

1 ALDERSON COURT REPORTING

2 MONIQUE CABRERA

3 HVC124550

4 INTERVIEW OF: GARETH RHODES, ESQ,

5 Friday, May 3, 2024

6 U.S. House of Representatives

7 Select Subcommittee on the Coronavirus Pandemic

8 Committee on Oversight and Accountability

9 Washington, D.C.

10 The interview of the above matter
11 was held at 1301 Pennsylvania Avenue, N.W., commencing at
12 9:10 a.m.

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

14

15 ON BEHALF OF GARETH RHODES, ESQ.

16

17 Joshua Goldberg, Esquire

18 Allison Murphy, Esquire

19 Neil Eggleston, Esquire

20 Of: Kirkland & Ellis, LLP

21 1301 Pennsylvania Avenue, N.W.

22 Washington, DC

23

24 ON BEHALF OF THE SELECT COMMITTEE ON

25 THE CORONAVIRUS PANDEMIC:

26

27 FOR THE REPUBLICAN STAFF (MAJORITY):

28 MITCHELL BENZINE, Staff Director

29 JACK EMMER, Counsel

30 ERIC OSTERHUES, Chief Counsel

31

32 FOR THE DEMOCRATIC STAFF (MINORITY):

33 [REDACTED] Staff Director

34 [REDACTED] Senior Counsel

35 [REDACTED] Counsel

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

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

81 This is a transcribed interview of
82 Mr. Gareth Rhodes conducted by the House
83 Select Subcommittee on the Coronavirus
84 Pandemic under the authority granted to it by
85 House Resolution 5 in the rules of the
86 Committee on Oversight and Accountability.

87 Further, pursuant to House
88 Resolution 5, the Select Subcommittee has
89 wide-ranging jurisdiction, but specifically
90 to investigate the implementation or
91 effectiveness of any federal law or
92 regulation applied, enacted, or under
93 consideration to address the coronavirus
94 pandemic and to prepare for future pandemics.

95 Can the witness please state his
96 name and spell his last name for the record?

97 THE WITNESS: Sure. Gareth Rhodes,
98 R-H-O-D-E-S.

99 EXAMINATION BY

100 MR. EMMER:

101 Q. Thank you, Mr. Rhodes.

102 My name is Jack Emmer. I am a
103 senior counsel for the majority staff of the

104 select subcommittee. I want to thank you for
105 coming in today for this interview. The select
106 subcommittee recognizes that you are here
107 voluntarily, and we appreciate that.

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

112 Do you now have an attorney
113 representing you in a personal capacity present
114 with you today?

115 A. Yes.

116 MR. EMMER: Will counsel please
117 identify themselves for the record?

118 MS. MURPHY: Allison Murphy from
119 Kirkland and Ellis.

120 MR. EGGLESTON: Neil Eggleston,
121 Kirkland and Ellis.

122 MR. GOLDBERG: Joshua Goldberg,
123 Kirkland and Ellis.

124 MR. EMMER: For the record, starting
125 with the majority staff and the additional
126 staff members, please introduce themselves
127 with their name, title, and affiliation.

128 MR. BENZINE: Mitch Benzine, staff

129 director for the majority staff.

130 MR. OSTERHUES: Eric Osterhues,
131 chief counsel for the majority staff.

132 [REDACTED]
133 Democratic staff director.

134 [REDACTED] senior
135 counsel for the Democratic staff.

136 [REDACTED] minority
137 counsel.

138 MR. EMMER: Thank you, all.

139 Mr. Rhodes, before we begin, I would like to
140 go over the ground rules for this interview.

141 The way this interview will proceed
142 is as follows: The majority and the minority
143 staff will alternate asking you questions,
144 one hour per side, per round until each side
145 is finished with their questioning.

146 The majority staff will begin and
147 proceed for an hour and then the minority
148 staff will have an hour to ask questions. We
149 will then alternate back and forth in this
150 manner until both sides have no more
151 questions. If either side is in the middle
152 of a specific line of questions, they may
153 choose to end a few minutes past an hour to

154 ensure completion of that specific line of
155 questioning including any pertinent
156 follow-ups.

157 In this interview while one member
158 of the staff for each side may lead the
159 question, additional staff may ask questions.

160 There is a court reporter taking
161 down everything I say and everything you say
162 to make a written record of the interview.

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

169 Further, to ensure the court
170 reporter can properly record this interview,
171 please speak clearly, concisely, and slowly.
172 Also, the court reporter cannot record
173 nonverbal answers such as nodding or shaking
174 your head, so it's important that you answer
175 each question with an audible, verbal answer.

176 Exhibits may be entered into the
177 record. Majority exhibits will be identified
178 numerically. Minority exhibits will be

179 identified alphabetically.

180 EXAMINATION BY

181 MR. EMMER:

182 Q. Do you understand?

183 A. Yes.

184 Q. We want you to answer our questions
185 in the most complete and truthful manner
186 possible, so we will take our time. If you have
187 any questions or do not fully understand the
188 question, please let us know. We will attempt to
189 clarify, add context to, or rephrase our
190 question.

191 Do you understand?

192 A. Yes.

193 Q. If we ask about specific
194 conversations or events in the past and you are
195 unable to recall the exact words or details, you
196 should testify to the substance of those
197 conversations or events to the best of your
198 recollection.

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

203 Do you understand?

204 A. Yes.

205 Q. Although you are here voluntarily
206 and we will not swear in, you are required
207 pursuant to Title 18, Section 1001 of the United
208 States Code to answer questions from Congress
209 truthfully. This also applies to questions posed
210 by congressional staff in this interview.

211 Do you understand?

212 A. Yes.

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

216 Do you understand?

217 A. Yes.

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

221 A. No.

222 Q. The select subcommittee follows the
223 rules of the committee on oversight and
224 accountability. Please note that if you wish to
225 assert a privilege over any statement today, that
226 assertion must comply with the rules of the
227 committee on oversight and accountability.

228 Pursuant to that, Committee

229 Rule 16(C) (1) states, "For the chair to consider
230 assertions of privilege over testimony or
231 statements, witnesses or entities must clearly
232 state the specific privilege being asserted and
233 the reason for the assertion on or before the
234 scheduled date of testimony or appearance.

235 Do you understand?

236 A. Yes.

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

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

245 Do you understand?

246 A. Yes.

247 Q. Do you have any other questions
248 before we begin?

249 A. I do not.

250 Q. Mr. Rhodes, I want to thank you
251 again for taking part in this interview
252 voluntarily and for your years of public service.

253 Let's start by discussing your

254 education and experiences. Where did you attend
255 undergraduate school?

256 A. The City College of New York, CUNY.

257 Q. What degree did you graduate with?

258 A. Public policy and economics.

259 Q. Where did you get your doctorate?

260 A. I attended law school at Harvard.

261 Q. Who is your current employer and

262 what is your current job title?

263 A. I teach at CUNY and I am in private

264 law practice.

265 Q. Can you briefly go through your

266 professional career until now?

267 A. Sure. After graduating from

268 college, I worked in the executive chamber in New

269 York as -- in the communications office. I then

270 attended law school.

271 Following law school, I worked

272 briefly in private practice. I then worked at

273 State Department of Financial Services. I then

274 worked at a company, small fintech credit card

275 start-up here in New York, and then I returned to

276 private practice.

277 Q. And just to be clear, you mentioned

278 that you worked in the executive chamber in --

279 doing communications. Was that all within the
280 Cuomo administration?

281 A. Yes. That was under former governor
282 Andrew Cuomo.

283 Q. I would like to now take a moment to
284 discuss your -- the New York State Department of
285 Financial Services and your previous role in it.
286 When did you begin your employment with the New
287 York State Department of Financial Services?

288 A. March 2019.

289 Q. What was your position?

290 A. My title when I started was special
291 assistant to the superintendent, and then it
292 became special counsel and deputy superintendent.

293 Q. Who did you report to?

294 A. My direct supervisor was the chief
295 of staff.

296 Q. Can you be more specific on her or
297 his -- his or her name?

298 A. Oh sure. Wendy Erdly, E-R-D-L-Y.

299 MR. BENZINE: When you were deputy,
300 your direct report was still the chief of
301 staff?

302 THE WITNESS: Yes. She was the one
303 that signed my time sheets, things like that.

304 BY MR. EMMER:

305 Q. Within that position, how often did
306 you meet with the former governor?

307 A. So for the first -- there were kind
308 of different parts of my time at DFS. There was
309 the time, I want to say pre-COVID and the time
310 kind of post-COVID. The pre-COVID I probably --
311 maybe once every three months we spoke. I don't
312 recall ever meeting in person, but maybe spoke
313 then and then during COVID, much more often,
314 of course.

315 Q. Can you briefly describe how your
316 duties and responsibilities changed as a result
317 of COVID?

318 A. Sure. So prior to COVID, I worked
319 at DFS has a -- number of divisions has banking,
320 it's the banking regulator for banks domiciled
321 here.

322 (Court reporter clarification.)

323 THE WITNESS: Domiciled -- New York
324 State banks, it's a state insurance
325 regulator, there's a consumer protection division.
326 There's a cyber security division. It's kind of the
327 CFPB plus OCC kind of packed into one on the
328 state level. I was working on those issues.

329 Then when COVID happened, I went to
330 Albany and joined the COVID task force. My
331 duties focused almost exclusively then on
332 COVID-related issues.

333 BY MR. EMMER:

334 Q. And we will discuss the task force
335 shortly.

336 Now I want to ask you if you spoke
337 with or e-mailed any of the following people
338 regarding COVID-19, specifically related to
339 nursing homes between January 1st of 2020 and
340 present. And you can answer "yes" or "no."

341 A. You said between January 1st --

342 Q. 2020 and --

343 MR. BENZINE: We can start with
344 January 1, 2020, until you left the
345 administration.

346 THE WITNESS: Okay.

347 MS. MURPHY: Do you mean until he
348 left the task force?

349 MR. BENZINE: No. Until he left the
350 Cuomo administration.

351 MS. MURPHY: Until he left DFS?

352 MR. BENZINE: Yes.

353 THE WITNESS: Okay. Either I spoke

354 with or e-mailed with?

355 MR. EMMER: Correct.

356 THE WITNESS: Okay.

357 BY MR. EMMER:

358 Q. First, Dr. Howard Zucker?

359 A. Yes.

360 Q. Dr. Eleanor Adams?

361 A. Yes.

362 Q. Ms. Sally Dreslin?

363 A. I don't recall conversations with

364 Sally about nursing homes.

365 Q. Mr. Gary Holmes?

366 A. Yes, I believe.

367 Q. Former governor Andrew Cuomo?

368 A. Yes.

369 Q. Former secretary to the governor

370 Melissa DeRosa?

371 A. Yes.

372 Q. Dr. Jim Malatras?

373 A. Yes.

374 Q. Mr. Rich Azzopardi?

375 A. Yes, I believe.

376 Q. Ms. Dani Lever?

377 A. I don't recall anything with nursing

378 homes with Dani Lever. Off the top of my head.

379 Q. Mr. Peter Ajemian?

380 A. Yes.

381 Q. Ms. Beth Garvey?

382 A. Yes.

383 Q. Ms. Judith Mogul?

384 A. Yes.

385 Q. Ms. Megan Baldwin?

386 A. I'm not -- I don't recall any
387 conversations with Megan with nursing homes off
388 the top of my head.

389 Q. Mr. Larry Schwartz?

390 A. I don't recall any conversations
391 about nursing homes with Larry.

392 Q. Ms. Jill DesRosiers?

393 A. I don't recall any conversations
394 about nursing homes with Jill.

395 Q. Ms. Annabel Walsh?

396 A. I don't recall any conversations
397 with Annabel about nursing homes.

398 Q. Ms. Linda Lacewell?

399 A. Possibly. I don't --

400 Q. Mr. Kenneth Raske?

401 A. I don't recall any conversations
402 with Ken about nursing homes.

403 Q. Mr. Lee Perlman?

404 A. I don't recall any conversations
405 with Lee about this.

406 Q. Mr. Michael Dowling?

407 A. I don't recall any conversations
408 with Mike about this.

409 Q. Dr. Anthony Fauci?

410 A. I don't recall any conversations
411 with Dr. Fauci about this.

412 Q. Mr. Alex Azar?

413 A. I don't recall any conversation
414 about this with him.

415 Q. Ms. Seema Verma?

416 A. The same answer.

417 Q. Dr. Deborah Birx?

418 A. The same answer.

419 Q. Finally, Dr. Robert Redfield?

420 A. The same answer.

421 Q. So let's start with Dr. Howard
422 Zucker. Do you recall if you spoke with him
423 about the March 25th order?

424 A. In this whole entire time period?

425 Q. Yes. Its implementation and -- its
426 implementation and the events leading up to its
427 eventual -- or the termination?

428 A. I don't recall speaking with

429 Dr. Zucker about the implementation or
430 termination of this order.

431 MR. BENZINE: What about the
432 drafting?

433 THE WITNESS: I don't recall any
434 conversation with Dr. Zucker about drafting
435 this.

436 MR. BENZINE: What conversations do
437 you recall?

438 MS. MURPHY: Sorry. Are you asking
439 him any conversations he's had?

440 MR. BENZINE: No. Within the scope
441 of the original question.

442 MS. MURPHY: I'm sorry. What's the
443 original question? We just went through
444 about 25 things.

445 EXAMINATION BY

446 MR. BENZINE:

447 Q. Conversations or communications with
448 those people regarding COVID-19 in nursing homes
449 between the beginning of the pandemic and the
450 time that Mr. Rhodes left the Cuomo
451 administration?

