosa was involved in the
3575 decision to change the methodology that was used

3576 throughout the pandemic?

3577 A. It was her decision.

3578 Q. It was her decision.

3579 So continuing on the same page --

3580 A. Okay.

3581 Q. -- of the report. We are looking at the
3582 second paragraph and the second sentence.

3583 A. Second paragraph, and the second --
3584 second, okay.

3585 Q. "For the next 18-day period, April 15th
3586 to May 2nd, 2020, the department added reporting
3587 of presumed deaths by county, as well as both
3588 confirmed and presumed deaths by individual
3589 facility; but only if the facility had five or
3590 more deaths, thus over 50 percent of the deaths
3591 that should have been reported at the end of that
3592 period were not an error rate of over 100
3593 percent."

3594 Can you explain why death data was
3595 differentiated between presumed and confirmed
3596 deaths?

3597 A. There was a concern at first -- well, it
3598 was to the accuracy. They wanted to make sure it
3599 was a confirmed death, not a presumed death.

3600 Q. Do you know why death totals at

3601 facilities with less than five deaths were not
3602 included?

3603 A. That was the discussion about insights
3604 in some smaller counties, where you could actually
3605 pinpoint back to an individual.

3606 Q. To be clear, was -- is that your -- is
3607 that for privacy reasons?

3608 A. It was a privacy issue at first, yeah.

3609 MR. BENZINE: Were those deaths counted
3610 internally, just not publicly reported?

3611 THE WITNESS: I would presume so. I
3612 don't remember. I would -- I want to be precise
3613 because I don't actually remember. Everything
3614 would have been in the death total. It would have
3615 been in some file.

3616 MR. BENZINE: Okay. So it could have
3617 been --

3618 THE WITNESS: Because individual --
3619 every individual -- the change in the HERDS survey
3620 was not aggregate data. It was individual data
3621 reported up to the state. A person's name was
3622 actually submitted.

3623 MR. BENZINE: Okay. I guess, I'm trying
3624 to figure out like -- I mean, if it's -- five can
3625 -- five can add up.

3626 THE WITNESS: That's true.

3627 MR. BENZINE: So trying to figure out if
3628 the total that's reported would include the five
3629 or less, just not like --

3630 THE WITNESS: No.

3631 MR. BENZINE: -- listed out with nursing
3632 homes.

3633 THE WITNESS: I got -- I think it was
3634 added -- this is where I don't really remember.
3635 We have to -- you have to ask someone who
3636 remembers this. I think it was added to the
3637 total, but not necessarily potentially associated
3638 back, if there was two people in that report.

3639 MR. BENZINE: Okay.

3640 BY MR. EMMER:

3641 Q. And to confirm, this change -- the
3642 methodology -- the change in methodology here
3643 would have had to have been approved by Ms.
3644 DeRosa?

3645 A. Correct.

3646 Q. The very next sentence continues.
3647 "Subsequently, from May 3rd, 2020, to February
3648 3rd, 2021, the department excluded deaths that
3649 occurred at other locations, and separated
3650 confirmed and presumed deaths, failing to report

3651 about 30 percent of the total COVID-19 nursing
3652 home deaths at the end of that period; a 45
3653 percent error rate."

3654 Do you know what necessitated the
3655 administration making this change?

3656 A. This is the question of location?

3657 Q. Yes.

3658 A. Yeah, this is -- this is the same issue.

3659 My understanding was even after the audit -- I
3660 don't know. You have to ask them about why they
3661 didn't do it after the audit. But prior to the
3662 audit conducted by Gareth Rhodes, Ms. DeRosa said
3663 she didn't trust the numbers.

3664 Q. In the previous hour, you testified to a
3665 call on June 27th of 2020 -- actually, scratch
3666 that. I have the dates wrong here.

3667 And again, to repeat yourself, this
3668 decision to change the methodology to exclude
3669 nursing home deaths would have been approved --
3670 needed to be approved by Ms. DeRosa?

3671 A. Correct.

3672 Q. Do you think not including deaths from
3673 other locations misled the public?

3674 A. I would have put everything out if I had
3675 the authority to do so, to avoid doing exactly

3676 what we're doing right now. And just to clarify
3677 because I want to be fair to people because you're
3678 talking about the July 7th report, until the June
3679 27th conversation. The report that I was editing
3680 had the total number of fatalities in all the
3681 charts until Ms. DeRosa intervened.

3682 Q. And we will return to the July 6th --
3683 7th report. So one last passage I want to walk
3684 through is on Page 14.

3685 A. Okay.

3686 Q. It is halfway through the second full
3687 paragraph.

3688 A. On March 19th paragraph -- is that?

3689 Q. March 9th.

3690 A. Okay. March 9th, sorry.

3691 Q. The sentence that starts with "For
3692 instance".

3693 A. I need to get an eye test.

3694 MR. BENZINE: It's like one line up from
3695 the blue box.

3696 THE WITNESS: Okay. Hold on. Go for
3697 it. Okay.

3698 BY MR. EMMER:

3699 Q. "For instance, according to a report
3700 issued by the New York State Assembly Judiciary

3701 Committee, sometime in April 2020, after releasing
3702 this data publicly, employees of the Executive
3703 Chamber and members of the New York State
3704 Interagency Task Force -- a group of senior level
3705 administration officials -- who roll -- whose role
3706 was to coordinate with local governments and
3707 healthcare partners, and monitor and respond to
3708 the outbreak -- became aware that certain
3709 fatalities were not being included in the
3710 published data. Specifically that for several
3711 weeks, deaths reported after 5:00 p.m. were not
3712 being included in the daily totals for certain
3713 facilities."

3714 A. Correct.

3715 Q. "The report notes that there was some
3716 reluctance to admit error when it was discovered,
3717 and to correct the published numbers immediately.
3718 Specifically, the report cites a Task Force member
3719 who -- made aware of this issue, saying something
3720 to the effect: Do you want me to admit that we
3721 have been reporting deaths incorrectly?"

3722 Do you recall the administration being
3723 -- becoming aware that those deaths after 5:00
3724 p.m. weren't being included?

3725 A. This is the issue that the minority

3726 question, asked about the under-reporting. This
3727 is what Megan Baldwin called me about, where this
3728 wasn't a categorization where the number's the
3729 same. We were actually under -- the deaths were
3730 actually being under-reported because of the time.
3731 She raised it with me because she was getting
3732 resistance from Ms. Lacewell to address the issue.
3733 I brought it -- I made this an issue to correct
3734 this, to get this redone and posted in a correct
3735 way.

3736 So this is the actual issue. They were
3737 under-reporting. It was time -- I forgot there
3738 was the timing. So 5:00 o'clock would come. If
3739 you came in at 5:15, it's fell into a no-man's
3740 land. It wasn't part of that day, it wasn't part
3741 of the next day. They figured out there was a
3742 series of those fatalities. We became aware of
3743 this. Ms. Baldwin called me and said I'm running
3744 into this. I said something in sum and substance
3745 of you really have to work this out with Linda.
3746 This is not my -- you know, I think I said shit
3747 show to her in a colorful way at the time, but she
3748 walked me through it. And I said this is
3749 something that I have to raise, and I raised it
3750 with Ms. DeRosa. And I raised it with -- I think

3751 there were other people, like I mentioned. Beth
3752 Garvey was in the room and Robert Mujica -- and we
3753 did update the numbers to include those fatalities
3754 in the retrospective. So every day got the actual
3755 numbers added to them.

3756 I don't know who made this statement. I
3757 can -- I could venture a guess, but I don't want
3758 to because it's not fair for me to say this is who
3759 I think it was. I mean, the last sentence, do you
3760 want me to admit that we've been reporting
3761 deaths -- I don't know who said that.

3762 MR. BENZINE: Did Ms. Baldwin ever
3763 express to you why Ms. Lacewell was blocking this
3764 kind of update?

3765 THE WITNESS: I'm going to be very
3766 careful because I want to be -- I want to be fair
3767 to people. Ms. Lacewell often was not open for
3768 comments or concerns to be addressed when issues
3769 were -- and that staff underneath her could not
3770 adequately bring up situations that may need to be
3771 rectified. Therefore, problems would perpetuate
3772 because her unwillingness to engage in rectifying
3773 an issue.

3774 MR. BENZINE: And --

3775 THE WITNESS: And she was feeling that

3776 same way, I believe, in this circumstance why she
3777 called me.

3778 MR. BENZINE: And then, when you brought
3779 it up to Ms. DeRosa and Ms. Garvey and others, how
3780 quickly thereafter was it rectified?

3781 THE WITNESS: I don't remember exactly.
3782 I would say if I remember -- recall, Ms. Garvey
3783 was almost immediate in like we should rectify
3784 this. I don't remember exactly, but it was maybe
3785 days. I mean, it was not a long time.

3786 MR. BENZINE: Okay.

3787 THE WITNESS: This was something that I
3788 did. This was something that had to be changed.

3789 MR. BENZINE: Did you ever figure out
3790 why it went into no man's land after 5:00?

3791 THE WITNESS: Again, you're in the
3792 middle of -- right. They have this whole new
3793 reporting system. Here's the bureaucracy meets
3794 pandemic. 5:00 o'clock is the cutoff time to
3795 submit something. 5:15 happens and it's like, all
3796 right, we're onto the next day. And those would
3797 just fall into this no man's land, and it's like,
3798 well, now what? One day happens, two day happens,
3799 three days happens. No wants to raise this issue
3800 with Ms. Lacewell, so it goes and goes. It's

3801 finally raised. Clearly, the issue wasn't
3802 received well. So then, it was -- it wasn't
3803 intentionally --

3804 MR. BENZINE: No, no.

3805 THE WITNESS: It's like it -- people
3806 were, you know.

3807 MR. BENZINE: No, that answers my -- I
3808 was just curious if it was just a bureaucratic,
3809 kind of like --

3810 THE WITNESS: Yeah, it's a whole new
3811 system. You have a deadline, and I thought it was
3812 -- the deadline was -- I remember -- if I remember
3813 it was, like, something. Nursing homes,
3814 hospitals, they don't -- 5:00 o'clock, they're not
3815 banker's hours. It's not like, oh, 5:00 o'clock
3816 comes, we're off for the day. Shift -- staff
3817 shift at certain times, who's responsible for the
3818 reporting. So like, 5:00 o'clock was an arbitrary
3819 thing in their mind. So anyway, it was part of
3820 the growing phase, I believe.

3821 BY MR. EMMER:

3822 Q. I want to fast forward to August 3rd,
3823 2020, when Dr. Zucker declined to provide the New
3824 York legislature with the number of nursing home
3825 residents who died. Do you recall Dr. Zucker

3826 testifying to that effect in August of 2020?