452 You said, yes, to Dr. Zucker
453 but no to drafting, implementation, or

454 termination of the order. So I was just asking
455 what conversations do you recall.

456 A. I worked with Dr. Zucker pretty
457 closely on numerous issues. So I probably had
458 dozens, if not hundreds of conversations with
459 him. I can't like -- it's going to be very hard
460 for me to say like this conversation was like
461 about this and this wasn't about this. I think,
462 you know, there was -- you know, nursing homes
463 were part of this pandemic. I can't recall like
464 here's one time I sat down and talked to Dr.
465 Zucker about nursing homes. There was probably
466 multiple times.

467 It's a hard time kind of thinking of
468 -- you know, here is like --
469 I have to think a little bit. Like -- you're
470 trying to ask like a specific time like we just
471 talked about nursing homes?

472 Q. No. Like the general topics, if it
473 wasn't about -- if it was like just about cases
474 and deaths in nursing homes, was it about the
475 impact of the order, the press coverage around
476 the order, anything like that?

477 A. It was most likely the press
478 coverage. Again, like

479 I just for some context, like my primary kind of
480 responsibilities in COVID were at the outset
481 testing. I then transitioned -- the Army Corps
482 of Engineers had come to New York and were
483 setting up these temporary hospitals. I worked
484 very closely with them. Those through like March
485 and April were kind of like my main focuses.

486 I kind of turned back to testing
487 once the reopening process began in May and June
488 and then throughout the summer. Then by the fall
489 we had implemented kind of this more targeted,
490 like, community restriction policy, like red
491 zones or yellow zones. I was very involved in
492 helping put those together.

493 And then when the vaccine came, like
494 that was really my like driving priority. So
495 like, for example, we did a whole vaccination
496 program with nursing home staff. So I was
497 very -- talked to Mr. Zucker over multiple times
498 about that and we built the dashboard and we had
499 to think through kind of all the ways to help
500 nursing home staff get vaccinated.

501 There was like -- on the testing
502 side, like we had at one point required nursing
503 home staff to get tested twice a week. I

504 was responsible on the testing side. So this was
505 an enormous logistical undertaking. So I worked
506 very closely with Dr. Zucker and DOH on that.

507 So it was just -- like we talked --
508 nursing homes were part of those discussions, but
509 it wasn't -- it's hard for to kind of say like on
510 this day at this time like this is what we
511 discussed about that.

512 Q. I appreciate that.

513 Any -- have it a little bit broader
514 but also a little bit more specific.

515 Do you recall any specific
516 conversations regarding the order or kind of more
517 the conversations that you just outlined?

518 A. The majority of what I remember is
519 about those things I outlined. I think when the
520 order was like a focus of press coverage, like I
521 had been a former communication staffer. So I
522 think people came to me and asked me with
523 that hat on to think about it that way.

524 So there were certainly
525 conversations along those lines, but the majority
526 of my conversations with him about
527 -- nursing homes did not involve this -- this
528 memo.

529 Q. Any conversations with him regarding
530 the July 6, 2020, Department of Health report on
531 the order?

532 A. So there was -- to the best of my
533 recollection, just to go back, I had worked
534 previously in my years prior to law school -- Cuomo does a
535 lot of like PowerPoints. PowerPoints were kind
536 of a big part of this administration. I worked
537 on designing and building these PowerPoints as
538 part of my role.

539 So when I come from back during COVID
540 and the governor was giving these PowerPoints
541 every day, I was often like asked to like help
542 out on the PowerPoint side. Dr. Zucker, to the
543 best of my recollection, him or maybe somebody
544 else, but I believe it was Dr. Zucker gave like a
545 PowerPoint in July regarding this report, and I
546 had been asked to help out on kind of making sure
547 that PowerPoint made sense. So I recall some
548 conversations with him about that PowerPoint.

549 MR. BENZINE: I appreciate that.

550 EXAMINATION BY

551 MR. EMMER:

552 Q. Same question. Do you recall
553 specific conversations related to the March 25th

554 order and nursing homes with the former governor?

555 Actually, I should rephrase that.

556 What do you recall as far
557 conversations with the former governor related to
558 the March 25th order?

559 A. I don't recall any conversations
560 like directly with him about that, you know,
561 order. I think maybe I was in conversations
562 where it was discussed. I don't recall me
563 talking to him one on one about this order, if
564 that makes sense.

565 Just like there was tons of meetings
566 at this time on many issues. It's hard to say
567 this was one conversation I had with him about
568 this order.

569 Q. You brought it up with Dr. Zucker
570 that you handled a lot of the press side because
571 that was part of your previous administration --
572 or role in the administration. Do you recall
573 having conversations with the former governor
574 related to how to handle the press related to the
575 March 25th order?

576 A. So I wouldn't say I would handle the
577 press. I would say like the press office would
578 come to me and say, here is like something we are

579 thinking about doing. Mostly it was with regards
580 to like testing and the hospital capacity and
581 vaccine and I would kind of look it over for
582 accuracy. And sometimes it was about nursing
583 homes. It could have been a number of different
584 topics.

585 So I wouldn't say I was the one
586 handling it, but more as like a second set of
587 eyes, so to say. I don't recall discussing press
588 strategy with the governor in regards to nursing
589 homes.

590 Q. What do you recall from your
591 conversation with the former secretary of the
592 governor Melissa DeRosa related to nursing homes
593 and the March 25th order?

594 A. Again, early on, I don't recall --
595 like I just wasn't involved in nursing homes
596 until the decision was made to do testing of
597 nursing home staff.

598 So like I was very -- I think really
599 my first kind of memory of being involved in
600 nursing home issues is when I was told that we
601 are going to do this twice-a-week testing of
602 nursing home staff. For context, I think we were
603 doing like 150,000 tests a week in New York at

604 the time.

605 And I remember learning there was
606 140,000 nursing home staff, which would be
607 280,000 tests just for nursing home staff, which
608 was like basically triple our testing capacity at
609 the time and being like very -- like this going
610 to be a huge undertaking for us and spending a
611 lot of time -- I think I remember speaking to
612 Melissa about like how are we going to like do
613 this, basically.

614 That's really my first kind of
615 memory talking to Melissa about nursing homes and
616 probably, you know, I spoke to Melissa probably
617 multiple times a week. So certainly there were
618 times we talked about nursing homes after that,
619 but this was -- I would say that's where my first
620 memory of when I spoke to Melissa about nursing
621 homes.

622 Q. This is unrelated to the DeRosa
623 question, but just because you brought it up, but
624 when did the state start to require nursing home
625 staff to be tested twice a week?

626 A. In May, I believe, it was.

627 EXAMINATION BY

628 MR. BENZINE:

629 Q. Again, to the best your
630 recollection, any conversations with Ms. DeRosa
631 regarding the order or aftermath of the order?

632 A. There was multiple just -- there was
633 the whole issue around testing in May. Then
634 there was the July report and then there was --
635 end of January there was the Attorney General's
636 report. And like in -- during and in the
637 aftermath of all this, there were lots of
638 conversations happening that you can imagine. So
639 like I was in this conversation -- we had --
640 there's just probably a lot of conversations in
641 there. Kind of hard for me to say like, here is
642 the list of all of them, if that makes sense.
643 I am happy to look at those more -- talk about
644 those in more detail.

645 I also had hundreds, if not more,
646 conversations with Melissa in general during this
647 pandemic. It's like broad -- it's hard for me to
648 like -- I am not trying to be difficult.

649 Q. We are not either. We are trying to
650 figure out like a shorter time schedule here. So
651 if there wasn't a whole lot of involvement in any
652 nursing home order directly conversations until,
653 you know, close to the revocation, close to the

654 July 6th report, then we can move forward in time
655 and --

656 A. Got it.

657 MS. MURPHY: You might want to ask
658 him, were you involved in the March 25th
659 order?

660 THE WITNESS: I wasn't -- like my
661 involvement with things to do with nursing
662 homes -- my involvement, to the best of my
663 recollection, with issues involving nursing
664 homes started with that May directive
665 regarding staff testing. That kind of
666 where -- so I don't --

667 Q. So that answers what Alison just
668 suggested, so we will attempt as best as possible
669 to focus our questions post-May then.

670 A. Okay.

671 MR. BENZINE: After we get through
672 some more custodial questions.

673 EXAMINATION BY

674 MR. EMMER:

675 Q. So now I want to ask you if you had
676 interaction with any of the following
677 institutions between January 1, 2020, and you
678 leaving your position at the New York State

679 Department of Financial Services and task force.

680 So first, U.S. Centers for Medicare
681 and Medicare services?

682 A. I don't recall any interaction.
683 I may have been on phone calls with them, but I
684 don't recall any off the top of my head.

685 MS. MURPHY: Just remember to slow
686 down for the court reporter.

687 THE WITNESS: Slow.

688 MS. MURPHY: So she can get the
689 record. It's not even 9:30.

690 EXAMINATION BY

691 MR. EMMER:

692 Q. U.S. Department of Health and Human
693 Services?

694 A. Again, I may have been on phone
695 calls with their staff. I don't -- I can't
696 recall a specific time off the top of my head.

697 Q. U.S. Centers For Disease Control and
698 Prevention?

699 A. I would say the same answer. I may
700 have been on phone calls. I don't recall any off
701 the top of my head.

702 Q. New York State Attorneys General's
703 Office -- or Attorney General's Office?

704 A. Did I interact with them at all?

705 Q. Yes.

706 A. I interacted with them briefly in
707 January of 2021.

708 MR. BENZINE: Did they call you to
709 testify?

710 THE WITNESS: I was thinking of
711 times during this COVID time period.

712 MR. BENZINE: Yes. Did they ask you
713 to testify for the Attorney General's report?

714 THE WITNESS: For the report on
715 nursing homes?

716 MR. BENZINE: Yes.

717 THE WITNESS: No. They did a number
718 of reports.

719 MR. BENZINE: The nursing home ones.
720 The other ones we don't need to talk about.

721 BY MR. EMMER:

722 Q. The New York State comptroller?

723 A. I don't believe I interacted with
724 the comptroller during this time period.

725 Q. New York State Assembly Judiciary
726 Committee?

727 A. Again, not during -- I spoke to them
728 at some point, but not -- I don't believe it

729 was -- they did a report at some point. So
730 I spoke to them about that report. But I don't
731 believe it was during this kind of time period,
732 if that makes sense.

733 Q. For the record, we are only
734 concerned with the assembly or judiciary
735 committee's investigation as it related to
736 nursing homes, not any of the others.

737 A. Yes. They did that -- they did that
738 report, but it was not -- I think I spoke to them
739 after I left the administration. I don't recall
740 the exact time. I believe it was after I left
741 the administration.

742 MS. MURPHY: So, would it be
743 helpful to put a date in terms of when
744 you left the task force --

745 THE WITNESS: Sure.

746 MS. MURPHY: -- and then when you
747 left the administration?

748 THE WITNESS: So I left the task
749 force in February of 2021. I left DFS in
750 July of 2021.

751 MR. BENZINE: Your conversations
752 after you left the administration with the
753 judiciary committee, were they regarding

754 nursing homes or the kind of other issues
755 that they were investigating?

756 THE WITNESS: I believe it involved
757 like four or five different topics. I think
758 nursing homes was included. It was -- I
759 think they had -- they had everything from
760 like bolts on bridges. It was pretty
761 wide-ranging. So I think nursing homes and
762 it was all sorts of things.

763 BY MR. EMMER:

764 Q. U.S. Department of Justice?

765 A. I don't recall any conversations
766 with DOJ.

767 Q. Greater New York Hospital
768 Association?

769 A. Yes, I spoke with them.

770 Q. Was it related to nursing homes or
771 the March 25th order?

772 A. It was not related to the March 25th
773 order. It may have been related to nursing home
774 staff testing, and we did a lot of -- we did a
775 lot of kind of work on -- with nursing homes, I
776 only had conversation about staff testing.

777 Q. Northwell Health?

778 A. I spoke to Northwell likely about

779 the same, staff testing.

780 Q. McKinsey and Company?

781 A. I don't recall any conversations
782 with McKinsey about nursing homes except for --
783 I think, actually, when we built that staff
784 testing online portal that tracks staff testing
785 in nursing homes, and like McKinsey was like a
786 tech consultant with them, so they may have
787 helped with that.

788 Q. I would like to now briefly ask you
789 some general operational questions.

790 Did you ever conduct official
791 Department of Financial Services or executive
792 chamber of task force business via personal
793 e-mail?

794 A. Not to the best of my recollection.

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

797 A. Sometimes people would call you on
798 their -- on your personal line, but I had a
799 separate work cell phone, which was the majority
800 of my communications, to the best of my
801 recollection.

802 Q. Did you ever conduct official
803 business by an encrypted messaging app like

804 Signal or WhatsApp?

805 A. Not that I recall.

806 Q. What about Microsoft Teams on a
807 desktop or laptop, did you ever use that to
808 communicate?

809 A. I think we had Teams on our
810 computers, but I don't recall a lot of use of
811 Teams.

812 MR. BENZINE: Was e-mail the primary
813 method of communication?

814 THE WITNESS: Yes.

815 BY MR. EMMER:

816 Q. Did you keep or maintain more than
817 one e-mail account?

818 A. I had one official e-mail account.

819 MR. EMMER: At this time I would
820 like to introduce Majority Exhibit 1.

821 (Whereupon, Majority Exhibit 1,
822 E-mail thread, was marked for
823 identification.)

824 BY MR. EMMER:

825 Q. This is an e-mail thread from
826 Melissa DeRosa to yourself and senior executive
827 chamber staff and Dr. Zucker. It is Bates marked
828 9253.

829 I want to direct your attention to
830 the top of the e-mail from Ms. DeRosa on
831 January 28th at 8:43 a.m. where she states in all
832 caps, delete this chain, don't respond to it.

833 Mr. Rhodes, do you recall this
834 request to delete an e-mail thread?

835 A. I don't really recall. Vaguely.
836 How about you show it to me? Vaguely, but not
837 really.

838 Q. Do you know why Ms. DeRosa would be
839 asking members of the staff to delete this
840 thread?

841 A. I do not.

842 MR. BENZINE: Do you recall any
843 other times she requested you delete records?

844 THE WITNESS: I don't recall, no.

845 BY MR. EMMER:

846 Q. Did you delete this thread?

847 A. I don't recall.

848 Q. Are you aware of any executive
849 chamber or task force officials ever deleting
850 official documents?

851 A. I am not.

852 EXAMINATION BY

853 MR. BENZINE:

854 Q. The original e-mail at the bottom is
855 from the Attorney General's office to the
856 executive chamber and it's regarding -- it
857 appears to be regarding the Attorney General's
858 nursing home report?

859 Do you recall any conversations
860 regarding the executive chamber's response to
861 that report?

862 A. There were conversations -- this was
863 looking at the -- this is January 28th. So this
864 was the date, I believe, the report came out.
865 There were conversations that day regarding this
866 report, yes.

867 Q. And how to respond to it or factual
868 inaccuracies? What was the nature of the
869 conversation?

870 A. I believe both.

871 Q. Starting with the first one, do you
872 recall how the governor's office planned to
873 respond to the report?

874 A. To the best of my recollection, it
875 was -- there was the Department of Health was
876 going to put out a statement of some sorts.

877 Q. Was it common for the governor's
878 office to draft those statements for the

879 Department of Health?

880 A. I think -- I don't know if that
881 would -- I think it would be common that maybe
882 DOH would, you know -- maybe the governor's
883 office would give input but DOH would have the
884 pen and maybe a lot back-and-forth -- it would be
885 a lot of back-and-forth on it. I know there was
886 a lot of, you know, input from both sides.

887 Q. Do you recall conversations
888 regarding any inaccuracies in the Attorney
889 General's report?

890 A. I recall that there were some --
891 that we did find in this report some like factual
892 things that were not correct and yes, I do
893 remember that.

894 Q. And we will introduce the report
895 later, so we will go through those.

896 A. Okay.

897 Q. And then in -- in Ms. DeRosa's book
898 and then subsequently in Dr. Zucker's interview,
899 they recalled a conversation between Ms. DeRosa
900 and the former Chief of Staff, the Attorney
901 General's Office this day.

902 Were you on that phone call?

903 A. I was on -- yes, I believe I was on

904 a phone call with the Chief of Staff.

905 Q. To refresh your recollection, I
906 think there was -- Dr. Zucker described it as
907 colorful language on this phone call.

908 Does that sound like the same phone
909 call?

910 A. There was -- I think I tried to
911 remember that exact phone call. Like I don't
912 remember it being like -- I remember it being --
913 I remember the phone call. If I said -- if you
914 asked what language was said, I wouldn't be able
915 to give you an answer because I don't recall, but
916 I remember that phone call.

917 Q. Do you recall why Ms. DeRosa wanted
918 to talk to you and the Chief of Staff at the
919 Attorney General's Office?

920 A. I believe that there was concern
921 about like potentially like maybe there have been
922 things -- inaccuracies found before it had gone
923 out that they wanted to fix. I think there was
924 just some -- I think maybe there was -- I don't
925 recall exactly. I don't recall exactly what that
926 phone call was about. I kind of remember that it
927 happened.

928 MR. BENZINE: Okay. I appreciate

929 that.

930 EXAMINATION BY

931 MR. EMMER:

932 Q. I know we already spoke through your
933 time with the Department of Financial Services,
934 but now I would like to focus specifically on
935 your role and how it changed as a result of the
936 pandemic.

937 Mr. Rhodes, you were a member of the
938 COVID-19 task force, correct?

939 A. Yes.

940 Q. Can you briefly describe what role
941 the task force played in the governor's response
942 to COVID-19?

943 A. Sure. I mean, I can speak to --
944 from my perspective.

945 Q. Generally, please.

946 A. Yes. Sure. So when I was asked to
947 join the task force, which was early March of
948 2020, and the first thing I was assigned with was
949 we -- New York were doing 100 or so, 100 or
950 150 or so tests a day. We were only doing them
951 out of -- the state has this lab called Wadsworth
952 out of DOH, Wadsworth lab, and they were running
953 about 150 tests a day.

954 And it was a big focus to bring our
955 testing capacity up dramatically. The governor
956 set a goal of like 1,000 tests a day. So one of
957 my responsibilities was working with Wadsworth
958 and working with about 200 labs in New York,
959 working to see how we could get those labs to run
960 the tests that Wadsworth was running in their own
961 labs and, therefore, increase capacity.

962 So my role was -- and I think this
963 speaks more kind of to your question. I think
964 the task force was taking individuals such as
965 myself and giving them specific tasks and like
966 asking them to help provide like an operational
967 like support to that task.

968 Q. Again, general operational
969 questions, but how often did the task force meet?

970 A. It wasn't like there were like
971 official like, you know, next Thursday at
972 4:00 p.m. the task force is going to meet. It
973 was more I think like a -- sometimes we got
974 together, like not the whole task force but it
975 was more in response to like, you know, here is a
976 new issue that we're confronting, like how can we
977 take action on it, basically.

978 It was -- I would -- I would say

979 maybe -- I talked to members of the task force
980 every day, of course, but like it wasn't
981 necessarily like formal meetings of the task
982 force.

983 Q. And I know we are here today because
984 predominately the March 25th order, so another
985 general question is: What role did the task
986 force play in crafting policy and issuing
987 guidance?

988 A. So I can like speak to like my role
989 in that. You know, I was speaking with lab
990 directors all the over the state almost every day
991 who had called me and asked, you know, we are
992 having trouble with either expanding our lab or
993 hiring, you know, people who maybe aren't -- you
994 know, who -- to do -- run samples and things like
995 that and they would come to us -- come to me and
996 say, hey, can you work with the various state
997 agencies to maybe like modify, you know, if it
998 was the Department of State or DOH, can you work
999 with them in terms of helping, you know, us
1000 increase our capacities.

1001 So that's -- then I would, you know,
1002 talk to counsel's office, I would talk to DOH and
1003 say this is the request I am getting from the

1004 lab. Can we think about how we could -- I am not
1005 the health expert here, like you guys are, can
1006 you let me know if like this kind of approach
1007 might be appropriate or not.

1008 Q. And you mentioned previously that
1009 members of the task force would have specific
1010 roles or issues that they were tasked to handle.
1011 Do you know who would have -- whose role it would
1012 have been to focus on nursing homes?

1013 A. I don't recall -- you know, I don't
1014 recall anyone being like a -- the two issues when
1015 we began was like PPE and testing. I know I was
1016 assigned testing. I did very little on the PPE
1017 side. Those were like the two things I remember
1018 principally assigned. I don't remember anyone
1019 being assigned nursing homes per se.

1020 Q. I mean, a big issue that the State
1021 of New York had to face was hospital capacity.
1022 Obviously there was projections that there was
1023 not going to be enough. Was there anyone or a
1024 group of people on task force that were solely
1025 focused on increasing the state's capacity or
1026 being able to handle an influx of patients?

1027 A. What I recall was in mid-March or
1028 so, testing is slowly building, that I think it

1029 was like the week of March 20th is when the
1030 Elmhurst Hospital like in Queens had a --
1031 basically was overwhelmed. It was kind of
1032 broadly covered in the news.

1033 This changed the kind of direction
1034 in terms of like we were very much focused on
1035 testing and PPE, but I think the governor had
1036 made like a public request for the Army Corps of
1037 Engineers to come.

1038 So I was kind of -- you know,
1039 testing was still something I was working on
1040 closely but I also moved my attention to working with
1041 the Army Corps of Engineers to identify
1042 facilities around the state that could serve as
1043 temporary hospitals -- you know, the Javits
1044 Center. We set up a number of these. So that
1045 was something that I worked on in terms of
1046 working with the Army Corps of Engineers on that.

1047 EXAMINATION BY

1048 MR. BENZINE:

1049 Q. My understanding, and please correct
1050 me if I am wrong, is that during the beginning of
1051 the pandemic and for a little while the
1052 legislature ceded some authority to the
1053 executives so that things could move quicker. Am

1054 I correct?

1055 A. That sounds right. I mean, I know
1056 there were various laws and executive orders out
1057 there. Like, I -- I can't like -- I don't
1058 have --

1059 Q. I don't know how the State of
1060 New York works and when the legislature meets and
1061 everything.

1062 A. The counsel's office would have been
1063 involved in that. It does strike me as that
1064 happened. Like, I remember hearing about that,
1065 but I can't really speak like to the exact law or
1066 things like that.

1067 Q. Before Jack asks another question,
1068 Dr. Zucker testified that there was an
1069 understanding, no involvement -- recalled
1070 involvement in the March 25th order and kind of
1071 what your role was at that time, but just want to
1072 know if you were in the room.

1073 Dr. Zucker testified that there was
1074 a phone call from the head of the Greater New
1075 York Hospital Association to the governor with
1076 him and Ms. DeRosa in the room where they were
1077 advocating in essence for the nursing home order,
1078 that they needed to free up beds in their

1079 hospitals. Were you in the room for that call or
1080 had any conversations about that call?

1081 A. I was not in the room for that.
1082 That's the first time I ever heard about it.

1083 MR. EMMER: At this time I'd like to
1084 introduce what will be marked Majority
1085 Exhibit 2.

1086 (Whereupon, Majority Exhibit 2,
1087 Impeachment investigation report, was marked
1088 for identification.)

1089 EXAMINATION BY

1090 MR. EMMER:

1091 Q. This is the impeachment
1092 investigation report to Judiciary Committee Chair
1093 Charles Levine and the New York City Assembly
1094 Judiciary Committee.

1095 I would like to direct your
1096 attention to page 41, specifically the subsection
1097 G, the second paragraph.

1098 MR. EGGLESTON: Mr. Rhodes, as
1099 always, if you need to review more of it in
1100 order to answer that question, he is more
1101 than welcome.

1102 MR. EMMER: Absolutely.

1103 MS. MURPHY: I am sorry. Where are

1104 you on 41?

1105 MR. EMMER: Subsection G,
1106 paragraph 2.

1107 THE WITNESS: I am going to look at
1108 footnotes if that's okay.

1109 MR. EMMER: That's fine.

1110 THE WITNESS: Okay.

1111 EXAMINATION BY

1112 MR. BENZINE:

1113 Q. Have you ever read this report
1114 before?

1115 A. After it came out, I remember going
1116 through it, but that was three years -- it is a
1117 while ago. I am not deeply familiar.

1118 Q. Describe it as a general familiarity
1119 that the report exists and skim through it at
1120 some point?

1121 A. Yes.

1122 EXAMINATION BY

1123 MR. EMMER:

1124 Q. For the record, I will read it out
1125 loud, so.

1126 "During testimony before the
1127 New York State senate in August of 2020, a senior
1128 executive chamber official who was in the room

1129 where a senior DOH official was remotely
1130 testifying wrote a message on a white board
1131 suggesting that the senior DOH official testify,
1132 in effect, that the March 25th directive was
1133 authored by DOH, and the executive chamber was
1134 not involved.

1135 "The statement was not true and the
1136 senior DOH official did not make such a statement
1137 in the testimony."

1138 Mr. Rhodes, do you know who the
1139 senior DOH official referenced in this excerpt
1140 is?

1141 A. The senior DOH official who was
1142 remotely testifying?

1143 Q. Correct.

1144 A. This would be most likely Dr.
1145 Zucker, because it's before the state senate in
1146 August -- unless, I know Dr. Zucker presented
1147 testimony then. So that would be my best guess.

1148 Q. And you were seated alongside
1149 Dr. Zucker at a hearing on August 3rd.

1150 Did you see this occur?

1151 A. Did I see the message being written
1152 on a white board?

1153 Q. Yes.

1154 A. I recall there being a white board
1155 in the room and people writing on it. I don't
1156 recall this exact -- I don't recall anything
1157 being written on the white board in regards to
1158 March 25th off the top of my head. I don't
1159 recall even looking at the white board, to be
1160 honest.

1161 Q. Do you recall the people who were
1162 writing stuff on the white board?

1163 A. There were a number of staff in that
1164 room. I don't recall. I don't really recall
1165 like -- I think a number of people were writing
1166 on that white board.

1167 Q. Was Ms. DeRosa one of them?

1168 A. I believe so, yes.

1169 Q. Why does the impeachment report say
1170 that the statement suggesting that the senior DOH
1171 official testified that the March 25th directive
1172 was authored by DOH and that the executive
1173 chamber was not involved was not true?

1174 A. I am sorry can you repeat the
1175 question.

1176 MR. BENZINE: Let me just reword it.

1177 EXAMINATION BY

1178 MR. BENZINE:

1179 Q. To your knowledge, was the executive
1180 chamber involved in the March 25th directive?

1181 A. I have no idea.

1182 MR. BENZINE: Now we can skip over a
1183 whole bunch of stuff.

1184 MR. EMMER: We can go off the
1185 record.

1186 (Whereupon, a brief recess was
1187 taken.)