3827 A. I don't remember him testifying
3828 specifically, but it was something like we're
3829 still reviewing the information. I'll get it back
3830 to you as soon as it's done, or something like
3831 that. I don't exactly recall the sum and
3832 substance of it.

3833 Q. Why couldn't he provide the Assembly
3834 with a number?

3835 A. I think the question then became -- I
3836 don't know if this was before or after Mr. Rhodes
3837 started his audit, but it was -- Ms. DeRosa still
3838 was not trusting of those numbers. She didn't
3839 think -- believe in the veracity of those numbers,
3840 therefore, she did not want them released.

3841 MR. BENZINE: That's come up a couple of
3842 times in these interviews of Ms. DeRosa being not
3843 trusting of the Department of Health numbers.

3844 Did you ever have any inclination as to
3845 why.

3846 THE WITNESS: I don't want to answer
3847 inclinations, if that's okay. I like to -- I
3848 don't want to base it on people's motivations. I
3849 feel like it's unfair to them what their
3850 motivations were.

3851 MR. BENZINE: Did Ms. DeRosa ever tell
3852 you why she didn't trust the numbers?

3853 THE WITNESS: No, no. I was not trying
3854 to be evasive. I don't feel --

3855 MR. BENZINE: No, I -- I totally
3856 understand.

3857 BY MR. EMMER:

3858 Q. So Mr. Rhodes testified to us that it
3859 was after that hearing that Ms. DeRosa ordered him
3860 to conduct an audit. And I know that this may
3861 have been around the time that you started your
3862 new position, and you may not have been around;
3863 but did anyone ever reveal to you what his audit
3864 found?

3865 A. I do know. Now, this is where I could
3866 be conflating reading a New York Times story. I
3867 did talk to Mr. Rhodes quite a bit. The only
3868 thing I remember at the beginning of the exercise,
3869 I said, you do it straight up. You do it --
3870 whatever the numbers are, the numbers are, and you
3871 do it right across the board. We have that kind
3872 of relationship. And I would say Mr. Rhodes is
3873 one of the most honorable people I've ever worked
3874 with. And that was important to me to make sure
3875 that he was doing it the right way.

3876 I mean, I think he may have mentioned
3877 this to me -- this is where it gets all conflated.
3878 That it was roughly in -- potentially in that
3879 ballpark of whatever he came up with, 9,800 or
3880 9,600 or whatever that number ultimately was. But
3881 that was in -- that could have been, like, after
3882 the fact in September, October, whatever; there
3883 was a couple of stories that came out around the
3884 same time.

3885 Q. He testified to us that his audit maybe
3886 found 600 entries that had some sort of
3887 inconsistency that warranted following up on. He
3888 never -- did he mention that to you?

3889 A. He mentioned that there was those type
3890 of errors, but nothing that stood out to me as in
3891 like, you know, anything out of the ordinary when
3892 you look at such a large sampling of something.

3893 MR. BENZINE: Did he ever -- and to the
3894 best of your recollection, did he ever mention how
3895 many of the 600 were verified?

3896 THE WITNESS: No -- oh, you mean after
3897 they were put aside for future review?

3898 MR. BENZINE: Uh-huh.

3899 THE WITNESS: I don't know, actually.
3900 No, I'm sorry.

3901 MR. EMMER: We can go off the record.

3902 (Short break was taken off the record.)

3903 MR. EMMER: We can go back on the
3904 record.

3905 BY MR. EMMER:

3906 Q. Dr. Malatras, really quick, are you
3907 aware of when the administration released the full
3908 data?

3909 A. I'm actually not aware of when that
3910 actually ended up happening. Released it publicly
3911 or some -- I don't actually remember when they did
3912 it. I don't recall.

3913 Q. That's fine. It's been widely reported
3914 that Secretary DeRosa admitted on a phone call
3915 with legislators on February 10, 2020, that the
3916 state froze in response to the DOJ information
3917 request. By DOJ request, she's referring to the
3918 letter that the Civil Rights Division sent to
3919 Governor Cuomo on August 26, 2020.

3920 Are you familiar with that?

3921 A. No. She -- I was not part of that
3922 meeting. She called me -- I don't know whether it
3923 was the morning after, or a couple days after.
3924 All she said to me was the meeting went quite
3925 well.

3926 Q. Do you have any recollection of how the
3927 governor's staff reacted to the Department of
3928 Justice's investigation -- or inquiry into data
3929 and --

3930 A. That came after I was already at
3931 Chancellor, and we were trying to re-open the
3932 campuses. So I wasn't as -- I wasn't involved,
3933 no, nor do I have any understanding of what the
3934 response was.

3935 MR. EMMER: We can go off the record.

3936 (Short break was taken off the record.)

3937 MS. [REDACTED] We can go back on the record.

3938 EXAMINATION BY

3939 MS. [REDACTED]

3940 Q. Welcome back. We've been talking around
3941 the July 6th DOH report a bit. So I think it's
3942 time that we actually just jump on in and talk
3943 about it directly.

3944 As you're aware, the New York Department
3945 of Health released their report on July 6th, 2020,
3946 titled, "Factors Associated With Nursing Home
3947 Infections and Fatalities in New York State During
3948 the COVID-19 Global Health Crisis". I'm going to
3949 introduce this as Minority Exhibit D.

3950

3951 (Minority Exhibit D was marked for
3952 identification.)

3953 BY MS. [REDACTED]

3954 Q. And I believe that we've talked about it
3955 already today. You've talked about being familiar
3956 with this report?

3957 A. Yes.

3958 Q. This was the first in depth analysis of
3959 nursing home data publicly released by DOH. So I
3960 assume that many people at DOH were involved in
3961 pulling the report together.

3962 Do you know who at DOH was
3963 involved with the report?

3964 A. Certain people that I worked with, Dr.
3965 Eleanor Adams, Dr. Zucker -- Commissioner Zucker
3966 would be the primary people within the Department
3967 of Health.

3968 Q. Were people outside of DOH involved in
3969 drafting the report?

3970 A. Everything -- the original report came
3971 Dr. Eleanor Adams. People did edit the report.
3972 If you mean outside of the Health Department, yes,
3973 there were some -- there were people that edited
3974 the report.

3975 Q. Who worked on editing the report?

4001 through all of those charts, through the June 27th
4002 call. I don't know what precipitated the change
4003 in Ms. DeRosa -- something happened. She talked
4004 to somebody. Something triggered a response,
4005 which she then called a meeting, and was very
4006 aggressive about questioning the numbers, why
4007 those numbers. Mostly aimed at Dr. Zucker, but we
4008 were -- none of us were immune from the -- I would
4009 say -- passionate interaction. And then,
4010 thereafter, she said she does not trust the
4011 numbers. She wants it to be continually be -- the
4012 numbers that were publicly reported until, you
4013 know, they could do a review on the numbers.

4014 Q. Was that the extent of her involvement
4015 in the report?

4016 A. No, she was very active in the editing,
4017 final stages of the report, sending information;
4018 things like that. She actually at one point sent
4019 an e-mail. This was prior to that meeting, but
4020 indicative of the process. She laid out the
4021 points that she wanted to have touched upon in the
4022 report.

4023 Q. So you would include her in your list of
4024 people?

4025 A. Yes. I didn't mean to exclude her

4026 purposefully.

4027 Q. No, that's fine. I'm just trying to
4028 clarify. You also didn't mention Ms. Lacewell in
4029 your list --

4030 A. Yes, she was part of the report.

4031 Q. Okay.

4032 A. She -- the original data in the report
4033 that Dr. Adams in the Health Department sent me to
4034 review was from Ms. DeRosa and Ms. Lacewell.

4035 Q. Okay.

4036 A. They forwarded the information, provided
4037 to me, so they were intimately involved from the
4038 very beginning of the report.

4039 Q. This list of people that you just gave
4040 me yourself --

4041 A. And that may not be exhaustive. It's
4042 just what I can remember.

4043 Q. Understandable. But of the people you
4044 remember being involved in the report outside of
4045 the DOH people. So anyone involved in the report
4046 who did not work for DOH, were any of them public
4047 health experts?

4048 A. Yes. The doctor from Harvard University
4049 was a health expert. And then, there were folks
4050 that -- like, from the Hospital Association

4051 reviewed it, Northwell Health, Mr. Dowling
4052 reviewed it, and some others, of which I -- again,
4053 like I mentioned previously to the Majority, that
4054 was not from me. That was from Melissa DeRosa,
4055 who sent it to them.

4056 Q. How would you describe your involvement
4057 in working on that DOH report?

4058 A. So I was brought in -- so I -- that
4059 e-mail came from Ms. Benton, or Mr. Cuomo through
4060 Ms. Benton. I was tasked with making it
4061 accessible because they want it to be a public
4062 report understood by people. That was my extent.
4063 So I did. I worked with Dr. Adams quite a bit, by
4064 making it more accessible language wise,
4065 clarity-out wise. It was very much told to me
4066 this was supposed to be an accessible public kind
4067 of report.

4068 So I was brought in -- I think they sent
4069 that e-mail, like, roughly the beginning of June
4070 -- June 7th or whatever -- they sent me the report
4071 June 12th. Frankly, I didn't pay much attention
4072 to it for awhile, 'til like June 18th or June 19th
4073 because it wasn't really -- to be truthful, I --
4074 it wasn't really on my agenda. Something that I
4075 -- I was back at my school, we were in the middle

4076 of planning for the fall -- we were in the middle
4077 of planning for commencement. We were planning
4078 for -- I was doing all the re-opening for schools.
4079 It was low on my priority list, to be honest.

4080 So I kind of avoided it for a couple of
4081 days -- for more than a week. And then, I think
4082 Ms. DeRosa sent an e-mail saying you need to pay
4083 attention to this.

4084 Q. Okay. During her interview with us, Dr.
4085 Adams told us about the way she perceived the
4086 report being crafted. She talked about there was
4087 an internal DOH version that she worked on that
4088 was very data-focused, data-driven, and maybe what
4089 was intended to be published in a journal or
4090 something of that nature. The report you're
4091 talking about, was public -- there's a difference
4092 between those two reports.

4093 A. Yeah.

4094 Q. What caused that difference, to go from
4095 that sort of academic report to the more
4096 public-facing report?

4097 A. I think if you look at the e-mail
4098 threads, I think the governor wanted a public
4099 report. Reiterated by Melissa, something that was
4100 easily accessible to the public. That was always

4101 my understanding of it from the beginning. So I
4102 don't know if DOH had other plans, but that was
4103 for me very much -- reminiscent of the Attorney
4104 General's report that they issued against Governor
4105 Cuomo about it, who was very accessible to people,
4106 so they could understand it. That was the goal
4107 the entire time.