1188 EXAMINATION BY

1189 ■■■ ■■■■

1190 Q. Good morning, Mr. Rhodes.

1191 I want to echo the thanks of my
1192 Republican colleagues for you agreeing to speak
1193 with us today. I'm ■■■■ ■■■■ I am senior counsel
1194 for the Democratic staff for the select
1195 subcommittee.

1196 We have some questions for you as
1197 well we hope you can answer for us today. I just
1198 want to start with you talked a little bit about
1199 your career and your various different roles
1200 within New York State government. I just wanted
1201 to get a little more clarity on what those roles
1202 were.

1203 So when you were with the Department

1204 of Financial Services prior to COVID, what were
1205 your duties there? I know you talked about your
1206 titles, but what exactly were you doing?

1207 A. Sure. Thank you. The Department of
1208 Financial Services has a number of different
1209 divisions. It's banking -- primary banking
1210 regulator for New York, insurance regulator, it
1211 has a consumer protection division. There is a
1212 cyber security division. There is a research and
1213 innovation division and capital markets. Six
1214 different divisions.

1215 I was not really in any of those
1216 divisions. But I worked on projects that
1217 impacted a number of those divisions, kind of the
1218 priority projects, I would say, of the
1219 superintendent.

1220 If the superintendent wanted
1221 something done that involved a number of those
1222 different divisions, I would work on those
1223 projects and help move them through the agency.

1224 Q. So like a project manager,
1225 supervisory role?

1226 A. I think that would be fair to say.

1227 Q. Okay. And then I know you moved
1228 over to the COVID task force. When exactly did

1229 that happen?

1230 A. It was, to the best of my
1231 recollection, the first week of March 2020.

1232 Q. And what were your duties when you
1233 first moved to the COVID task force?

1234 A. I started with testing when I
1235 joined the task force, my primary -- well, really
1236 only responsibility was testing.

1237 Q. That was even that first week of
1238 March?

1239 A. Yes. So New York at the time, the
1240 only testing being done in New York was happening
1241 out of Wadsworth lab. They had created their own
1242 test at the time, which Wadsworth is actually a
1243 very unique lab -- long story, I will not go into
1244 here. But basically when CMS was created, which
1245 is the national regulator, Wadsworth was already
1246 in existence and had a number of carve-outs where
1247 it could kind of authorize its own tests and, you
1248 know, there were labs in the state that it had
1249 more of a direct supervisory role over.

1250 So it kind positioned Wadsworth both
1251 when we created our own test, to be able to work a
1252 little more quickly, and then work with the
1253 labs -- in other labs in the state.

1254 So when I got there, just Wadsworth
1255 was testing, there being like a hundred tests a
1256 day. These were like not high throughput. These
1257 were like on these kind of Thermo Fisher
1258 devices -- that were on like slower devices that
1259 weren't high throughput.

1260 And they -- and my goal was -- my
1261 direction was to take what Wadsworth was doing
1262 and ensure that 200 labs around New York State
1263 were able to start doing their own COVID testing.

1264 Q. So again, this was a project manager
1265 type of role, correct?

1266 A. I would say operational, like
1267 operational would be the way I would describe it.

1268 Q. Sure. But you do not have a medical
1269 background, so you weren't performing tests
1270 yourself?

1271 A. Correct.

1272 Q. And then you said you also did work
1273 involving setting up emergency hospitals.

1274 Can you tell us a little bit about
1275 that?

1276 A. Sure. There was some -- in probably
1277 mid-March or so, you were starting to see these
1278 projections about hospital capacity. New York,

1279 for the background, has about 50,000 hospital
1280 beds and about 3,000 ICU beds statewide.

1281 We were seeing projections of
1282 anything from 140,000 to more beds needed just
1283 for COVID, not for all the other reasons people
1284 might go to a hospital by the end of May.

1285 And this when you are seeing on TV,
1286 Italy and other countries -- so there was this
1287 real kind of like drive, how do we go from 50,000
1288 to more.

1289 So there was an order, directive of
1290 some sort that hospitals had to increase their
1291 own capacity by 50 percent, they're adding beds
1292 in cafeterias, hallways. There was a
1293 cancellation or pause of elective surgeries. I
1294 think elective is not a great way to describe
1295 these, but like non-essential procedures, being
1296 that some of them are very important.

1297 So there are a number of measures
1298 put in place. Then we worked with the Army Corps
1299 of Engineers to identify various -- mostly state
1300 facilities, just because we thought it would be
1301 easier around the state that could be converted
1302 into temporary hospitals. This was -- we
1303 basically had a list of what qualities or what

1304 factors are required for a temporary hospital.

1305 Something like you have oxygen in

1306 there, so you would need a sprinkler system.

1307 Like elevators have to be large enough to fit

1308 hospital beds, hallways. You don't want old

1309 facilities that might have asbestos or things

1310 like that. Like carpeting. There's all these

1311 things like I was not aware of because this was

1312 not my background.

1313 But I worked with people at DOH and

1314 others who were experts in this and so the Army

1315 Corps of Engineers. So we basically identified a

1316 number of facilities around the state and said

1317 these are probably -- make the most sense, the

1318 Javits Center, someone from Army Corps said this

1319 is one of the best facilities we have ever seen. It has

1320 a huge power grid that can support ventilators,

1321 COVID space, high ceilings, large loading docks,

1322 had all the right things.

1323 Then we worked on those facilities

1324 creating temporary hospitals. At the time, we

1325 were not -- they weren't originally designed for

1326 COVID patients, they were to take patients out of

1327 the hospitals so the hospitals could have COVID

1328 patients there.

1329 They eventually became like
1330 step-down COVID facilities where people
1331 recovering from COVID could go to.

1332 Q. Thank you. And that, your work on
1333 the hospital capacity, was that going on in
1334 conjunction with your work on testing?

1335 A. Yes.

1336 Q. And then throughout the rest of your
1337 time with the COVID task force, I believe you
1338 said through February of 2021, were there any
1339 other projects that you worked on?

1340 A. So testing was throughout. Testing
1341 was a big focus early on and once the hospital --
1342 New York COVID hospitalizations peaked around
1343 18,000 in early April, I believe, and then
1344 started coming down.

1345 So once the focus became -- turned
1346 away from building new hospital beds, my focus
1347 kind of went back into testing. Testing was the
1348 ramp up the testing capacity. That kind of was
1349 throughout the summer.

1350 The reopening started happening. So
1351 I was involved in putting together some of the
1352 presentation of the metrics for reopening. Every
1353 region had to have a number of different metrics.

1354 And then come the fall, the second
1355 wave began in September and we had designed the
1356 system. We had a lot of testing by September, so
1357 we designed a system that would be a little more
1358 targeted -- instead of closing down counties or
1359 towns, it was a more targeted system based on
1360 like where COVID was spreading in a community.
1361 We -- it was like red zones, yellow zones, orange
1362 zones. So I focused on that.

1363 In the fall -- and really by the
1364 time October, November came around, I was putting
1365 a lot of my attention toward the vaccine
1366 preparations and then the vaccine came in
1367 December, and I was basically then full time on
1368 vaccines.

1369 Q. And that was working on the rollout
1370 to get the vaccines to those who needed the
1371 vaccines?

1372 A. So the state was required to
1373 prepare a plan -- every state had to prepare a
1374 plan to receive the vaccine. The DOH had drafted
1375 their plan and I helped them on thinking through
1376 the operational like rollout details of it. And
1377 that was in the fall.

1378 And then once the vaccines arrived

1379 in December, it was hands on, all hands on deck
1380 kind of operation in terms of rolling that out.

1381 [REDACTED] Great. Thank you. That
1382 answers my question. I am going to turn over
1383 to my colleague [REDACTED] to ask you some other
1384 questions.

1385 EXAMINATION BY

1386 [REDACTED]

1387 Q. Good morning, Mr. Rhodes.

1388 A. Good morning.

1389 Q. Thank you for your voluntary
1390 participation in today's interview. My name is
1391 [REDACTED] and I am counsel with the minority.

1392 I would like to ask you a few
1393 questions about decision-making around DOH's
1394 public reporting of nursing home data.

1395 A. Okay.

1396 Q. I'll try to summarize how I
1397 understand how DOH ordinarily reported that data,
1398 and you can let me know if that's correct. So
1399 every day between April 2020 and let's say
1400 February of 2021, March of 2021, DOH posted to
1401 its website a PDF showing deaths related to
1402 nursing homes. And there may have also been an
1403 Excel spreadsheet.

1404 Mr. Rhodes, the scope of what was
1405 publicly counted as a nursing home death may have
1406 evolved over time, but is all that generally
1407 correct?

1408 A. I think there are a couple questions
1409 in there. Just making sure I get this right.
1410 I believe, yes, you're correct that DOH every day
1411 posted an updated fatality report on its website.
1412 I believe it was every day. Maybe we missed a
1413 day. Don't hold that against me. That was the
1414 first question.

1415 The second question was?

1416 Q. The scope of what was publicly
1417 counted as a nursing home death may have changed
1418 over time; is that correct?

1419 A. I think -- I don't know that's --
1420 I think the best of my recollection, they
1421 posted -- there was a survey that went out to
1422 hospitals and to nursing homes and that came back
1423 and the DOH posted like here is who the nursing
1424 homes are reporting, the fatality of people who
1425 died in nursing homes over the past 24 hours, and
1426 here is the hospital reporting the fatality of
1427 the people who died in the hospitals over the
1428 past 24 hours. Those are the two categories they

1429 published every day.

1430 Q. On the latter category of nursing
1431 home residents who died in hospitals. Do you
1432 recall if that was posted every day starting in
1433 April of 2020?

1434 A. No, I don't believe it was.

1435 Q. When do you recall that it was
1436 started to be reported?

1437 A. I believe in early 2021.

1438 Q. Okay. If we could, let's just talk
1439 about DOH's public reporting by way of these
1440 website PDFs.

1441 It might be helpful for us to start
1442 where DOH stands on this point. For that, I will
1443 introduce Minority Exhibit A.

1444 (Whereupon, Minority Exhibit A,
1445 March 2022 report, was marked for
1446 identification.)

1447 BY [REDACTED]

1448 Q. This is a March 2022 report by the
1449 New York State Comptroller that assesses the use,
1450 collection, and reporting of infection control
1451 data.

1452 You don't need to look at every page
1453 here, but you can look through if you would like.

1454 Hopefully we just need to focus on one page.

1455 If you can just let me know when you
1456 feel you are ready.

1457 A. Am I supposed to read this?

1458 Q. No. We are just going to focus on
1459 one page.

1460 A. Okay.

1461 Q. If you can turn to page 44. DOH had
1462 an opportunity to respond to a draft of this
1463 report.

1464 A. Okay.

1465 Q. The last paragraph, midway through,
1466 beginning with "as the draft report
1467 acknowledges."

1468 MR. EGGLESTON: I am sorry. Say
1469 that again.

1470 BY [REDACTED]

1471 Q. The last paragraph midway through,
1472 the sentence beginning --

1473 MR. EGGLESTON: I see it. So not
1474 the beginning of that paragraph, after --

1475 [REDACTED] Yeah.

1476 MR. EGGLESTON: Thank you.

1477 BY [REDACTED]

1478 Q. I'll just read that sentence.

1479 "As the draft report acknowledges
1480 and the New York State Assembly concluded during
1481 its investigation concerning the state's public
1482 disclosures, the scope of health data that was
1483 released to the public by the prior
1484 administration was determined by that executive
1485 chamber, not department personnel. And any
1486 department issued data was accurately described."

1487 Like I said at the top, we can
1488 specifically talk about nursing home data which
1489 is certainly encompassed in health data.

1490 Mr. Rhodes, do you agree that there
1491 was an extent to which chamber determined the
1492 scope of nursing home data that DOH publicly
1493 released?

1494 A. Can you repeat the question? I am
1495 trying to understand.

1496 Q. Do you agree that chamber determined
1497 the scope of nursing home death data that DOH
1498 publicly released?

1499 A. I am sure, I mean, I believe there
1500 was input. I think -- I don't know exactly like
1501 the extent to which executive chamber and DOH --
1502 there might have been parts that DOH had -- you
1503 know, would have released without the chamber,

1504 maybe the chamber had input on other parts. I am not sure.

1505 Q. Okay. Minority Exhibit B is a set
1506 of e-mails dated between June 2020 and February
1507 2021 where DOH is sending around the daily
1508 nursing home death PDFs, and these are total
1509 counts that would be posted to DOH's website.
1510 E-mails of this kind were sent daily, so
1511 hopefully what we have here is a smaller but
1512 representative set. I will pass the minority
1513 exhibit around now.

1514 (Whereupon, Minority Exhibit B,
1515 E-mails, was marked for identification.)

1516 BY [REDACTED]

1517 Q. For the room, for your awareness,
1518 the Bates numbers that should be at bottom right were
1519 cut off on my end by the printer. I will read
1520 out the Bates if it's helpful.

1521 MR. EGGLESTON: We would appreciate
1522 that.

1523 [REDACTED] Sure.

1524 BY [REDACTED]

1525 Q. Mr. Rhodes, I believe you are in the
1526 "to" line for all of these e-mails beginning with
1527 September 2020 e-mails. I think the earliest, if
1528 you can turn to it, is the September 26th e-mail.