4108 Q. And in the process of going from sort of
4109 the more academic report to the more public
4110 report, was data changed?

4111 A. After the June 27th, yes.

4112 Q. And again, can you just tell us exactly
4113 what data was changed?

4114 A. The total number of nursing home
4115 fatalities that included in facility --
4116 in-nursing-home facilities and
4117 outside-of-nursing-home facilities and hospitals
4118 was changed back to the original reported data.

4119 Q. Who had final approval on the report
4120 before it's released?

4121 A. For me, it was mostly DeRosa; but
4122 ultimately, it would probably be Governor Cuomo.

4123 Q. Did you --

4124 A. The direct line would be Melissa DeRosa.
4125 It wasn't like Governor Cuomo said now it's time

4126 to put out the report. He wanted it out, but it
4127 was Ms. DeRosa.

4128 Q. Were there -- after that June 27th call and
4129 after reverting to the numbers, did Ms. DeRosa
4130 have any further comments before it was released?

4131 A. She was -- yes, edit -- she was
4132 constantly editing it, Mr. Cuomo was editing it.
4133 Numerous people were editing this report. The
4134 Health Department was editing it. Ms. Adams and I
4135 often played -- I -- I think it sounds great,
4136 actually. I found a couple of -- we were trying
4137 to make sure it was staying true to the sum and
4138 substance of it. So when people would come back
4139 with a sentence that was clearly a little outside
4140 the sum and substance, we were like the
4141 wordsmithers to make sure it was factual.

4142 Q. And obviously, COVID was an unusual
4143 time. So keeping that in mind. Was it normal for
4144 Executive Chamber members like Ms. DeRosa, or even
4145 Governor Cuomo himself to be as involved with an
4146 agency report as you're describing they were in
4147 this one?

4148 A. These are executive -- there are
4149 executive agencies in every -- every report that
4150 comes through an agency, ultimately reviewed by

4151 the governor of the State of New York or any
4152 governor, no. Do executives as running their
4153 executive agencies, which they have ultimate
4154 authority over, review things like this,
4155 absolutely. It's happened at the federal -- it's
4156 happening at the federal level at the same time.
4157 So that in and of itself is not unusual. There
4158 was a lot of attention paid to this, and the
4159 origin of it was from the governor. That was a
4160 distinguishing factor.

4161 Q. Okay. Thank you. Now, since we have
4162 the report in our hands. Let's look at some of
4163 the numbers.

4164 A. Okay.

4165 Q. On Page 7.

4166 A. Okay.

4167 Q. The sort of -- the only paragraph that's
4168 in full on Page 7 talks about the numbers from
4169 surrounding states and New York. This paragraph
4170 lists New York deaths in facilities as 6,432.

4171 Do you see that?

4172 A. I do.

4173 Q. This is what is being said in this
4174 report -- was the number of nursing home deaths at
4175 this point in time; correct?

4176 A. Correct.

4177 Q. Is it your understanding that that was
4178 the actual number of nursing home deaths at that
4179 time?

4180 A. Not if you included the fatalities
4181 outside of the nursing home facilities and
4182 hospitals, it did not.

4183 Q. Do you believe those numbers should have
4184 been included in this report?

4185 A. I would have -- if I had the authority
4186 to do so, I would have included them, again, so
4187 that we wouldn't be sitting together right now.

4188 Q. Was that discussed among the people who
4189 were working on editing the report?

4190 A. Most people thought the numbers should
4191 be out, and that was -- should be the end of it.
4192 That's why they were in the report until the June
4193 -- they were in the -- all the charts had these
4194 numbers until June 27th.

4195 Q. You talked about being directed by Ms.
4196 DeRosa to make that change. Did anyone else agree
4197 with her --

4198 A. No.

4199 Q. -- or was it just she's the top of the
4200 chain, I'm going to listen?

4201 A. Well, Mr. Zucker -- if I remember the
4202 call correctly -- was trying to push back a little
4203 bit. I think at one point, Ms. Garvey did. There
4204 was some ire turned my way about it, but there --
4205 sometimes, as you know with the principal, there's
4206 not -- there's certain discussions -- certain
4207 decisions made of which you don't -- they have
4208 ultimate authority and that was that.

4209 Q. Sure.

4210 A. I followed up with an e-mail afterwards
4211 because I was frustrated.

4212 Q. An e-mail saying that you thought --

4213 A. No, let me share this. I was the one in
4214 the impeachment report that said no one should
4215 have been shocked or surprised by the 10,000
4216 number. You guys gave me -- the report with those
4217 numbers came from you. We synthesized the
4218 information in the report. We gave you the
4219 report, and now you are now criticizing us for
4220 things that you gave us.

4221 So I was frustrated at that moment very
4222 much so. And I was frustrated by the tone on the
4223 call very much so. We were all pretty exhausted
4224 by that point. And, you know, when I mentioned
4225 priorities, it was not my priority at that moment

4226 in time in my life.

4227 Q. Understandable. And you expressed those
4228 thoughts in an e-mail to Ms. DeRosa?

4229 A. Well, I said there's no surprise or
4230 shock. I was in an e-mail back to Ms. DeRosa and
4231 Ms. Lacewell, Mr. Schwartz -- I don't think Mr.
4232 Schwartz was on the call, but he was on the
4233 e-mail. Mr. Schwartz was on the e-mail -- Larry
4234 Schwartz, Beth Garvey was on the e-mail and I -- I
4235 don't know if Megan Baldwin was on the e-mail, but
4236 there was a group of people on that e-mail.

4237 MS. [REDACTED] I am going to introduce
4238 Minority Exhibit E.

4239 (Minority Exhibit E was marked for
4240 identification.)

4241 BY MS. [REDACTED]

4242 Q. This is a New York Times article,
4243 originally from March 4, 2021. It is talking
4244 about this DOH report, and I just want to look at
4245 a couple of specific paragraphs in this article.
4246 At the very beginning of the article, I will just
4247 read out what it says. "Top aides to Governor
4248 Andrew M. Cuomo were alarmed. A report written by
4249 state health officials had just landed and it
4250 included accounts of how many nursing home

4251 residents in New York had died in the pandemic.
4252 The number -- more than 9,000 by that point in
4253 June -- was not public, and the governor's most
4254 senior aides wanted to keep it that way. They
4255 re-wrote the report to take it out, according to
4256 interviews and documents reviewed by the New York
4257 Times."

4258 So that does seem to line up with what
4259 you just told us, but I just want to confirm with
4260 you that that is an accurate sort of summary of
4261 your understanding.

4262 A. With respect to Ms. DeRosa, that is an
4263 ac -- now, it seems for the e-mail communication
4264 that Ms. Lacewell raised that with her. So I
4265 don't know if she had the same concern, but it was
4266 Ms. DeRosa who clearly was concerned by the
4267 number.

4268 Q. Okay. Turning to the next page, the
4269 paragraph right above the picture block.

4270 A. Okay.

4271 Q. It says: "The changes sought by the
4272 governor's aides fueled bitter exchanges with
4273 health officials working on the report. The
4274 conflict punctuated an already tense and devolving
4275 relationship between Mr. Cuomo and his Health

4276 Department, one that would fuel an exodus of the
4277 state's top health -- top public health
4278 officials."

4279 You mentioned already Dr. Zucker pushing
4280 back on the changes to the report. Is there any
4281 other conflict that you're aware of at that time
4282 that was ongoing between the governor and the
4283 Health Department?

4284 A. I think it was many issues that were
4285 coming up. I mean, this was at the end of June or
4286 whatever -- June. There were all sorts of issues
4287 that the Health Department. I'm sure in the
4288 governor's office going back and forth on how to
4289 open summer camps, to travel advisories. So I
4290 think it was already an overworked group of
4291 people. And these issues weren't going away,
4292 right? Whether or not to have summer camps for
4293 kids seems like a relatively mundane thing, but
4294 when thousands of parents are now e-mailing the
4295 governor saying why are you closing our summer
4296 camps, and the Health Department -- right?
4297 There's just natural tension between an executive
4298 and the Health Department -- with the Health
4299 Department was over -- overly cautious on some
4300 things and the governor feeling public pressure

4301 wanted to do things. There's a lot of that going
4302 on there, for sure.

4303 Q. Okay. Turning to the next page. The
4304 third full paragraph down reads: "The aides who
4305 are involved in changing the report included
4306 Melissa DeRosa, the governor's top aide; Linda
4307 Lacewell, the head of the state's Department of
4308 Financial Services; and Jim Malatras, a top -- a
4309 former top advisor to Mr. Cuomo, brought back to
4310 work on the pandemic. None had public health
4311 expertise."

4312 Based on what you told us, this is
4313 partially accurate, partially not. I don't know
4314 if you have any response to this paragraph.

4315 A. The way I took this was from this --
4316 this newspaper reporting, there was a game of
4317 telephone with people within the agency were
4318 talking to the press. And they probably heard
4319 from someone who's heard it from somebody, so they
4320 made us a homogenous whole. So that is not fully
4321 reflective of the situation on the ground. I was
4322 brought in, absolutely, to make it more
4323 accessible. I worked very closely with Eleanor
4324 Adams. All of those things are true. The
4325 changing of the numbers and all those other

4326 things, that was not true.

4327 Q. Except for as it refers to Ms. DeRosa?

4328 A. Correct. Ms. -- you would have to --
4329 you'll have to ask Ms. Lacewell what her position
4330 was; but the order to change the number back was
4331 from Ms. DeRosa, not Ms. Lacewell.

4332 Q. Okay. Thank you. After the DOH report
4333 came out, it seems there was a lot of media
4334 coverage or -- do you recall getting media
4335 inquiries related to the DOH report?

4336 A. Yes, they got criticized immediately
4337 because it didn't have the out-of-facility
4338 numbers. The Times pointed it out, I think, the
4339 next day.

4340 MS. [REDACTED] Sure. I am going to
4341 introduce Minority Exhibit F.

4342 (Minority Exhibit F was marked for
4343 identification.)

4344 BY MS. [REDACTED]

4345 Q. You can take your time to look this
4346 over, but it is an e-mail chain from July 10th,
4347 2020, which was soon after the release of the DOH
4348 report. And if you could just quickly confirm
4349 that you are included on this e-mail chain.

4350 A. I'm included on this e-mail chain.

4351 Q. Take your time to review and when you're
4352 ready for questions, just look up.

4353 A. Okay. Okay.

4354 Q. In general, this e-mail chain is
4355 discussing amongst several members of Executive
4356 Chambers, the COVID Task Force how to respond to
4357 inquiries from the ProPublica related to the DOH
4358 report. Is that fair?

4359 A. That is true. That is fair, let me
4360 answer your question.

4361 Q. And there are several references
4362 throughout these e-mails, pointing to -- who I
4363 assume is you -- to provide answers. They refer
4364 to you, Jim or Malatras. For example, right there
4365 at the very top, "Jim said he is reviewing the
4366 written answers".

4367 Is that referring to you?

4368 A. Yeah, I probably did write -- I don't
4369 recall this, but I probably did review answers.

4370 Q. And then, throughout, there are other
4371 references to you reviewing or providing answers.
4372 If we look at Bates Number 139512.

4373 A. Say that again.

4374 Q. 139512. So on the bottom, there's a
4375 Bates Number in the bottom corner.

4376 A. Okay.

4377 Q. So that is an e-mail from Jonah Bruno on
4378 July 9th.

4379 A. Uh-huh.

4380 Q. And he says -- part of what he says
4381 there is: "Malatras recommendations are
4382 highlighted."

4383 He had attached a list of responses, and
4384 parts of it are in different fonts. And we only
4385 got black and white, so it's hard to tell exactly
4386 what is highlighted. But again, he is referring
4387 to you providing written answers; correct?

4388 A. Or, I looked at it -- reviewed based on
4389 whatever -- and I provided comments probably, yes.

4390 Q. It seems from my reading of these
4391 e-mails that all these folks were deferring to you
4392 as sort of the authority on answering those
4393 questions. Do you know why that was?

4394 A. Because it was specific to the report.
4395 It came out of the report, because Eleanor and I
4396 worked so closely on it, I just assumed that they
4397 gave it to me.

4398 Q. And why you, and not somebody within
4399 DOH?

4400 A. That's a great question, and why DOH

4401 kept punting it to me. I'd prefer DOH to answer
4402 probably.

4403 Q. Because Jonah Bruno is at DOH; correct?

4404 A. Yeah.

4405 Q. So you don't know if he was instructed

4406 --

4407 A. No.

4408 Q. -- to speak to you?

4409 Okay. And was this the only instance of
4410 you --

4411 A. No, there are a couple of times, I'm
4412 assuming, after. I think that -- I don't remember
4413 exactly, but there were a couple of other
4414 inquiries where we responded.

4415 Q. And was it similar, that you were sort
4416 of the final authority on answers?

4417 A. No. I mean, like, I gave answers but
4418 whether the press shop wanted to, like, massage
4419 beyond that and stuff like that, it's up to them.

4420 Q. Did you do interviews with any of the
4421 media about --

4422 A. I probably talked on background about
4423 some of this. People had a lot of questions about
4424 -- there's lots of charts that curves and things
4425 like that. I mean, there's like detailed stuff.

4426 Q. Okay. Moving on from that. We have
4427 mentioned the Attorney General conducted an
4428 investigation and issued a report on this DOH
4429 report.

4430 A. Uh-huh.

4431 Q. That AG report was titled, "Nursing Home
4432 Response to the COVID-19 Pandemic", and it was
4433 released on January 28th, 2021.

4434 You are familiar with that report;
4435 correct?

4436 A. I am familiar with that report.

4437 Q. And I just want to be clear that the
4438 Attorney General in New York does not report to
4439 the governor; correct?

4440 A. She's independently elected.

4441 Q. The report -- I'm not going to give you
4442 the full report. The report found -- and I'm just
4443 reading one quote here -- that, "Discrepancies
4444 remain over the number of New York nursing home
4445 residents who died of COVID-19. Data obtained by
4446 OAG shows that DOH publicized data vastly
4447 undercounted these deaths. The report recommended
4448 that DOH, quote, 'ensure public reporting by each
4449 nursing home, as to the number of COVID-19 deaths
4450 of residents occurring at that facility, and those

4451 that occurred during or after hospitalization of
4452 the residents in a manner that avoids creating a
4453 double-counting of resident deaths at hospitals in
4454 reported state COVID-19 death statistics'".

4455 You mentioned earlier this issue of
4456 double-counting was clearly of concern.

4457 A. For clarity of the record, at the
4458 beginning April, May, that was an --

4459 Q. Right. That was not the issue with the
4460 numbers going into the DOH report?

4461 A. I do not believe that was an issue.
4462 You're asking me, Jim Malatras?

4463 Q. Yes.

4464 A. I do not believe that was an issue.

4465 Q. So for your understanding, there was not
4466 a concern about double-counting that caused those
4467 numbers to be changed in the report?

4468 A. No.

4469 Q. On February 11th, 2021, the New York
4470 Department of Health released an updated version
4471 of the July 6th report. Was that February 11th
4472 update in response to the Attorney General report?

4473 A. I don't know for sure, but I think --
4474 when did the Attorney General's report come out?

4475 Q. The Attorney General's report came out

4476 January 28th, 2021.

4477 A. There's a high likelihood that that was
4478 in response. I mean, I -- I -- you know, I don't
4479 know. No one said let's respond, Jim is putting
4480 out the response to them, but it seems pretty
4481 close.

4482 Q. Were you involved in the --

4483 A. Well, they brought me into some of that
4484 stuff. Like, they brought me into -- yes, I was
4485 aware they brought me in and out at certain times.
4486 I mean, I was on the call --

4487 Q. Okay. Yeah.

4488 A. -- with the Attorney General. I was
4489 brought onto that call to listen to it.

4490 Q. What in that -- in that call when the
4491 report was released, I think you said it was the
4492 day it was released, so January 28th. I think you
4493 said you were just in listening mode on that call;
4494 correct?

4495 A. I was in listening mode.

4496 Q. I'm assuming the Attorney General was
4497 giving the Executive Chamber some sort of preview
4498 about what was coming out in the report.

4499 A. The way I remember it was they were --
4500 it was to let the chamber know that the report was

4501 already, in fact, released to a news outlet, which
4502 ended up being the New York Times. And that it
4503 was just a courtesy heads up.

4504 Q. And you said Ms. DeRosa used a lot of
4505 colorful language on the call. Was she upset
4506 about the fact that it had already been released
4507 to the New York Times, or about the content?

4508 A. Well, I -- I -- I think the primary
4509 driving force was the report being released in a
4510 manner without much of a heads up. I think the
4511 content plays into that because the content led
4512 with some of the issues about the numbers. So I
4513 think it was a mixture of both of those elements.

4514 Q. And you said earlier, I believe, but I
4515 just want to confirm that you are -- you do not
4516 recall when exactly complete data was released?

4517 A. I don't remember, no. I wasn't at -- I
4518 wasn't in the chamber. I was pretty much out of
4519 it. The only thing I was helping with at that
4520 time, there were some issues of these micro
4521 clusters that the City of New York and the state
4522 were working on that I had -- was helping Gareth
4523 with.

4524 Q. Okay. And I just want you to put it in
4525 your own words. You were asked about this a

4526 little bit earlier, but why is it important for
4527 accurate public health data to be released to the
4528 public?

4529 A. I think in the end, I thought -- there's
4530 two real reasons. One, for us internally to get a
4531 more accurate review, so you can actually respond
4532 to a crisis. The second piece is putting this out
4533 is just important from a -- from a -- I even think
4534 when the full history of this is written, it's
4535 going to be even more fatalities, right? I
4536 mentioned the at-home deaths wasn't still counted
4537 in many states. Just to get an understanding of
4538 the severity, cause and how going forward, you can
4539 address it better.

4540 And I feel like -- like any of these
4541 things, a lot of this could have been avoided.
4542 What we're doing today could have been avoided
4543 because I think the report was accurate. None of
4544 the indicators change about why certain things
4545 happened in nursing homes. I firmly believe that.
4546 And by the way, the AG's office report basically
4547 confirms that. There are a couple of other
4548 outlying non-for-profits that don't agree with
4549 that, the think tanks that don't agree with that.
4550 So my point was why not just put that out at

4551 whatever time.

4552 Q. I'm going to shift topics a bit, but it
4553 is somewhat related. I just want to get a little
4554 bit of your perspective on the working
4555 relationship between the federal government and
4556 the state government, particularly during
4557 COVID-19.

4558 A. It was great.

4559 Q. So -- and you talked about your prior
4560 experience, as well, with things like Ebola. So
4561 there was also coordination there, I'm sure, with
4562 the federal government.

4563 A. Uh-huh.

4564 Q. So during a public health crisis, what
4565 role does the federal government usually play in
4566 coordinating with the state government?

4567 A. I think it's absolutely essential that
4568 every unit of government, whether you're the
4569 federal government, all the way down to local
4570 governments -- we have 60-something counties in
4571 the State of New York, 700 school -- there's just
4572 a lot of layers. You need to be coordinated in
4573 something like this. No one can respond
4574 adequately one way or another. I will say put
4575 aside the principals who were often engaged in

4576 different political differences. On a staff
4577 level, I found working with the federal government
4578 that I was tasked with, whether it be data
4579 analysts, analytics that they gave us, or access
4580 to ventilator -- and all that be a pleasure to
4581 work with, quite frankly. And professionals, and
4582 people you want to engage with because there is no
4583 other reason to do it than actually trying to
4584 help.

4585 Q. Earlier, you mentioned a couple of
4586 issues where -- and I think it wasn't unique to
4587 New York. Every state was experiencing issues
4588 with both PPE supply and testing supplies.

4589 A. Yes.

4590 Q. So these were both issues that you're
4591 aware of?

4592 A. Yes.

4593 Q. In terms of testing supply, part of the
4594 issue -- it seems -- was that the CDC took over
4595 testing early on, and their tests were not
4596 functioning properly. They were not giving
4597 accurate readings. Is that your understanding?

4598 A. Yes.

4599 Q. How did that impact New York's testing
4600 ability early on in the pandemic?

4601 A. It made it more difficult, and it was
4602 one of the reasons why we tried to get -- we have
4603 Wadsworth lab, which is the lab for the Department
4604 of Health. Now, this was not me. This was Gary
4605 and Larry and others, but I was in the rooms
4606 enough for this, where we want to just get the
4607 authority to use our test to build up capacity.

4608 And this is one of the reasons why we
4609 also -- Gareth and myself with the governor
4610 traveled to meet the president, and other senior
4611 officials in the White House to expand testing
4612 capacity in the State of New York. Because the
4613 federal government did control the allocation of
4614 all tests made by manufacturers at that point.

4615 Q. So that -- in some ways, the federal
4616 government was providing a stumbling block
4617 for state activity?

4618 A. I would say there was a -- you know, I
4619 don't want to -- yes, it was a -- it was an
4620 impediment to us of doing more testing.

4621 Q. Similarly, were you also aware there was
4622 not an adequate amount of PPE? You know, there
4623 was footage of doctors in hospitals wearing trash
4624 bags because they didn't have the proper gowns to
4625 be wearing. And we know that PPE helps to reduce

4626 the spread of infection, such as COVID-19.