1529 A. Okay.

1530 Q. Does the general format and purpose
1531 of these e-mails look familiar to you?

1532 A. You said the general format and
1533 purpose.

1534 Q. Yeah. Meaning do you recall seeing
1535 e-mails that look like this and that were sent as
1536 notifying this distribution group that there was
1537 a PDF ready to be posted to DOH's website?

1538 A. You know, I received hundreds of
1539 e-mails every day. I was on dozens of
1540 distribution lists.

1541 Now that I see this, it looks
1542 vaguely familiar, but I don't recall like reading
1543 this every day.

1544 Q. Do you recall being part of this
1545 distribution group?

1546 A. I see here my name was on there so
1547 I was.

1548 Q. Before we get into the bodies of
1549 these e-mails, I just have a couple of questions
1550 about the "from" and "to" lines?

1551 A. Okay.

1552 Q. For example, let's turn to the 15th
1553 page. That would be Bates 104542.

1554 MS. MURPHY: We don't have Bates.

1555 [REDACTED] [REDACTED] You don't have Bates.

1556 I am just reading them for the room.

1557 MR. EGGLESTON: Read for the room.

1558 We cannot get to the 15th page.

1559 BY [REDACTED] [REDACTED]

1560 Q. The date of that e-mail is
1561 September 26th, 2020. In the "from" line we have
1562 Shu-Kuang Tai.

1563 The "to" line there is other DOH
1564 people, for example, Gregory Schoonmaker,
1565 Anne Schettine, Raina Josberger, and Katarzyna
1566 Petronis.

1567 Is it your understanding or
1568 recollection that Tai and those four people
1569 I just named belonged to the same division within
1570 DOH?

1571 A. I have never met or spoke or heard
1572 of Tai before. So I am not sure. Who are the
1573 other people you mentioned?

1574 Q. Gregory Schoonmaker, Anne Schettine,
1575 Raina Josberger, and Katarzyna Petronis.

1576 A. So of the other people you just
1577 mentioned, I know Anne Schettine, but I don't
1578 know the others.

1579 Q. Okay. Do you know what division she
1580 belonged to within DOH?

1581 A. I do not.

1582 Q. Does the office of quality and
1583 patient safety ring a bell?

1584 A. It does not.

1585 Q. Do you know what her division or
1586 role was as it related to nursing home death
1587 data?

1588 A. I don't know what her division was.
1589 So I am not sure what its role was.

1590 Q. Do you know what her role was as
1591 related to nursing home death data?

1592 A. I don't know her specific -- I don't
1593 know her specific job responsibilities.

1594 Q. What did you understand her job
1595 responsibilities to be in a general sense?

1596 A. I know she was a pertinent DOH staff
1597 member who like was involved with data
1598 collection. I don't know what data specifically
1599 . Maybe it was all data. Maybe -- I don't
1600 know.

1601 Q. The "to" line of this e-mail also
1602 includes people from chamber. We have, for
1603 example, Rachel Baker, Megan Baldwin, Jennifer

1604 Rentas, and maybe Richard Becker.

1605 Is it correct that at the time of
1606 this e-mail, the official placements of
1607 Rachel Baker, Megan Baldwin, and Jennifer Rentas
1608 were within a health team of some sort in
1609 chamber?

1610 A. Yes. Rachel Baker, Megan Baldwin,
1611 Jennifer Rentas and Richard Becker, I believe --
1612 yeah, I believe those people were all people who
1613 were health people in the chamber.

1614 Q. So you are also in the "to" line for
1615 this e-mail and most of the other e-mails in this
1616 exhibit. Earlier we heard that you were part of
1617 Mr. Cuomo's COVID task force and involved in
1618 COVID testing, and we get that, but you were
1619 officially part of DFS, and it seems like
1620 everyone else here had a health-related
1621 placement.

1622 So we are just wondering how you
1623 came to be part of this particular daily
1624 distribution group?

1625 A. The question is how did I -- why was
1626 I added to this distribution group?

1627 Q. Yes.

1628 A. I am not sure I have -- I think if

1629 you went through my e-mails, you would see I was
1630 on dozen of distribution groups of COVID data for
1631 all sorts of different issues.

1632 I mean, it may be helpful to know,
1633 I was involved every day in the PowerPoint
1634 presentation which Cuomo gave to his team. So
1635 people would include me on all sorts of
1636 distribution lists in case the governor wanted to
1637 add some sort of data to his PowerPoints, that I
1638 would be able to have it at my fingertips. But I
1639 received -- if you looked at my e-mails at the
1640 time, a lot of these remain unopened, but I
1641 received many, many e-mails of like list serves
1642 of all sorts of things.

1643 Q. What other groups?

1644 A. I mean, there was testing data.
1645 There was vaccination data. I mean, multiple
1646 e-mails with these. There was hospitalization
1647 data. There was fatality data. There was
1648 intubation data. There was contact tracing data.
1649 I mean, just huge -- I mean, also like data
1650 coming from different sources.

1651 Like sometimes we worked with
1652 McKinsey who had an analysis. We worked with DOH
1653 who sent data. There was a lot of different -- a

1654 lot e-mails coming in with data sources
1655 throughout the day.

1656 Q. Were you receiving this data in
1657 purely a receiving capacity, like you just
1658 receive these and maybe pass it along to someone
1659 else?

1660 MS. MURPHY: I am sorry. What was
1661 the question?

1662 BY [REDACTED]

1663 Q. When you received this data, did you
1664 just simply pass it on to someone else, or did
1665 you have any role in approving the data,
1666 verifying it, anything else?

1667 A. If the question is did I receive
1668 these e-mails and pass them on, I don't recall
1669 passing on any of these e-mails, and the data
1670 that was collected, it was not -- I did not play
1671 a role in collecting this data.

1672 MS. MURPHY: Did you verify -- was
1673 that your job?

1674 THE WITNESS: Verify the e-mails
1675 that were coming in? No. I barely remember
1676 even seeing these e-mails.

1677 [REDACTED] Just out of
1678 curiosity, this list of about 20 people, you

1679 mentioned a number of different list serves,
1680 distribution sets. Is it your sense that for
1681 all of kind of distribution sets you're
1682 mentioning, hospitalization data, incubation
1683 data, testing data, that this was a standard
1684 group of people who would receive all of that
1685 information or is this sort of "to" line
1686 individuals maybe curated to this nursing
1687 home facility data?

1688 THE WITNESS: Can I make one
1689 correction? Intubation, not incubation.
1690 With a T, not a C.

1691 MR. LITCHMAN: Noted. Thank you.

1692 THE WITNESS: I don't believe --
1693 I have -- I don't know. Like whoever
1694 created -- whoever is making these list
1695 serves, I don't know who they included and
1696 why. I am guessing they probably were
1697 over-inclusive.

1698 I remember, you know, some days I
1699 would wake up and like I'd been added to a
1700 bunch of list serves. I am like, okay, now,
1701 I am getting these e-mails. Like it wasn't
1702 something that I really thought about.

1703 I don't know what the

1704 decision-making -- whoever created the e-mail
1705 list, I am not sure what the decision-making
1706 is. There could have been a time when I say,
1707 hey, can I get the latest hospitalization
1708 numbers in Buffalo, New York, for the
1709 PowerPoint. And some is like, oh, maybe
1710 Gareth should be added to this list serve
1711 that the regional breakdown of
1712 hospitalization numbers and I would get added
1713 to it. Things like that.

1714 BY [REDACTED]

1715 Q. In August of 2020, Dr. Howard Zucker
1716 testified to the New York legislature about
1717 COVID-19 issues including deaths in nursing
1718 homes, and I think that might have been
1719 referenced in an earlier exhibit.

1720 We spoke to Dr. Howard Zucker, and
1721 he told us, quote, "Melissa said that after the
1722 hearing, she was going to send Gareth Rhodes over
1723 to the Department of Health and work with me to
1724 just figure out what all of these numbers were."

1725 Do you have any idea of what
1726 Dr. Zucker is talking about?

1727 A. Yes.

1728 Q. Could you explain?

1729 A. Yes. Following that hearing,
1730 Melissa asked me to go to the Department of
1731 Health with -- as Dr. Zucker said and sit down
1732 with their team and kind of give a common sense
1733 like review of some of these statistics --
1734 I mean, some of this data.

1735 Q. The data that is in these e-mails?

1736 A. So I don't have like the -- I don't
1737 know if you have any spreadsheets attached to
1738 this, but it was the data reported, I believe,
1739 from the HERDS survey regarding fatality deaths.
1740 So -- but I have to -- I don't know what this
1741 spreadsheet is. I don't know if that is the
1742 exact same report.

1743 Q. Why did Ms. DeRosa ask you
1744 specifically to go to DOH and help with verifying
1745 the data?

1746 A. I am not sure.

1747 Q. What did that conversation that you
1748 just described sound like? Did she give you any
1749 reason for why she wanted you to check the data
1750 or for someone to check the data?

1751 A. To the best of my recollection, she
1752 said something along the lines of, would you mind
1753 taking some time and going and sitting down with

1754 the DOH team and Dr. Zucker and make sure that
1755 there is not double-counting and duplicates and
1756 other kind of obvious errors in the data.

1757 Q. How did you go about doing that with
1758 DOH?

1759 A. I walked over to DOH. I met -- at
1760 this point, I met Anne Schettine, who is an
1761 absolutely wonderful person and I think
1762 exceptional public servant. And I told Anne, I
1763 have been asked to do this. You know, can you
1764 help me, basically.

1765 I was not -- I didn't know how data
1766 was collected. I wasn't sure how it was
1767 prepared. It wasn't something that I knew much
1768 about. She set me up on a computer at DOH
1769 outside her office where I was -- somewhere at
1770 DOH and she gave me kind of a spreadsheet said,
1771 here is what has been reported. And I went
1772 through that Excel spreadsheet.

1773 Q. What were you checking for when you
1774 looked at these spreadsheets to verify the data.
1775 You had a spreadsheet. What were you verifying
1776 that spreadsheet's data? I assume you were
1777 comparing to another source?

1778 A. This -- again, this is -- best of my

1779 recollection, it was an Excel document that had
1780 the list of reported fatalities from nursing
1781 homes and hospitals. So it would have been like -- I would
1782 have to see this to remember exactly what it was.

1783 It was like the person's initials,
1784 the date of admission, the date of death, the
1785 facility, where the death occurred,
1786 comorbidities, birth date, gender, kind of things
1787 like that. I kind of did a -- basically did like
1788 a line-by-line review looking for things like
1789 duplicates, basically identical entries. I
1790 looked for obvious
1791 data errors like date of death was before date of
1792 admission, which there were a few, person died of
1793 COVID before COVID was confirmed in the United
1794 States, things like -- there was things like -- I
1795 didn't say these were wrong.

1796 I just said, okay, mark them and
1797 maybe we should follow up and like see if these
1798 are -- might -- maybe we should do
1799 some additional verification of these, like call
1800 the facility that provided them and say, hey,
1801 like, are these duplicates or is it just someone
1802 with this initial -- I mean, two people with
1803 exactly the same data like died on the same day,

1804 same place, everything.

1805 So I kind of flagged them and these
1806 are the ones that result in some follow up.

1807 Q. The data in those spreadsheets, was
1808 it total deaths up to the day you were reviewing
1809 that spreadsheet, or was it these are people who
1810 died that day?

1811 A. I believe there was a total deaths
1812 up to -- I don't know what date it was, but up to
1813 a certain date.

1814 Q. When did you -- how long were you in
1815 this role of verifying the data?

1816 A. I would say maybe a week, maybe took
1817 me a couple of days. I kind of went over to DOH
1818 and sat at this computer every day to do this for
1819 a couple of days.

1820 Q. Couple of days in August?

1821 A. Yes.

1822 Q. And after that point, you felt that
1823 the data had been verified?

1824 A. I felt that what I had been asked to
1825 do, which was provide that kind of common sense
1826 review of the spreadsheet to make sure there
1827 weren't duplicates and things like that, I felt
1828 what I had been asked to do, I had done.

1829 Like I was not calling nursing homes
1830 myself and saying, hey, like, I am seeing this.
1831 Did the person die before they were admitted? I
1832 wasn't doing that myself. I was just flagging
1833 and saying it's a little -- I think there might
1834 be a mistake in the report here, things like
1835 that.

1836 Q. This was all in August of 2020 or
1837 September of 2020?

1838 A. This was in August of 2020.

1839 Q. The data that you were reviewing,
1840 did it include out-of-facility deaths?

1841 A. There was -- again, I would have to
1842 look at the spreadsheet, but to the best of my
1843 recollection there was like a column that had
1844 place of death and it was in-facility or
1845 out-of-facility or may have been unknown or
1846 something.

1847 Q. And you reviewed that data, too?

1848 A. This was a part of the -- you know,
1849 this was a spreadsheet that had all of these
1850 things and I was looking for kind of what might
1851 be -- what one might, you know, be appropriate
1852 for some additional follow-up.

1853 Q. I would like for us to look at these

1854 e-mails in Minority Exhibit B together with what
1855 will be Minority Exhibit C --

1856 (Whereupon, Minority Exhibit C,
1857 E-mail, was marked for identification.)

1858 BY [REDACTED]

1859 Q. -- which is a February 6, 2020,
1860 e-mail that Anne Schettine sent to you and the
1861 distribution group. The Bates is 102663.

1862 MR. EGGLESTON: Can I go back for a
1863 second? I am slightly worried the record is
1864 unclear. I have no idea what the numbers
1865 were, but if his spreadsheet said 5,000
1866 deaths in a nursing home, it does not -- no
1867 part of what he did verified whether there
1868 was 5,000 deaths in a nursing home. That was
1869 not part of what this assignment was.

1870 Your last question, I thought, maybe
1871 led to a sense that is part what he did, but
1872 that's not part of what he did. He was
1873 looking for inconsistencies essentially in a
1874 line-by-line document of deaths. Maybe I
1875 didn't need to clarify that, but I was
1876 worried that we left the record slightly
1877 unclear as to what his assignment was.

1878 THE WITNESS: That's exactly right.

1879 I was not conducting any verification. I was
1880 looking at a data set for inconsistencies --
1881 potential inconsistencies. Again, like some
1882 identical entries, someone died before they
1883 were admitted, you know, just various things
1884 that stood out as being potentially like
1885 should require some follow-up, and I was
1886 flagging them for additional follow-up.
1887 That's what I was asked to do and that's what
1888 I did.

1889 BY [REDACTED]

1890 Q. Once you flagged those
1891 inconsistencies for follow-up, do you know how
1892 quickly they were resolved?

1893 A. I do not.

1894 Q. Who did you flag those
1895 inconsistencies to?

1896 A. I provided that -- I provided that
1897 spreadsheet back to the Department of Health.
1898 Here is what I found. To the best of my
1899 recollection, they were grateful. They said some
1900 of this we should follow up on.

1901 Q. Did you provide that spreadsheet to
1902 anyone else outside of DOH?

1903 A. I didn't provide the exact

1904 spreadsheet to anyone else. I probably kept it a
1905 summary of what I had done, like here is what I
1906 found. But I didn't take that spreadsheet and
1907 give it to anyone else.

1908 MS. MURPHY: Where was the
1909 spreadsheet?

1910 THE WITNESS: It was on a DOH
1911 computer. That's where it stayed.

1912 BY [REDACTED]

1913 Q. Let's go back for Minority Exhibit

1914 C.

1915 A. Okay.

1916 Q. I'll read the first sentence for the
1917 record.

1918 "Attached are files for the
1919 February 5, 2021, to replace the existing files
1920 on the website once Garth approves."

1921 MS. MURPHY: And to be clear, we
1922 don't have these -- the "Attached are files,"
1923 all we have is that one cover page e-mail.
1924 We don't have the files here, right?

1925 [REDACTED] Sure. Yes.

1926 BY [REDACTED]

1927 Q. "Garth" refers to you, correct?

1928 A. I believe so. I believe that was a

1929 typo.

1930 Q. And this is the -- well, to you,
1931 does this look like the same distribution that
1932 will be for -- seeing in some of these e-mails in
1933 Minority Exhibit B?

1934 MS. MURPHY: These look different.
1935 They are from different people.

1936 THE WITNESS: This from
1937 Anne Schettine, so this is not from the other
1938 person. So I don't think this is a -- this
1939 does not jump out to me as like the same
1940 distribution.

1941 BY [REDACTED]

1942 Q. Is Anne Schettine in the e-mail that
1943 we looked at in Minority Exhibit B?

1944 A. Yes.

1945 Q. Is Rachel Baker?

1946 A. Yes.

1947 Q. Is Greg Schoonmaker?

1948 A. Yes.

1949 Q. Is Richard Becker?

1950 MS. MURPHY: I am sorry. There is
1951 like 30 e-mails in Exhibit B, so.

1952 [REDACTED] We looked at a specific
1953 one, September 26th of 2021.

1954 MS. MURPHY: Oh, you are referring
1955 back to that one. Okay.

1956 BY [REDACTED]

1957 Q. I think it was Richard Becker?

1958 A. Richard Becker has an exec e-mail
1959 here and a DOH e-mail here.

1960 Q. Sure. Is Raina Josberger?

1961 A. In both?

1962 Q. Yes.

1963 A. Yeah, I see her in both.

1964 Q. So Minority Exhibit C is talking
1965 about files that are posted to a website; is that
1966 correct?

1967 A. Okay. I see that's what the text
1968 says.

1969 Q. Is there a sense that this
1970 distribution group is similar to the one in
1971 Minority Exhibit B that we looked at?

1972 A. I just want to make sure -- when you
1973 say a distribution group, I think the one in this
1974 exhibit seems to be like a daily list serve of
1975 people to e-mail to. This one seems to be like a
1976 more one-off e-mail. I see there is obviously
1977 overlap, but like when you say distribution list,
1978 I am thinking kind of like that daily e-mail of

1979 data. Like I am not sure that that's exactly
1980 what this is. I don't know.

1981 Q. Is the data in Exhibit Ca daily website
1982 PDF? Is that your sense?

1983 MS. MURPHY: I don't think he is
1984 trying to be difficult. I just without -- if
1985 you are asking is the date the same, the data
1986 is the attachment that isn't here. So if
1987 you're positing that, I just -- he just can't
1988 look at it.

1989 THE WITNESS: I want to be helpful.
1990 I don't have a lot of recollection of exactly
1991 what this is. I just don't want to speculate
1992 without seeing what the -- what is
1993 underneath, what's in the spreadsheets.

1994 BY [REDACTED]

1995 Q. So if you can go back to Exhibit B,
1996 if you could flip to the fourth page. That would
1997 be Bates 102884.

1998 MS. MURPHY: Since these don't have
1999 Bates, is this the February 3, 2001?

2000 [REDACTED] Yes.

2001 MS. MURPHY: Okay. February 3rd,
2002 that's on the back.

2003 BY [REDACTED]

2004 Q. The first sentence reads, "Here is
2005 the 02/03/2021 NHACF report as per chamber for
2006 posting to the website."

2007 I will give you a moment if you need
2008 it to confirm, but that per chamber piece is in
2009 all of the e-mails in this exhibit; is that
2010 correct?

2011 A. Do you want me to go through every
2012 e-mail? If you want to state that, I can if you
2013 would like me to, but.

2014 Q. Yeah, I'll just say it is.

2015 A. Okay.

2016 MR. EGGLESTON: If you represent
2017 that to him, we're good.

2018 BY [REDACTED]

2019 Q. Taking Exhibit B and C together, we
2020 would just be interested in the extent to which,
2021 quote, "once Garth approves" in Exhibit C and,
2022 quote, "per chamber" in Exhibit B indicates that
2023 DOH required chamber's approval prior to posting
2024 nursing home death data?

2025 A. I am not sure. I don't know if DOH
2026 required approval to post nursing home death
2027 data.

2028 Q. Do you recall what "once Garth

2029 approves" means in Exhibit C?

2030 A. I don't recall what that means.

2031 I mean, it seems like there is a footnote in here
2032 that they are asking about. The files looks like
2033 they are different from the two e-mails. Like I
2034 don't want to speculate about what Anne is asking
2035 for.

2036 You are asking if I had to approve,
2037 you know, for website information being posted to
2038 the website, like I was not someone who did
2039 approve on a daily basis information posted on
2040 nursing home deaths to the website.

2041 Q. Not on a daily basis, but did you
2042 ever do that?

2043 A. I don't believe I ever had -- I
2044 think what might have happened they are asking
2045 for my input here on this. But like I was never
2046 in a -- "can we only post this. You know, Gareth
2047 has to sign off." Like that was not my role.

2048 Q. Do you know whose role that was?

2049 A. I do not.

2050 [REDACTED] Do you have a sense
2051 the kind of input they may have been seeking
2052 if that was the nature of "once Garth
2053 approves"?

2054 THE WITNESS: So this February of
2055 2021. This is following the Attorney
2056 General's report. There has been a lot of
2057 focus on nursing homes, as you can imagine.
2058 There may have been like a footnote in here
2059 they are asking me to look at. I see it
2060 says, updated footnotes maybe, you know.
2061 It's just hard for me to know what they want
2062 me to approve without looking at the files.
2063 I don't recall ever being in a position where
2064 someone is like can you approve this so it
2065 can be posted.

2066 Like these things were posted every
2067 day online. Like I don't believe I ever even
2068 opened these e-mails. I think it's hard for
2069 me to speculate what she is asking me to
2070 approve.

2071 Maybe they are asking me about
2072 timing. Like, I mean, that there was going
2073 to be announced that this was going online
2074 and once I say like the announcement has been
2075 made you can post them. There's just a lot
2076 of like -- I don't know why she is asking me
2077 to approve.

2078 I certainly didn't have input over

2079 like -- that was like over the contents of
2080 in-facility. That was not something I was
2081 like going through every day to see if they
2082 should be reported or not.

2083 BY ██████████

2084 Q. Okay, so we've been talking about
2085 process for a while now. But I would like to ask
2086 a few substance questions as it relates to what
2087 numbers were included in the PDFs.

2088 A. Okay.

2089 Q. If you can go back to Exhibit B.

2090 A. Okay.

2091 Q. At page 9.

2092 A. Which date is that?

2093 Q. That would be December 12, 2020,
2094 e-mail.

2095 A. Okay.

2096 Q. Near the bottom there is an asterisk
2097 and a sentence. The sentence reads, "Total
2098 presumed in-facility ACF death count was
2099 corrected from 53 to reflect chamber's request to
2100 show such counts as of 5/22/2020."

2101 Does ACF stand for adult care
2102 facility?

2103 A. I believe so.

2104 Q. Is there an extent to which quote
2105 "to reflect chamber's request" indicates that
2106 there was instances in which "chamber corrected"
2107 in other words modified, the scope of its
2108 publicly reported nursing home death data due to
2109 request from chamber?

2110 A. I don't know who made this request.
2111 I don't know what the request is referring to.
2112 December 12th was like two days before the
2113 vaccine arrived in New York. And like this was
2114 not something that I was paying attention to. So
2115 I don't know what this is regarding.

2116 Q. Are you aware of any other requests
2117 that chamber made as to the scope of DOH's
2118 reporting of nursing home death data?

2119 A. Any request that chamber made by
2120 DOH's nursing -- I mean, I think we just talked
2121 about when I worked with Dr. Zucker about doing
2122 that common sense review, is that what you are
2123 referring to or like what exactly do you mean?

2124 Q. So the asterisk sentence --

2125 A. Okay.

2126 Q. It appears that "chamber requested
2127 that the scope of ACF in-facility death counts
2128 would reflect total presumed deaths."

2129 Do you see that?

2130 A. Okay.

2131 Q. That's what I mean by scope.

2132 A. Can you repeat the question so I can
2133 just answer it the best I can?

2134 Q. Are you aware of chamber requesting
2135 that DOH include in the scope of its public
2136 reporting of nursing home death data, data
2137 reflecting the deaths of nursing home residents
2138 at a hospital? I'll just make it specific like
2139 that.

2140 A. I don't -- I don't know specifically
2141 about like the chamber requesting DOH to do --
2142 you know, I know obviously in February when the
2143 full scope of the numbers were put online, like
2144 there was conversations about that, like I don't
2145 know -- like here in December like about chamber
2146 requesting presume, I don't know what that is
2147 about.

2148 MS. MURPHY: To be clear, you are
2149 not the chamber; is that correct? Because
2150 you were on the task force.

2151 THE WITNESS: I was a task force
2152 member in December of 2020, like almost
2153 exclusively involved in the vaccination

2154 process. So like I would be shocked if I
2155 opened this e-mail at all.

2156 MS. MURPHY: So the chamber doesn't
2157 refer to you?

2158 THE WITNESS: I don't know what they
2159 are referring to. I don't recall seeing this
2160 e-mail.

2161 BY [REDACTED]

2162 Q. Would you be surprised if staff at
2163 DOH considered you as part of the chamber?

2164 A. I would think they considered me
2165 part of the task force. The e-mail was DFS.
2166 They probably thought I was a, you know, a member
2167 of the task force to which was on loan from DFS or
2168 something like that.

2169 Q. So let's turn to page 1 in this
2170 exhibit. That's Bates 102767. That's
2171 February 5, 2021, e-mail. I will just read the
2172 first sentence. "Today's e-mail has been updated
2173 to include out-of-facility deaths for nursing
2174 home residents per chamber."

2175 Do you know who made the decision to
2176 include out-of-facility deaths of nursing home
2177 residents in DOH's public reporting?

2178 A. I do not.

2179 Q. Do you have any reason to believe
2180 that was someone in chamber?

2181 A. I don't want to speculate about who
2182 it was. I am not sure.

2183 Q. I am not asking you to speculate on
2184 the identity, I am just asking if you have any
2185 reason to believe that chamber was the one who
2186 made the decision?

2187 A. So this was, again, following the
2188 AG's report. If I recall correctly, the day of
2189 the AG's report Dr. Zucker put out a statement
2190 that included, I believe, the kind of
2191 subcategorization of people who the nursing homes
2192 reported had died outside of their facility. I
2193 believe that statement included that number in
2194 there.

2195 This appears to be a week later.
2196 That number is now being included in the daily,
2197 you know, online databases. Like who made the
2198 decision to, you know, update the databases like,
2199 I don't know.

2200 [REDACTED] My understanding is
2201 that there was an order that came from the
2202 State Supreme Court regarding the inclusion
2203 of more comprehensive set of data following

2204 the Attorney General's report.

2205 I believe this was pursuant to sort
2206 of an effort by the Empire Center through a
2207 freedom of information request. Does that
2208 sound familiar to you?

2209 THE WITNESS: I want to -- like I
2210 was at this time very focused on the
2211 vaccination process. Like I was not paying
2212 attention to like legal opinions that were
2213 being issued in terms of data. Like so it
2214 sounds vaguely familiar, maybe I read in the
2215 news. It was not something I was really
2216 paying attention to.