4627 How did the inadequate amount of PPE
4628 hamper the public health response in New York?

4629 A. I think like many other states, it made
4630 it enormously challenging. Hence, why we had to
4631 put so much effort into how PPE was allocated. We
4632 had models where -- this is one of those cases
4633 where many hospitals would call and say we need
4634 50,000 masks. Everybody wanted 50,000 masks. The
4635 question was where was the greatest demand and
4636 greatest need, and we had to allocate based on
4637 those limited resources that we had in one
4638 element. And then, we did everything in our power
4639 to expand the state's supply of PPE in order to
4640 have enough on hand. So we were stockpiling as
4641 much as possible, and then trying to work with
4642 other states because every other state was doing
4643 the same, exact thing. And that just became a
4644 race to the bottom of who can compete. And then,
4645 everybody was paying a massive premium on all of
4646 these materials.

4647 Q. Would that effort have been aided by
4648 coordination through the federal government that
4649 the states weren't competing with each other?

4650 A. To be fair -- so this is two levels to

4651 that. I think -- could more coordination have
4652 been done? Yes, absolutely. Do I think the
4653 people that I worked with, at least on the staff
4654 level, tried to allocate based on what was
4655 available in a straight up, fair way? I do,
4656 actually. Ventilators being the perfect example
4657 of that. They provided us great data analysis on
4658 it. They allowed us to have stockpiles when we
4659 needed to.

4660 So there were times when the federal
4661 government, Admiral Giroir and others -- I'm
4662 always getting his name wrong, I apologize for
4663 that, but they were -- it was very helpful to work
4664 with, and there was other times where it was
4665 challenging, for sure.

4666 Q. Thinking about PPE in particular and
4667 nursing homes in particular, it seems that spread
4668 within nursing homes would have been stemmed a bit
4669 if there had been more adequate supply of PPE.

4670 Is that a correct understanding?

4671 A. I believe so.

4672 Q. During a Select Subcommittee hearing
4673 last May, we heard from Dr. David Grabowski, who
4674 is a professor of healthcare policy at Harvard
4675 Medical School. He said that: "Community spread

4676 was a driving force of COVID-19 entering nursing
4677 homes and other primary care facilities, not just
4678 in New York, but across the country."

4679 PPE would have been -- or more PPE would
4680 have been one thing that would have helped prevent
4681 that spread. Is that description consistent with
4682 your understanding of what was happening in
4683 nursing homes?

4684 A. Yes, and consistent with what the report
4685 and the Attorney General's report and others said,
4686 too.

4687 Q. As you may be aware, in 2019, the Trump
4688 administration proposed to relax a federal
4689 requirement that nursing homes employ onsite
4690 infection prevention specialists. According to
4691 public reporting, Trump's proposal led some
4692 facilities to cut corners in infection control.

4693 Is the maintenance of certain inspection
4694 control standards and compliance of those
4695 standards important to prevent viral infection of
4696 spread in nursing homes?

4697 A. I will say that many nursing homes had
4698 significant challenges in -- forget COVID being --
4699 people being readmitted for COVID -- just
4700 generally maintaining an environment that was

4701 conducive to care during the time.

4702 Q. Last thing on this topic.

4703 Under President Biden, the federal
4704 government initiated the national vaccination
4705 campaign in early 2021, so right after he took
4706 office. Did vaccines reduce the threat of
4707 COVID-19 posed to nursing home residents and
4708 staff?

4709 A. I mean, I -- at that point, I wasn't in
4710 the -- doing this day-to-day anymore. I was doing
4711 this from the college side. Vaccines don't stop.
4712 People can still get COVID with the vaccine, but
4713 it did mitigate against the more serious health
4714 impacts and, in fact, to a vaccination program.
4715 And that has been enormously helpful in getting us
4716 back to a more normal societal environment.

4717 Q. Thank you. Thinking back to COVID
4718 testing. We talked about it a bit. We talked
4719 about how New York was doing 2,000 tests a day,
4720 but that was nowhere near enough. I think that's
4721 how you described it, right?

4722 A. That's true.

4723 Q. And that's because COVID testing plays a
4724 -- or any testing plays a huge role in mitigation
4725 in a public health emergency; correct?

4726 A. Yes.

4727 Q. There were allegations that early in the
4728 days of the pandemic, those close to Governor
4729 Cuomo received preferential access to the limited
4730 supply of COVID tests available at that point.
4731 This has been reported fairly widely publicly.

4732 Do you have a recollection of a
4733 preferential testing program?

4734 A. No, I was not -- I read about that, I
4735 believe for the first time, in the Washington
4736 Post.

4737 Q. So you weren't involved in any
4738 conversations about who would get tests?

4739 A. No.

4740 Q. Or how tests were allocated?

4741 A. No. First time I was actually tested
4742 was before I visited the White House and Mr. Trump
4743 -- President Trump at the time. That was the
4744 middle of -- end of April.

4745 MS. [REDACTED] All right. We will move on
4746 from that. We can go off the record for -- oh,
4747 never mind.

4748 MR. [REDACTED] You mentioned a working
4749 relationship with Mr. Rhodes and Dr. Adams. Did
4750 they ever suggest that there was any issue, in

4751 terms of who was receiving tests, who was not
4752 receiving tests during those early months of the
4753 pandemic?

4754 THE WITNESS: I don't -- definitely from
4755 -- not -- not from Dr. Adams. I don't remember
4756 from Mr. Rhodes. I mean, you're asking -- I don't
4757 -- he never said to me I can't believe people are
4758 receiving certain tests or not. I don't remember
4759 that at all.

4760 BY MS. [REDACTED]

4761 Q. Did you ever notice that people who were
4762 performing the tests were maybe traveling greater
4763 distances --

4764 A. No, I had no -- that, I read about in
4765 the newspaper. And specifically, Dr. Adams
4766 traveling to Long Island or something like that, I
4767 was -- I don't want to use an adjective. I was
4768 surprised to see that.

4769 Q. And there was never any comment that the
4770 supply of tests was less than people expected it
4771 to be because tests were being diverted somewhere
4772 else?

4773 A. No, it was overall if you're doing 2,000
4774 tests a day on 20 million people, of which you
4775 have a large demand, you need more tests. I think

4776 we ramped up to 20,000 by the end of April, and
4777 that was considered fairly robust. Even that
4778 wasn't enough. I think the State University of
4779 New York system, I was -- we ended up doing 2
4780 million tests ourselves. So we really ramped up.
4781 You can exponentially increase the number of
4782 tests.

4783 Q. And was that -- I mean, there were sort
4784 of two periods of the tests. So there was a test
4785 when they first started that had to be
4786 administered --

4787 A. Of the nurse.

4788 Q. -- by a trained -- I don't know what
4789 level of training, but some medical professional.
4790 And then, later, we got the home tests that we
4791 could do for ourselves.

4792 So I think -- thinking towards the
4793 beginning, when you needed a medical professional
4794 to administer the test, was there ever any concern
4795 that the resources of who was qualified to do
4796 those tests was not being sent to the sort of
4797 larger communities that could use their tests?

4798 A. I don't think we had enough at that
4799 point. Even in the chamber -- the executive to
4800 the governor's office where people were working,

4801 we were not getting tested. They were doing
4802 temperature -- at the time, it was not testing.
4803 It was temperature checks to be a substitute for
4804 an actual test. If you had a temperature, that
4805 was enough of a reason to send people home as
4806 presumed, but there just wasn't enough tests.
4807 There weren't enough tests.

4808 MR. [REDACTED] When there weren't enough
4809 tests, did you have a sense for what were the
4810 factors that were sort of determining who was
4811 receiving those tests?

4812 THE WITNESS: I wasn't in the day-to-day
4813 of that piece of how it was distributed. I know
4814 we were gearing toward healthcare in certain other
4815 first responders, but that wasn't my day-to-day
4816 thing. So I don't really -- I don't want to over
4817 speak about what that -- how that was allocated.

4818 MS. [REDACTED] Thank you. We appreciate
4819 that. We can go off the record.

4820 (Short break was taken off the record.)

4821 MR. BENZINE: We can go on the record.

4822 EXAMINATION BY

4823 MR. BENZINE:

4824 Q. I just have a couple of questions about
4825 the last hour and one of the exhibits they

4826 introduced, and some other questions. This is
4827 kind of general, but we all know COVID-19 was a
4828 novel virus. There were no tests available for
4829 it. You got to ask about shortage of tests.

4830 Would there have been a shortage of
4831 tests, regardless of who was in the White House?

4832 A. Yes.

4833 Q. You were also asked about a shortage of
4834 PPE. Was a shortage of PPE a longstanding issue?

4835 A. Yes.

4836 Q. Okay. Thank you. I want to go back to
4837 Minority Exhibit F.

4838 A. Is that something I have already?

4839 Q. Yes. It is July 10th at the top. And
4840 flipping to the back of the first page on that
4841 one.

4842 A. Okay.

4843 Q. There's an e-mail with a draft press
4844 statement from Mr. Azzopardi from July 10, 2020.
4845 And I can -- I know what it's in relation to
4846 because I wrote the letter that the press
4847 statement is about, but it's about a letter sent
4848 from Minority Rep Steve Scalise at the time to the
4849 governor requesting information regarding the
4850 nursing home issue in New York.

4851 You've said a couple times that, in
4852 essence, you wish that we weren't in this
4853 conference room today. And maybe if some
4854 decisions were made differently, we weren't. And
4855 Mr. Azzopardi describes the investigation as:
4856 "These travel-sized Trumps can write as many
4857 election-year, partisan attacks on taxpayer-funded
4858 letterhead as they want."

4859 Do you think investigating the origins
4860 of the March 25th order and the surrounding issues
4861 is a partisan attack?

4862 A. I would say put aside the clever
4863 alliterations, which I'm always -- I like a nice
4864 alliteration. I feel like too much of this
4865 rhetoric on both sides, frankly, precipitates
4866 hand-to-hand combat instead of understanding how
4867 to improve over time.

4868 Q. Yeah.

4869 A. And when we're in this environment
4870 where, of course, mistakes are being made,
4871 unintentional, often that you can't learn from it,
4872 because the minute that you say anything that
4873 could be somehow wrong, you get pummelled over the
4874 head. And people like -- underneath that layer
4875 ends up in the middle of the crossfire. So, yes,

4876 I feel like there should be less of it. So people
4877 should be able to inquire for purposes of making
4878 sure for the next one we're better off than we
4879 are.

4880 Q. Absolutely. And my last chairman once
4881 said that probably a thousand times at this point
4882 over the last 14 months.

4883 Also, in that statement, he says -- and
4884 we'll get into -- Jack will get into more
4885 particulars of the Department of Health study; but
4886 in the middle of it, he said the DOH study, which
4887 was peer reviewed by experts at Northwell Health
4888 and Mount Sinai. You've had a long career in
4889 academia. Does peer review have an established
4890 definition?

4891 A. It doesn't. I have said this before:
4892 This was -- I believe -- came from the governor
4893 saying it should be peer reviewed. It was
4894 reviewed, but this wasn't an academic study. Peer
4895 review has a very specific connotation. Peer
4896 reviews has comments. The author has to go back
4897 and redo comments based in an academic setting.
4898 This was a review. It was not a peer review.

4899 MR. BENZINE: All right. Thank you.

4900

4901 EXAMINATION BY

4902 MR. EMMER:

4903 Q. Following-up on that. The review --
4904 obviously, you said is not peer review -- but the
4905 review that the Governor and Mr. Azzopardi were --
4906 what they were referring to would have been
4907 Northwell Health and Mr. Grabowski?

4908 A. Yeah, and some -- I mean, there might
4909 have been some other -- yes, those outside
4910 individuals reviewed it. Yes.

4911 Q. And to the best of your recollection,
4912 you testified earlier that it was mostly DeRosa
4913 communicating with Grabowski --

4914 A. Yeah.

4915 Q. -- Northwell Health.

4916 Are you aware of them making any edits
4917 to the report, or just reviewing stuff and
4918 providing comments?

4919 A. They did. I remember there were e-mails
4920 that came back, where they did make
4921 recommendations for changes, of which I do believe
4922 some of them make it. Let me give you an example.
4923 I don't remember everything. Mr. Dowling from
4924 Northwell had not substantive to the facts or
4925 data, but he thought the executive summary should

4926 be clearer and rewritten, and I believe some of
4927 that was incorporated. That's just as an example,
4928 yeah.

4929 Q. Did any of his recommendations revolve
4930 around the conclusions of the report, namely, what
4931 drove transmission in nursing homes?

4932 A. No, it was most -- it was not to change
4933 any of the findings. It was simply around clarity
4934 and language and things like that. Not that I
4935 recall. I don't recall any changes substantively.

4936 Q. And I'm going to jump around a little
4937 bit here, but I believe that you answered this in
4938 the previous hour, but what prompted this report
4939 to be written?

4940 A. I believe that came from that June 7th
4941 e-mail from Ms. Benton, which was really a passing
4942 through a message from Governor Cuomo in response
4943 -- I think it was to a newspaper article at the
4944 time.

4945 Q. That's a sufficient answer. I want to
4946 direct your attention back to the July 6th report.

4947 A. Okay.

4948 Q. And I'm going to ask you a general
4949 question. Do you recall the conclusions of the
4950 report, and can you provide just a brief summary

4951 of the conclusions?

4952 A. I -- this is a long time ago.

4953 Q. Okay. Of course.

4954 A. The -- largely to what the Attorney
4955 General's office said, and what Dr. Grabowski and
4956 others have said is that the initial spread
4957 through nursing homes was a result of staff coming
4958 into the nursing homes that also had COVID-19.
4959 And that was the precipitating factor of driving
4960 most of the cases. In sum and substance, that was
4961 the report.

4962 Q. Do you stand by the conclusions of the
4963 July 6th report?

4964 A. That very much is held up over time
4965 through different studies.

4966 Q. I want to focus on one conclusion of the
4967 report.

4968 A. Okay.

4969 Q. The -- that -- so this -- specifically
4970 that it was nursing home staff that drove
4971 transmission in nursing homes.

4972 Do you recall whether that was -- that
4973 was the same conclusion that the Department of
4974 Health had in their initial drafts?

4975 A. I don't exactly -- they said it -- they

4976 would -- let me say this. This is the difference
4977 between a purely academic -- which I think it was
4978 probably in their mind and a -- more accessible.
4979 It wasn't -- they weren't talking about these in
4980 the clearest terms. It was like a lot of commas
4981 and but's and modifiers, but this was a
4982 contributing factor that I think they did raise in
4983 their earlier reports. And I can recall reports
4984 from many years ago and, you know -- but yes, I
4985 think that was a contributing factor.

4986 Q. Absolutely. And I believe in the
4987 previous hour, you testified to this question; but
4988 when would you say you received the academic
4989 journal article that DOH was preparing?

4990 A. The version -- I don't know what -- if
4991 they had a purely academic. The one I received
4992 was not even a fully academic journal article. I
4993 received something from Dr. Adams in the middle of
4994 June -- June 12th, June 15th. Somewhere around
4995 there.

4996 Q. Okay.

4997 A. I don't remember exactly.

4998 Q. And as the minorities have mentioned,
4999 when she testified to us this pass month, she
5000 character her report as a more scientific paper,

5001 and really emphasized that she did not believe
5002 that she was an author of the July 6th report.

5003 At this time, I would like to introduce
5004 what will be marked as Majority Exhibit 12.

5005 (Majority Exhibit Number 12 was marked
5006 for identification.)

5007 BY MR. EMMER:

5008 Q. This is an e-mail sent from Dr. Adams to
5009 Dr. Zucker on June 7th, 2020, in which she
5010 summarizes the key points of the McKinsey
5011 analysis. And I will give you a minute to review
5012 the e-mail.

5013 A. Okay.

5014 Q. I know that you're not on this e-mail
5015 thread, but -- and for the record, the Select
5016 Subcommittee has not received any drafts of the
5017 July 6th report; but does this appear to be the
5018 draft documents and information that you've used
5019 to draft the July 6th report?

5020 A. The charts -- the charts, yes, because
5021 these look like they were provided from McKinsey &
5022 Company. They have the same -- well, the -- so
5023 that -- there was a deck of charts that McKinsey
5024 provided. That does look like the case. This --
5025 there was an associated deck attached to the --

5026 that I received first before Ms. Adams -- Dr.
5027 Adams' report that does look like it was a
5028 McKinsey -- the McKinsey charts.

5029 Q. I would like to direct your attention to
5030 -- I don't know what page it is, but it's Bates
5031 marked 7421. And it is one of the charts.

5032 A. Okay. Okay. I think I'm on the right
5033 one.

5034 Q. I also want to direct your attention to
5035 Page 21 of the July 6th report.

5036 A. Okay.

5037 Q. And for the record, the chart shows
5038 three different nursing homes. And it is labeled
5039 as Cumulative Mortality Versus Admissions, Select
5040 Facilities. I'm just curious because the July 6th
5041 report uses three different nursing homes that had
5042 very much less numbers to work with.

5043 Do you recall who would have made the
5044 decision to choose these nursing homes, rather
5045 than the ones that McKinsey offered? And I see
5046 that --

5047 A. Ms. DeRosa.

5048 Q. Ms. DeRosa?

5049 A. Yes, sir. There were a lot of different
5050 options.

5051 Q. And for the record, looking specifically
5052 at the Luxor Nursing Home, it has a -- it has
5053 "Deaths, 20" on the July 6th report. And on the
5054 e-mail that Ms. Adams sent, it shows 22. That is
5055 just accounting for -- or, well, the July 6th
5056 report does not account the deaths that occurred
5057 at the hospital; correct?

5058 A. I'm just looking at the -- it's what --
5059 yeah, the chart -- that's what the chart source
5060 says.

5061 Q. Okay. Would it be fair to characterize
5062 the decision that -- that Ms. DeRosa -- that's --
5063 would it be fair for me to characterize this chart
5064 as just another example of how the administration
5065 picked and choose which data to present, and maybe
5066 perhaps that they wanted data that was more
5067 favorable to the administration?

5068 A. An example, yes, it looks that way.

5069 Q. In the previous hour, you testified to
5070 the July 6th report, not including deaths that
5071 occurred at the hospital. I may have misheard
5072 you, but I believe you said most people wanted it
5073 out.

5074 Were you referring to most people wanted
5075 the -- the deaths that occurred at the nursing

5076 homes out of the report?

5077 A. No, I meant it in the inverse, as in
5078 most people just wanted the full set of
5079 information out at that point.

5080 Q. Got it.

5081 A. So let me just -- for the record, most
5082 people working on this issue wanted the full data
5083 set reported. That's an example of how saying
5084 something in the negative can have a different
5085 meaning --

5086 Q. Yeah, thank you.

5087 A. -- on how you read the transcript.

5088 Q. I just wanted to make sure the
5089 transcript is clear. I want to draw your
5090 attention --

5091 A. And just to clear -- and because to that
5092 point, if you read Dr. Adams' main June 7th
5093 findings, she basically -- it finds what we've
5094 been saying, right? It says it here. Now,
5095 there's a couple of different points in there
5096 about the certain points of time, but those
5097 fatality curves represent the external society,
5098 which seems to indicate the larger problem. So
5099 why -- if that is the same, what's the -- why not
5100 just put everything else out.

5101 MR. BENZINE: We've talked a decent
5102 amount about the late June phone call with Ms.
5103 DeRosa. Did you ever get -- the rationale she
5104 gave was that she wanted to -- she didn't trust
5105 the numbers; is that right?

5106 THE WITNESS: Yes.

5107 MR. BENZINE: Did you see any reason to
5108 not include the full 9,849 --

5109 THE WITNESS: I don't even know. All
5110 right. So you finished the question. I'll answer
5111 it again. I would put the entire data set out.

5112 MR. BENZINE: All right.

5113 THE WITNESS: I -- and my action was,
5114 until that opinion in time, it was in the report.

5115 MR. BENZINE: After the fact, have you
5116 heard any different rationale for not including
5117 the full data set?

5118 THE WITNESS: I think the point where
5119 Mr. Rhodes became involved was -- there were
5120 mistakes in that data set, so, therefore, do an
5121 audit.

5122 BY MR. EMMER:

5123 Q. I want to direct your attention back to
5124 the impeachment report and we're looking at Page
5125 40.

5126 A. What page was that again?

5127 Q. Page 40.

5128 A. Okay.

5129 Q. Specifically this second paragraph.

5130 A. Okay.

5131 Q. And it states for the record:

5132 "Witnesses have stated that the same senior
5133 Executive Chamber official, who served as the key
5134 point person for the book made the decision that
5135 only in-facility deaths would be included in the
5136 DOH report."

5137 Dr. Malatras, I know I'm making you
5138 repeat yourself, but who would -- do you believe
5139 the Senior Executive Chamber Official is referring
5140 to?

5141 A. The senior is sent to the -- the chamber
5142 official has been reported to as Ms. Melissa
5143 DeRosa.

5144 Q. And she was the person who made the
5145 decision to not include in-facility deaths;
5146 correct?

5147 A. Correct.

5148 Q. In the book, that's referring to the
5149 Governor's American Crisis Publication; is that
5150 right?

5151 A. In this paragraph, yes, it looks that
5152 way.

5153 Q. And we'll discuss the book in detail --

5154 A. Okay.

5155 Q. -- later.

5156 But moving forward on that same page,
5157 we're looking at -- excuse me, I lost the passage
5158 I was looking for.