2217 [REDACTED] Okay. Press
2218 coverage -- and I know these were through the
2219 exhibits we were entering but around
2220 February 6th was reporting this determination
2221 had recently been made that the New York
2222 State health officials were releasing this
2223 more comprehensive data pursuant that State
2224 Supreme Court decision would you say that
2225 perhaps that is related to the timing on
2226 Exhibit C, Saturday, February 26th here,
2227 where you would have a role as Garth in
2228 approving this information potentially being

2229 released publicly?

2230 MS. MURPHY: I am sorry. I don't
2231 think he said that he had a role in approving
2232 information to go publicly.

2233 [REDACTED] In the approval
2234 process that is -- or the approval that is
2235 noted in Exhibit C regarding the data here,
2236 is it your sense that any approval, however
2237 you would characterize it, is related to the
2238 requirement that the state release this more
2239 comprehensive set of data.

2240 A. I don't recall the court decision.
2241 I vaguely recall the press coverage about the
2242 Empire Center requesting this.

2243 I don't recall this e-mail. I don't
2244 recall ever approving, you know, these detail
2245 reports. I believe they, you know, look like
2246 they happen kind of automatically, so I don't
2247 know.

2248 BY [REDACTED]

2249 Q. At any point before February 5th of
2250 2021, did you have the sense that there were some
2251 people within DOH or maybe even yourself who
2252 believed that out-of-facility numbers were ready
2253 for public release?

2254 A. Can you -- February 5th you said?

2255 Can you repeat the question?

2256 Q. Was there a sense within DOH based
2257 on what you understand or from your recollection
2258 that out-of-facility numbers were ready for
2259 release prior to February 5, 2021?

2260 A. I don't know what the sense within
2261 DOH. I can't really speak -- I don't know what
2262 the sense was within DOH. I did this review in
2263 August and like I don't recall speaking to DOH
2264 really about nursing home fatality numbers really
2265 until the Attorney General's report came out. So
2266 like I had completed my review in August and
2267 really turned my attention back to my day job.
2268 So like I don't recall having any conversation
2269 with DOH about what the sense was there.

2270 [REDACTED] I think we can go off
2271 the record.

2272 (Whereupon, a brief recess was
2273 taken.)

2274 MR. EMMER: We can go back on
2275 record. Mr. Rhodes, at this time I would
2276 like to introduce what will be marked as
2277 Majority Exhibit 3.

2278 (Whereupon, Majority Exhibit 3,

2279 Memo, was marked for identification.)

2280 EXAMINATION BY

2281 MR. EMMER:

2282 Q. And I will give you a minute to
2283 review the document, but this is specifically
2284 concerned about the attachment entitled "NH
2285 Facts," and this was sent on September 16th of
2286 2020.

2287 Mr. Rhodes, did you prepare this
2288 memo?

2289 A. I believe I compiled this, yes.

2290 Q. And I know we discussed in the
2291 previous hour that your involvement as far as the
2292 March 25th order or you didn't have any
2293 involvement with the March 25th order, that as
2294 far as nursing homes, you became involved in
2295 approximately May of 2020; is that correct?

2296 A. On the testing issue, yes.

2297 MS. MURPHY: Do you just want to
2298 clarify -- what did you mean when you say you
2299 compiled? He asked a question, did you
2300 prepare, you said I complied. What did you
2301 mean?

2302 THE WITNESS: I took, you know, some
2303 quotes from other sources and kind of put

2304 them in one document. I don't think this is
2305 all like my original writing but it looks
2306 like I took compiled things from maybe other
2307 documents and put them in here, if that makes
2308 sense.

2309 MR. BENZINE: From -- it's probably
2310 a combination, but just for clarity from both
2311 public source documents and internal to
2312 New York documents?

2313 THE WITNESS: I believe so, yes.

2314 MR. BENZINE: Jack will have more.
2315 Did you discuss the compilation of this
2316 information with anyone at the Department of
2317 Health?

2318 THE WITNESS: I believe I did but
2319 I don't have direct memory.

2320 MR. BENZINE: What about anyone at
2321 CMS or CDC?

2322 THE WITNESS: I don't recall
2323 discussing this with CMS or CDC.

2324 MR. BENZINE: Do you recall where
2325 you got the two bullets under the bold header
2326 March 25th advisory was based on federal
2327 guidance?

2328 THE WITNESS: This was -- DOH had

2329 said this publicly. This had been -- I
2330 had -- you mentioned before, I had sat next
2331 to Dr. Zucker at that hearing and, I believe,
2332 he said that a number of times. That's, I
2333 believe, where that came from.

2334 MR. BENZINE: Thank you.

2335 BY MR. EMMER:

2336 Q. Do you recall who would have
2337 instructed you to prepare this memo or
2338 participate in preparing this memo?

2339 A. Sure. To the best of my
2340 recollection, I did this on a couple of issues
2341 was -- I was often, because I previously had a
2342 communications role, I was often asked to speak
2343 to the press on testing, hospitals, reopening
2344 schools, like a lot of issues. People would say,
2345 oh, get Gareth on the phone to explain this or
2346 explain our reopening metrics to the reporter or
2347 do this.

2348 And it was basically, people would
2349 say, hey, can you talk to the reporter about this
2350 and that. What I tried to do was put together --
2351 at some point I was like -- it was taking up a
2352 lot of my time. It would be helpful if the press
2353 office had a background sheet on some of these

2354 things.

2355 That they, in other words, talk to
2356 the press themselves on some of these things
2357 without having to come to me all the time. So I
2358 recall that that kind of was the impetus for me
2359 putting this together.

2360 Like a lot of this had been
2361 included, I believe, in Dr. Zucker's testimony in
2362 August and I believe otherwise had -- none of
2363 this was like -- a lot of this was public -- had
2364 been said publicly or was in public documents or
2365 I had seen written down elsewhere.

2366 And I had put this together in a way
2367 to provide to the press office so --
2368 when a reporter called with questions regarding
2369 this topic, they could refer to this. And I
2370 believe I did this on like testing as well. I
2371 think I did this on questions like with the
2372 Javits Center, things like that.

2373 I did this a number of different
2374 topics as a way of like -- the press office would
2375 say this is helpful when you talk to a reporter
2376 instead of having to come to me to do
2377 the conversations.

2378 MR. BENZINE: And not trying to put

2379 words in your mouth, but a fair
2380 characterization of this is that much of this
2381 would not be your analysis, just a
2382 compilation of others; is that correct?

2383 THE WITNESS: That's correct.

2384 MR. BENZINE: Okay. While Jack is
2385 flipping through, do you recall any
2386 conversations that you were part of regarding
2387 the applicability of CDC and CMS guidance to
2388 the March 25th directive outside of kind of
2389 like Dr. Zucker's public statements or any
2390 internal conversations?

2391 A. I do not recall.

2392 MR. EMMER: At this time I would
2393 like to introduce what we will mark as
2394 Majority Exhibit Number 4.

2395 (Whereupon, Majority Exhibit 4,
2396 E-mail thread, was marked for
2397 identification.)

2398 BY MR. EMMER:

2399 Q. I will give you a minute to look it
2400 over.

2401 MR. BENZINE: It should not take
2402 long. There is a lot of black boxes on this
2403 one.

2404 THE WITNESS: Okay.

2405 BY MR. EMMER:

2406 Q. For the record, this is Department
2407 of Health production Bates Number 3478. This is
2408 e-mail thread between executive chamber and
2409 health department officials, including yourself,
2410 Secretary DeRosa, Dr. Malatras, Ms. Lacewell, and
2411 Dr. Zucker on June 22nd of 2020.

2412 Flagan authored an article entitled
2413 "Verma: Cuomo Contradicted Federal Nursing Home
2414 Guidance." Mr. Rhodes, do you recall this e-mail
2415 thread?

2416 A. I do not.

2417 Q. Do you remember CMS Administrator
2418 Verma saying that the March 25th order
2419 contradicted federal guidance?

2420 A. I don't recall that.

2421 EXAMINATION BY

2422 MR. BENZINE:

2423 Q. Do you recall any internal
2424 conversations regarding CMS administrator Verma
2425 making that statement?

2426 A. I do not.

2427 Q. HHS secretary at the time,
2428 Alex Azar, made a similar statement. Do you

2429 recall any internal conversations regarding Alex
2430 Azar?

2431 A. I do not.

2432 Q. So did White House COVID task force
2433 coordinator Deborah Birx. Do you recall any
2434 internal conversations regarding Dr. Birx?

2435 A. Not in regards to nursing homes.

2436 Q. Probably in regards to testing?

2437 A. Yes.

2438 Q. Were you involved at all in the --
2439 not framed in the memo as a termination of the
2440 March 25th order but an edit to the March 25th
2441 order that changed some of the things, were you
2442 involved in that decision?

2443 A. Are you referring to the May 10th?

2444 Q. Yes.

2445 A. What I recall about May 10th is I
2446 was involved very much in the testing. I
2447 learned, I believe, like maybe shortly before the
2448 press conference, that they were going to
2449 announce -- the governor was going to announce
2450 that this testing requirement was going to go
2451 into effect.

2452 When I learned about how many staff
2453 it would impact, I was -- you know, really -- I

2454 knew this would be a huge undertaking that would
2455 be on my plate and that's what I really recall
2456 about that May 10th date.

2457 Q. The May 10th also refers to the
2458 March 25th in that it required patients to be
2459 testing negative for COVID prior to discharge
2460 from a hospital back to a nursing home. Were you
2461 involved in that?

2462 A. At that time the hospitals -- the
2463 hospitals themselves had testing. And I don't
2464 believe the number of -- the number of people
2465 being transferred was high, that it was worrying
2466 me. The nursing home one was worrying because
2467 the nursing homes didn't have testing in their
2468 home -- for their staff. This was a huge number,
2469 like in the triple testing requirements, and
2470 there was a lot of questions like who would pay
2471 for it. Like it wasn't -- I think there was a
2472 rule at some point insurance wouldn't cover a
2473 test unless a doctor ordered it.

2474 But this was like
2475 employment-required testing so it is like a
2476 condition of their employment. So like there was
2477 questions like is insurance going to cover this
2478 and if not, these tests were like \$100 each.

2479 I remember being on a lot of calls,
2480 a lot of media stories at the time, who is going
2481 to pay for this, how is it going to happen. And
2482 I remember this being a big focus of mine in May
2483 or June, like how to get this testing to happen.

2484 MR. EMMER: At this time, I would
2485 like to introduce what will be marked as
2486 Majority Exhibit 5.

2487 (Whereupon, Majority Exhibit 5,
2488 E-mail chain, was marked for identification.)

2489 BY MR. EMMER:

2490 Q. This is Bates number New York State
2491 Department of Health 37830.

2492 MR. BENZINE: He is not on this
2493 e-mail chain.

2494 BY MR. EMMER:

2495 Q. This is an e-mail thread between
2496 Department of Health staffer started by
2497 Jill Montag on May 12, 2020. Ms. Montag writes
2498 that she has reporters not able to find the March
2499 25 guidance online anymore. When she tried to
2500 find it on her personal computer, she also could
2501 not find it. She asked, did we take this down.

2502 The response she received was it
2503 was, in fact, taken down. She then follows up

2504 asking the instruction to pull it down came from
2505 the chamber, correct?

2506 In the response received, the e-mail
2507 at 4:32 p.m. on May 27th, was, "Yes, because it
2508 was inconsistent and we were directed by chamber
2509 to pull it. I can try to find e-mails on this."

2510 I know you are not a part of this
2511 e-mail thread, but the direction from the
2512 chamber, do you have any idea who would have
2513 directed the Department of Health to take the
2514 guidance off the website?

2515 A. No. I don't recall it being taken
2516 off the website at all. This was not -- I don't
2517 have any recollection of this.

2518 MR. EMMER: At this time I would
2519 like to introduce what will be marked
2520 Majority Exhibit 6.

2521 (Whereupon, Majority Exhibit 6,
2522 E-mail thread, was marked for
2523 identification.)

2524 BY MR. EMMER:

2525 Q. This is Bates marked 11250. This is
2526 e-mail thread that was forwarded to you from
2527 Stephanie Benton on June 7th of 2020. Ms. Benton
2528 attaches an article seemingly critical to the

2529 March 25th order and writes, "This is going to be
2530 the great debacle in the history books. The
2531 longer it lasts, the harder to correct. We have
2532 a better argument than we made. Get a report on
2533 the facts because this legacy will overwhelm any
2534 positive accomplishment.

2535 "Also, how many COVID people were
2536 returned to nursing homes in that period? How
2537 many nursing homes? Don't you see how bad this
2538 is or do we admit error and give up?" First, who
2539 is Ms. Benton?

2540 A. Stephanie Benton, I don't recall her
2541 exact title, but she was a -- I don't want to say
2542 executive assistant to the governor, but was like
2543 an assistant to the governor, but didn't like
2544 answer his phone, but kind of was like his right
2545 hand assistant.

2546 Q. Do you recall this e-mail thread?

2547 A. Vaguely.

2548 Q. General question, what great debacle
2549 do you think Ms. Benton is referring to here?

2550 A. It seems to be involving kind of the
2551 Buffalo News, the article in the Buffalo News,
2552 the editorial it looks like that she's
2553 circulating, yes. Four primary areas, COVID-19

2554 testing, isolation of those that test positive,
2555 providing PPE, infection control, staff level.