5159 A. You're filibustering me.

5160 Q. Looking at Subsection 2.

5161 A. On Page 40?

5162 Q. On Page 40.

5163 A. Okay.

5164 Q. The first paragraph, the third sentence,
5165 and I will read it into the record.

5166 "Throughout the drafting process, the
5167 former governor reviewed and edited the draft DOH
5168 report on multiple occasions, and made edits to
5169 strengthen the defense of the March 25th
5170 directive. DOH officials, who weren't on the DOH
5171 report, expressed a number of concerns regarding
5172 drafts of the report, including that drafts of the
5173 report used data that could not be independently
5174 verified by DOH. And that drafts included
5175 statements of causality, and drew over-simplified

5176 conclusions, and did not explain the limitations
5177 of the data used in the DOH report. More
5178 generally, DOH officials were concerned that the
5179 DOH report was directed by the Executive Chamber
5180 and Task Force, and was not, in fact, a scientific
5181 or medical report."

5182 So let's spend some time just dissecting
5183 that paragraph. First, it says that the governor
5184 reviewed and edited the draft on multiple
5185 occasions. I believe you testified to this in the
5186 previous hour, but is that true?

5187 A. Yes.

5188 MR. BENZINE: How were the edits
5189 communicated?

5190 THE WITNESS: The edits were
5191 communicated in a number of ways. Sometimes
5192 people received handwritten notes back on the
5193 printed-out piece of paper. Other times, like
5194 through messages from Ms. Benton or Ms. Walsh, who
5195 were the main, primary conduits for sending those
5196 comments back. Sometimes from Ms. DeRosa herself.

5197 BY MR. EMMER:

5198 Q. Do you recall what areas of the report
5199 the governor made edits to?

5200 A. It was largely around language. It

5201 wasn't -- actually, I don't recall any discussion
5202 of the numbers, but it was a -- around language.
5203 And as this person in this paragraph of the
5204 impeachment report stated, there was a lot more --
5205 when it came back from him, a lot more causality,
5206 which that's -- I think I can only surmise who it
5207 was. It probably was Dr. Adams. And that's why I
5208 harken back to that one e-mail, where I said where
5209 the words we -- you did a good job of
5210 worthsmithing. She said at one point -- because
5211 then, we would come back, and then refashion those
5212 sentences to be more less causal, less definitive,
5213 and work back in some of the language that DOH had
5214 originally.

5215 MR. BENZINE: So -- and like Jack said,
5216 we don't have the -- we don't have the edits; but
5217 causality, you mean like the governor's edits
5218 would be more the March 25th order did not cause
5219 deaths, versus the wordsmithing is making --

5220 THE WITNESS: Yes.

5221 MR. BENZINE: -- little -- lining up the
5222 curves, and doing all the --

5223 THE WITNESS: Correct.

5224 MR. BENZINE: -- actual analysis?

5225 THE WITNESS: Correct.

5226 MR. BENZINE: Okay.

5227 BY MR. EMMER:

5228 Q. And when I asked what areas the governor
5229 was interested in, where his edits were, I guess
5230 what I'm trying to ask is -- there were different
5231 conclusions within the report. I believe that
5232 there was -- part of it was whether the nursing
5233 home scores was a factor.

5234 Did he pay particularly more attention
5235 to the March 25th order and its effects, rather
5236 than other areas?

5237 A. With respect to the -- yes. Yes. I
5238 mean, that the driving factor was -- were the
5239 staff coming into the facility. And I think you
5240 mentioned the STARS rating of nursing homes. We
5241 found that to be a factor to the -- the lower
5242 rated the nursing home facility, the higher
5243 likelihood that they would have cases of COVID
5244 fatalities.

5245 MR. EMMER: At this time, I would like
5246 to introduce what will be marked as Majority
5247 Exhibit 13.

5248 (Majority Exhibit Number 13 was marked
5249 for identification.)

5250

5251 BY MR. EMMER:

5252 Q. This is entitled, "Statement from Beth
5253 Garvey, Special Counsel to the Governor", from
5254 March 5th, 2021.

5255 Dr. Malatras, do you recognize this
5256 statement?

5257 A. I do.

5258 Q. Did Ms. Garvey consult with you
5259 regarding this statement prior to issuing it?

5260 A. Ms. Garvey had the courtesy of calling
5261 me ahead of time, saying they were going to issue
5262 this statement. It was not a confrontation. It
5263 was a heads up because they were responding to a
5264 statement I made in the previous part of the day.

5265 Q. What statement did you make during the
5266 previous part of the day?

5267 A. This statement came after the New York
5268 Times report that was in one of the exhibits that
5269 you showed me, where it specifically said that I
5270 did not alter the numbers, that that came from Ms.
5271 Lacewell or Ms. DeRosa. I then made a statement
5272 because I was Chancellor of the State University
5273 of New York, saying that second part of the
5274 statement was true. I did not alter -- that came
5275 from -- I didn't say Ms. DeRosa's name. I said

5276 that New York Times report was true. They then
5277 called me on the first -- there was a call where
5278 Ms. DeRosa, with Ms. Lacewell and Ms. Garvey, and
5279 I believe their attorney, [REDACTED], called
5280 saying what did you just say? You have to put out
5281 a statement. And I said I'm not going to put out
5282 an additional statement. My statement is my
5283 statement, I stand by my statement. Several hours
5284 later, Ms. Garvey called me to say this is the
5285 statement they would be putting out. I said thank
5286 you very much.

5287 And I appreciated Ms. Garvey giving me a
5288 heads up. At least she gave me the courtesy of
5289 giving me a heads up.

5290 Q. I want to direct your --

5291 MR. BENZINE: One second. The timeline
5292 in my head, you said after you made a statement
5293 the day before. So March 4th?

5294 THE WITNESS: The same day.

5295 MR. BENZINE: Same day.

5296 THE WITNESS: The story I believe in the
5297 New York Times came out the night of -- like you
5298 have it in your exhibit. You just sent it to me.
5299 It is like March 4th.

5300 MR. BENZINE: Uh-huh.

5301 THE WITNESS: The next day, I was in an
5302 event in the Bronx.

5303 MR. BENZINE: Yes, March 4th.

5304 THE WITNESS: And I was in an event in
5305 the Bronx at the local center, which SUNY runs --
5306 and I was asked this question by a reporter. And
5307 I gave my statement to the fact of what was in the
5308 Times. I did -- that was not my decision
5309 ultimately to change the report, and left it at
5310 that. I, thereafter, got a call from the
5311 governor's office, including Ms. DeRosa, Ms.
5312 Garvey was on the call. I believe Ms. Lacewell
5313 was on the call. I know there were some other
5314 press people, like Mr. Azzopardi. And then, they
5315 also got [REDACTED] on the call to say we have
5316 to say something about this. And then, they
5317 suggested to me that I put a statement out
5318 suggesting otherwise. And I said I would not.
5319 The statement -- my statement is my statement, I
5320 stand by my statement.

5321 A couple of hours later, Ms. Garvey
5322 calls me back and said they are issuing this
5323 statement in response to what the Times and I
5324 said.

5325 [REDACTED]

5326 [REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED]
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[REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]

5344 BY MR. EMMER:

5345 Q. I want to direct your attention to the
5346 second paragraph. And I will only have one
5347 question in response to this, but it reads:
5348 "COVID Task Force members, including Melissa
5349 DeRosa, Linda Lacewell and Jim Malatras were
5350 involved in reviewing the draft report. None of

5351 them changed any of the fatality numbers or
5352 altered the facility or fatality data. After
5353 asking DOH questions, as to the source of the
5354 previously unpublished data, to which there were
5355 not clear and complete answers, and probing to
5356 determine whether it was relevant to the outcome
5357 of the report. And the decision was made to use
5358 the data set that was reported by the place of
5359 death with firsthand knowledge of the
5360 circumstances, which gave a higher degree of
5361 comfort in its accuracy."

5362 The second part of that excerpt,
5363 referring to the unpublished data that wasn't
5364 included, that -- and the rationale for not
5365 including it, that is what we were talking about
5366 earlier; the decision was made by Ms. DeRosa to
5367 not include that data?

5368 A. That statement is true, except for who
5369 made the decision and had the probing questions.
5370 That was Ms. DeRosa solely.

5371 Q. Finally, in regards to the July 6th
5372 report, I want to direct your attention to Page 4.

5373 MR. BENZINE: Ms. DeRosa in the meeting
5374 changing the numbers, did -- to your knowledge,
5375 did the governor know that that was occurring?

5376 THE WITNESS: I have no knowledge that
5377 that actually occurred, that he had any knowledge
5378 of that.

5379 MR. BENZINE: Okay.

5380 BY MR. EMMER:

5381 Q. Dr. Malatras, we'll return to the July
5382 6th report, but I was wondering if you could
5383 explain the difference between admitted and
5384 readmitted residents for the purposes of the July
5385 6th report?

5386 A. I don't -- you're asking me a question
5387 that I'm not -- I don't really remember.
5388 Re-admitted is people who are already in the
5389 facility, coming back after being discharged from
5390 the hospital. Admitted, I think, is the first
5391 time; right? I don't think -- you're stretching
5392 my memory without really diving into this again.

5393 Q. So I want to direct your attention to
5394 the second paragraph and the second sentence.

5395 A. Okay.

5396 Q. And it states: "A survey conducted by
5397 NYSDOH shows that approximately 6,326
5398 COVID-positive residents were admitted to
5399 facilities between March 25th, 2020, and May 8th,
5400 2020."

5401 Are you aware of whether this number
5402 included re-admitted nursing home residents?

5403 A. I really don't remember. I would have
5404 to read through this entire report again. I mean,
5405 I could take a look, but I don't remember.

5406 Q. Do you recall any conversations of
5407 whether -- or which populations to consider in the
5408 report? Admitted residents, versus readmitted
5409 residents?

5410 A. No. Not to say that it didn't happen,
5411 but I don't really remember.

5412 Q. We can move on.

5413 A. Yeah, I don't -- I -- the policies, I
5414 just don't remember.

5415 Q. Dr. Malatras, were you aware that the
5416 governor and members of his staff were writing a
5417 book while you were working on the July 6th
5418 report?

5419 A. No.

5420 Q. When did you become aware that the
5421 governor was writing a book?

5422 A. Roughly around the time that he went on
5423 a local Albany radio show. I think it was the
5424 Alan Shaw talk show. It was like July 10th or
5425 11th, 12th -- something like that. And the only

5426 real heads up I got before that was Gareth said to
5427 me I think -- I heard that he might be writing a
5428 book, and that's what he's going to be talking
5429 about on the radio show.

5430 Q. When you learned that he was writing --
5431 or after you learned that he was writing a book,
5432 did you have any involvement in the drafting of
5433 the book?

5434 A. I had -- I had involvement in editing
5435 his book, yes.

5436 Q. Do you recall what areas of the book you
5437 would have been drafting, or what specific policy
5438 areas you would have been most concerned with?

5439 A. The first think I received was sometime
5440 thereafter. I don't know. July 12th or -- I
5441 don't know. You -- I don't remember the exact
5442 dates. Ms. Benton sent me something called
5443 Chapter 6, which is policy recommendations
5444 generally about what to do in COVID. She did not
5445 say it was actually for what ended up becoming
5446 American Crisis. I didn't know what it was. He
5447 often was putting out these policy things. We did
5448 it for reopening, and I said, all right, I'll look
5449 at it. Although he just did the news report,
5450 saying he's going to write a book, I was assuming

5451 they put it in for the book. So I did it in off
5452 hours, frankly, and I got the comments back.

5453 The first realtime where I was aware
5454 that it was for what became American Crisis was
5455 July 24th, July 25th. It was a Friday, and they
5456 invited us over to the executive mansion, where
5457 the government's residence is. And when we
5458 arrived, there was a printed-out manuscript on
5459 each of the table settings. And we edited from
5460 there. So basically, beginning to end, we looked
5461 at all of it.

5462 Q. And again, did you ever -- were you ever
5463 tasked with reviewing nursing home related --

5464 A. Everything.

5465 Q. -- parts of the book? Okay.

5466 Everything.

5467 A. Sorry.

5468 Q. And who else was involved in the
5469 drafting of the book?

5470 A. Let me just say this. The drafting of
5471 the book, I don't know. I have seen -- since have
5472 seen press reports, like all you have in the
5473 Times, that there were drafts going back and forth
5474 for many months prior to July 10th, when he
5475 announced the book. You have to ask folks that

5476 question about their involvement because I don't
5477 know. The editing of the -- mainly of -- the copy
5478 that we first saw was over 300 pages in -- there
5479 was -- Mr. Rhodes was involved, Ms. DeRosa was
5480 involved, Mr. Mujica -- Robert Mujica, the budget
5481 director, was involved. And then, he had other --
5482 Ms. Benton -- Stephanie Benton was involved.

5483 Other people also were reviewing the
5484 book. I remember Steve Cohen, the former
5485 secretary to the governor, was involved. So he
5486 had other outsiders like that reviewing it, as
5487 well. But in a really -- and Ms. Garvey was also
5488 at the initial July 24th meeting, as well. I
5489 could be forgetting a person here or there, but
5490 that was the sum and substance of --

5491 MR. BENZINE: Initial, were there
5492 subsequent meetings regarding the book?

5493 THE WITNESS: I was involved primarily
5494 through two weekends. There was that July 24th
5495 weekend, then I think there was a weekend in the
5496 beginning of August. And then, there was a day
5497 here or there, like during lunch period, where I
5498 went -- I went over, but it was basically two
5499 weekends for me. After that, I was basically done
5500 and others remained. I mean, I -- I remember

5501 talking to Gareth, who I was commiserating with
5502 because he was still working on it after I was
5503 done.

5504 MR. BENZINE: Do you know if any of them
5505 were using official state resources to work on the
5506 book?

5507 THE WITNESS: I mean, he said -- we were
5508 in the executive mansion, but that's considered
5509 his residence. I don't know. I mean, I -- here's
5510 the resolution for me. I read in the press
5511 reports now that they were used. At the time, I
5512 did not.

5513 MR. BENZINE: Okay.

5514 BY MR. EMMER:

5515 Q. Did you ever have any discussions about
5516 the book with the governor himself?

5517 A. He was in the room for each of those
5518 meetings I was in.

5519 Q. Did any of those discussions occur while
5520 simultaneously having COVID -- or having
5521 conversations related to the COVID-19 response?

5522 A. I mean, I -- I recall -- I'll give you
5523 one example that I do recall. I mean, because it
5524 was all just a -- I mean, it wasn't like any of
5525 these things were going away. There was one of

5526 the days where I was -- well, oddly, I wasn't
5527 talking to him about it. There's this whole
5528 discussion in the beginning of the August about
5529 how to re-open our schools, and what levels of
5530 testing to do and what levels of -- when do you
5531 close a school again with cases. And he was
5532 talking to the local teacher's union, Michael
5533 Mulgrew, in one part of the room. And I was
5534 talking to Mr. Mulgrew off the line. Really, he
5535 was having conversations talking -- anyway, that
5536 was one example where we were ending up -- it
5537 started with at a lunch table looking at the
5538 booklet. It stopped, and then it became that.

5539 Q. I just want to ask one final question
5540 related to the book. Do you feel that the
5541 governor's book may have influenced the governor
5542 and the staff's decisions during the pandemic?

5543 A. That's an unfair question for me to
5544 answer. I -- the question, you should ask them.
5545 People like me were surprised at a certain point
5546 about how long back that book went, but you would
5547 have to ask them on that. I don't really want to
5548 -- it's unfair for me to venture what was
5549 influencing them and not influencing them.

5550 Q. Thank you. I would like to briefly

5551 discuss the concerns that hospitals would be
5552 overwhelmed with COVID-19 patients.

5553 To the best of your recollection, can
5554 you briefly describe the administration's
5555 concerns, and what measures it took to ensure that
5556 the state could accommodate a potential influx of
5557 patients?

5558 A. When I first came to working more -- I
5559 was more embedded in the response effort in the
5560 middle of March. That was a -- a serious concern
5561 by the administration based on the projections
5562 provided by the models that McKinsey was
5563 providing, where we did not have the capacity to
5564 deal with the hospital, the potential admittance
5565 of individuals with COVID with the capacity that
5566 we have in the State of New York. It was triple
5567 the amount potentially just for COVID patients for
5568 our hospital system.

5569 Q. Did you have any involvement with the
5570 opening of the Javits Center and the USNS Comfort?

5571 A. I was part of the -- I did not do the
5572 operational piece on the Javits, but I was there
5573 for the opening of it for a briefing. So I was in
5574 and around that issue, yes. I think that was Mr.
5575 Schwartz and some others.

5576 Q. Do you recall whether there was ever any
5577 discussions about transferring COVID-positive
5578 nursing home patients from the hospitals to the
5579 Comfort or Javits Center?

5580 A. Yes, I -- I recall, although -- so
5581 dates, times. There were two issues on the
5582 Comfort, which was the ship, that the federal
5583 government provided. At first, I believe they did
5584 not want COVID patients. It was non-COVID
5585 patients that could go to that facility. So there
5586 was some controversy there about why would we move
5587 other patients in a hospital to a ship, instead of
5588 COVID-positive patients. And I think that did
5589 change at a certain point.

5590 The second piece was moving nursing home
5591 patients. Like I mentioned early on in my
5592 testimony, people like Dr. Zucker had concerns
5593 about shifting pretty frail nursing home patients
5594 who were already COVID-positive, dealing with a
5595 whole host of issues into different facilities
5596 because it could harm their health. Javits was
5597 one example. We tried to create other -- I think
5598 it was called the convalescent units just for
5599 nursing home patients that were recovering from
5600 COVID. And there was an ongoing debate about that

5601 because people like Dr. Zucker, who were the
5602 medical professionals on this one, did not believe
5603 -- even if you're going 10 miles or 14 miles,
5604 after already going through that trauma of going
5605 from a nursing home to a hospital, then getting
5606 discharged into another facility, that would be
5607 beneficial for their health. So that was the
5608 actual discussions.

5609 MR. EMMER: At this time, I would like
5610 to introduce what will be marked as Majority
5611 Exhibit 14.

5612 (Majority Exhibit Number 14 was marked
5613 for identification.)

5614 BY MR. EMMER:

5615 Q. This is an e-mail thread collected via
5616 FOIA between Vice Admiral Mike Dumont to Melissa
5617 DeRosa on April 7, 2020.

5618 A. Okay.

5619 Q. And the first e-mail -- I'm looking at
5620 the e-mail on April 7th of 2020 --

5621 A. Okay.

5622 Q. -- at 7:23 p.m. --

5623 A. Okay.

5624 Q. -- that you are CC'd on.

5625 And the vice admiral writes in this:

5626 "We could use some help from your office. The
5627 governor asks us to permit use of the USNS Comfort
5628 to treat patients without regard to their COVID
5629 status, and we have done so. Right now, we only
5630 have 37 patients aboard the ship. Further, we are
5631 treating only 83 patients at the Javits event
5632 center. Our greatest concern was twofold:
5633 Helping take the strain off local hospitals, and
5634 not wasting high-end capabilities the U.S.
5635 military has brought to New York City."

5636 Doctor -- or Ms. DeRosa forwarded the
5637 e-mail to Dr. Zucker, Kopy and Dowling. I'm
5638 trying to locate the page.

5639 A. It's right at the top here.

5640 Q. Regrettably, the wrong production was
5641 printed here; but do you recall conversations
5642 related to the vice admiral's request?

5643 A. I really don't. I mean, I wasn't -- as
5644 you can see, she quoted that Mr. Kopy was in
5645 homeland emergency services, or in the facility.
5646 Mr. Dowling, I think, was the -- I think Northwell
5647 was the one who managed Javits -- the Javits
5648 operation and Dr. Zucker.

5649 Q. And to conclude this section. Why
5650 wasn't the Comfort and Javits Center being fully

5651 utilized during this time?

5652 A. I think if you look at this e-mail, this
5653 is me talking about how they're responding.
5654 Staffing is one of the issues. And then -- look,
5655 I mentioned the one conversation I do remember
5656 before, which changed because the -- I think the
5657 vice admiral did say they did change their
5658 position allowing COVID patients on board. First,
5659 that was not allowed, right. That was prohibited.
5660 So that automatically cut back on the number of
5661 patients available for use, but they did change
5662 that, which was good; but that was a barrier.
5663 Staffing was a barrier.

5664 And then, I do think there was this
5665 third piece on particular fragile populations,
5666 where Dr. Zucker did -- did not believe -- and Dr.
5667 Zucker was in disagreement with the hospital
5668 industry about that, as well. He was pretty
5669 adamant about you can't be moving these patients
5670 all over the place all the time. They are fragile
5671 patients.

5672 MR. EMMER: Thank you, Dr. Malatras. We
5673 will go off the record.

5674 (Time Noted: 3:13 p.m.)

5675