2556 EXAMINATION BY

2557 MR. BENZINE:

2558 Q. Then the next two paragraphs down
2559 are regarding the March 25th order?

2560 A. I don't know exactly. It appears
2561 that she -- the reference there is to this story.

2562 Q. Have you ever known Ms. Benton to
2563 write e-mails on behalf of the former governor?

2564 A. Yes.

2565 Q. Do you believe this e-mail was
2566 written on behalf of the former governor?

2567 A. It appears that way, yes.

2568 Q. That's consistent with Dr. Zucker as
2569 well.

2570

2571 Q. In what situations would Ms. Benton
2572 write those e-mails?

2573 A. To the best of my recollection, the
2574 governor himself didn't have e-mail, so when
2575 there was a message that he wanted to communicate
2576 to other staff members, sometimes Stephanie or
2577 another person who kind of worked directly with
2578 him would send out on his behalf.

2579 Q. The governor didn't have an official
2580 e-mail account?

2581 A. If he did, I never received an
2582 e-mail from him. Not that I'm aware.

2583 Q. What was your normal means of
2584 communication with the governor?

2585 A. In person, on the phone. I
2586 didn't -- or through Stephanie.

2587 Q. To your knowledge, did the governor
2588 have an official phone?

2589 A. He had a cell phone.

2590 Q. Through the State of New York?

2591 A. I assume it was through the State of
2592 New York. He had a cell phone, yes.

2593 Q. How -- the in-person meetings, kind
2594 of a general question, how would they get set up?
2595 Would Ms. Benton e-mail you and say come over to
2596 the chamber and meet with the governor? Would it
2597 be Ms. DeRosa?

2598 A. Stephanie or one of the other
2599 people -- call them assistants. These were --
2600 they were more than just -- they did a lot of things.
2601 They would reach out to us and say, hey, the
2602 governor wants to meet with you. Could you come
2603 over?

2604 EXAMINATION BY

2605 MR. EMMER:

2606 Q. Further up the e-mail Ms. DeRosa
2607 sends on June 7 at 10:19 a.m., "Tracy, please set
2608 a call with this group for today after the press
2609 conference to go through." Were you asked to
2610 participate in this call?

2611 A. I don't recall. I think I would
2612 need to see if I was invited to it. I don't --
2613 I just don't recall.

2614 Q. Do you recall taking part in a
2615 meeting related to this e-mail?

2616 A. I don't recall a meeting with
2617 regards to this e-mail.

2618 EXAMINATION BY

2619 MR. BENZINE:

2620 Q. When -- if you -- to the extent you
2621 do recall, when do you recall first conversations
2622 regarding the drafting of the July 6th report?

2623 A. At this time, I -- in June I shared
2624 an office with Jim Malatras, the chamber, a lot
2625 of people were there so they put us
2626 together. And you know, testing is what I
2627 was working on. He was working on reopening
2628 stuff. I think I overheard him mentioning though

2629 there was a report being put together at some
2630 point in June.

2631 I remember hearing him say that and
2632 I would say, oh, if you ever needed help with
2633 anything, I am here to help. Like I was trying
2634 to be helpful, but I don't believe -- I think he
2635 said something along the lines of I don't need
2636 your help. But that's kind of the first time I
2637 recall hearing about it.

2638 Q. To the best that you can kind of put
2639 a finer point on the beginning of June, in or
2640 around kind of the first week of June, this
2641 e-mail was June 7th, early June?

2642 A. I would say maybe mid-June. I don't
2643 have a direct recollection.

2644 EXAMINATION BY

2645 MR. EMMER:

2646 Q. In the previous hour you discussed
2647 your role in preparing the slides for the
2648 governor's daily press conferences. Within that
2649 role, were you reviewing the numbers daily?

2650 A. Which numbers are you referring to
2651 specifically?

2652 Q. Death totals related to -- well, all
2653 the death totals but specifically related nursing

2654 homes?

2655 A. So what would happen would be every
2656 PowerPoint -- you know, let me rephrase.

2657 The PowerPoints would normally
2658 have -- like the first couple of slides would be
2659 tests performed, positive tests, positivity rate,
2660 hospitalizations, discharges, intubation. All
2661 this kind of first 15 slides, let's say. Every
2662 day there would be data that would be sent to
2663 myself and other people who kind worked on the
2664 PowerPoint. There was often it came in slide
2665 format, like the charts already had been prepared
2666 for us.

2667 I think McKinsey had helped with
2668 that. So we would open up those files and put
2669 them like into a PowerPoint, like with the proper
2670 design, put that way. So I wasn't involved in
2671 reviewing them, more take them from -- to the
2672 extent I was involved in the PowerPoint.

2673 Like normally we had like a team of
2674 kind of more junior staffers in the press office
2675 who were directly responsible for
2676 kind of typing in and putting the graphics on and
2677 things like that. You know, I would often --
2678 they would send them to me when they were done,

2679 and I would kind of look through it to make sure
2680 the dates were right and kind of look for obvious
2681 errors.

2682 But I wasn't involved in like -- I
2683 had no way to check that the data coming in was
2684 right or wrong. It would come to us in the
2685 morning e-mail, you would take it, put it in the
2686 PowerPoint.

2687 EXAMINATION BY

2688 MR. BENZINE:

2689 Q. These were PowerPoints that the
2690 governor would use in his press briefings?

2691 A. Yes.

2692 Q. Prior to the press briefing would
2693 you -- sorry to use briefing three times in one
2694 sentence. But prior to the press briefing, would
2695 you brief the governor on the content of the
2696 slides or would you be involved in that
2697 preparation?

2698 A. The process was -- it kind of varied
2699 by day, but normally the process was if there was
2700 something we wanted to announce the next day,
2701 let's say there was a PPE procurement or a new
2702 testing site or something, we would -- the night
2703 before, kind of put together a handful of slides.

2704 Here's like some suggestions of what we should
2705 announce tomorrow. We would send that home with the
2706 governor in his briefing book. He had like a
2707 binder.

2708 The next morning the governor would
2709 come in and have a -- kind of a -- he would have
2710 taken a kind of paper like this, blank page, and
2711 he had kind of made -- added things to the
2712 PowerPoint. So he would come in and hand -- like
2713 6:30 in the morning, early in the morning, he
2714 would hand myself or someone else, give you like
2715 a sheaf of paper and say like, Here are my edits
2716 to the PowerPoint. I would then give that to
2717 that kind of team of people who were designing
2718 the PowerPoint, and they would make that into
2719 like a slide deck.

2720 As part of that, you would plug
2721 in -- the morning's data had come in, you didn't
2722 have the data the night before. The morning data
2723 would come in and you would plug in all of that
2724 data, compiled then like what's called the draft
2725 PowerPoint and then you would show that to the
2726 governor on a slide show and he would click
2727 through and kind of make his edits.

2728 Q. The original PowerPoints that would

2729 go with the governor the night before, who was
2730 kind of the hand off? Who was, here is your
2731 draft PowerPoints to review?

2732 A. He had a team of like people called
2733 like the briefing staff, who probably would have
2734 done it. But it would have been like, for
2735 example, people who were responsible for
2736 different substantive areas.

2737 Like for example, like I was testing
2738 and these new hospitals -- like if I was -- you
2739 know, if I had something in my area of
2740 responsibility that could be announced the next
2741 day or should be, I would have e-mailed either
2742 the team of staff who was putting the PowerPoint
2743 together or the briefer and say, hey, can we do a
2744 slide, here's some text for the slide. Like
2745 tomorrow we are opening the Javits Center. Here
2746 is what I propose should go into that PowerPoint.

2747 Or tomorrow we are opening 30 new
2748 testing sites. Here is the hotline. Here is the
2749 map. Can you please put that in the draft of the
2750 PowerPoint and then someone would compile that
2751 and off it would go.

2752 Q. To the best that you know, and I'm
2753 going -- with the understanding that this kind of

2754 like a custodial, lawyerly question, are the
2755 briefing books retained?

2756 A. I don't know. I am not sure.

2757 Q. And then in your experience
2758 surrounding those daily PowerPoints, was it
2759 common that the governor would make edits or
2760 revisions?

2761 A. Yes.

2762 Q. Did he ever -- was it common for him
2763 to remove suggested slides or add suggested
2764 slides?

2765 A. Yes.

2766 Q. And those would be -- those edits or
2767 additions would be memorialized in a piece of
2768 paper that he slid back in the briefing book that
2769 was then handed back to staff the next morning?

2770 A. He would have -- like the best way
2771 to describe it is like if you had like a sheaf --
2772 is that a word, sheaf? Like a sheaf of papers,
2773 and he would kind of just like hand it to you and
2774 say, here is like my PowerPoint, and he would
2775 have written -- each page would be a slide. Then
2776 he would give that to -- or Stephanie would give
2777 it or kind of depending on who he handed it to in
2778 the morning, would give it to the kind group of

2779 staff in the press office and then they would
2780 quickly take that piece of paper with his writing
2781 on it and put it into a PowerPoint slide.

2782 Q. To the best of your understanding,
2783 it's a retention question, your job isn't to
2784 retain e-mails and stuff, did the press office
2785 keep the notes or would they discard them?

2786 MS. MURPHY: Do you know?

2787 THE WITNESS: I don't know what
2788 happened to those.

2789 MR. BENZINE: Thank you.

2790 EXAMINATION BY

2791 MR. EMMER:

2792 Q. And just to be clear, you mentioned
2793 that each day McKinsey would send over the
2794 numbers and slides and you just mentioned there
2795 were people that were tasked with reviewing them.
2796 Can you be more specific on the names of the
2797 individuals that would have been reviewing those
2798 slides and numbers?

2799 A. They weren't like reviewing it like
2800 for the content. They were like taking -- it
2801 would come over in like a PDF document or like a
2802 PowerPoint like file, but it was in like the
2803 McKinsey format.

2804 So it wasn't like -- it was like
2805 kind of, you know, not exactly visually
2806 compelling. And then it would be taken from that
2807 and just transferred into like a PowerPoint slide
2808 in the governor's format, just like dark blue
2809 background gold, something more compelling. They
2810 weren't reviewing the data. It would be an
2811 overstatement. It was more of just like a
2812 transfer of the data, if that makes sense.

2813 Q. So in the previous hour, we
2814 discussed your testimony on August 3rd.

2815 MR. BENZINE: Not yourself,
2816 Dr. Zucker.

2817 BY MR. EMMER:

2818 Q. Dr. Zucker's testimony on
2819 August 3rd. Do you recall Dr. Zucker declining
2820 to provide the New York legislature with numbers
2821 of nursing home residents who died, at this
2822 hearing?

2823 A. I recall he asked for them. He
2824 said they would be something that we would follow
2825 up on.

2826 Q. You were also asked for data that
2827 you could not provide at this hearing as well,
2828 correct?

2829 A. I was personally asked?

2830 Q. Yes.

2831 A. I would have to see a transcript to
2832 know exactly what kind of I was personally asked.

2833 EXAMINATION BY

2834 MR. BENZINE:

2835 Q. Were you involved in preparing
2836 Dr. Zucker for that hearing?

2837 A. I recall being -- only knowing I was
2838 going to join him maybe a few days in advance
2839 being told something along the lines of, you are
2840 going to sit there and if he is asked something
2841 about testing and hospital capacity and the like,
2842 you can be there to help answer those questions.
2843 That's what I was asked basically. I was like sure, no
2844 problem. Maybe there was a call in advance or
2845 maybe there was some like briefing documents I
2846 was sent, but I don't recall much in preparation
2847 for that.

2848 Q. So your primary purpose of being --
2849 accompanying Dr. Zucker that day was more testing
2850 and capacity versus nursing home death case kind
2851 of situations?

2852 A. I recall it was said, Hey, you
2853 should sit next to him in case he was asked

2854 questions on this, like you can maybe jump in and
2855 be helpful on that. I don't recall being asked
2856 to talk about nursing homes necessarily.

2857 EXAMINATION BY

2858 MR. EMMER:

2859 Q. I may be making you repeat yourself.
2860 I believe the minority staff asked in the
2861 previous hour, but can you elaborate on why Dr.
2862 Zucker was unable to provide the legislature with
2863 numbers at that time?

2864 A. I am not sure.

2865 Q. But isn't it true, as you testified
2866 in the previous hour, that after this hearing you
2867 were ordered to conduct an audit of the
2868 Department of Health's data?

2869 A. I recall it like a common sense
2870 review of a data set that I was asked to, you
2871 know, go over and sit down with their staff and
2872 go through it line by line and make sure there
2873 were no discrepancies or any inconsistencies.

2874 Q. Again, I apologize if I am making
2875 you repeat yourself, but who ordered you to
2876 conduct this audit?

2877 A. Melissa asked me to go over there
2878 and do this review.

2879 EXAMINATION BY

2880 MR. BENZINE:

2881 Q. Did she explain why?

2882 A. I don't recall really the
2883 conversation, just, you know, can you -- what --
2884 you know, do you mind going there and taking a
2885 look at this. I think there was -- I think
2886 she -- I remember her mentioning like
2887 double-counting or like she wanted me to make
2888 sure that the numbers didn't have
2889 inaccuracies or inconsistencies.

2890 Q. To the best that you recall, when
2891 you started this, was the kind of like metric
2892 that was used to be counting, it was recorded
2893 that New York was only counting nursing home
2894 residents that passed away from COVID if they
2895 were still residing in the nursing home but not
2896 those residents that were in the hospital and
2897 passed away, is that your recollection as well?

2898 A. My recollection was that there were
2899 like two buckets, and the HERDS -- the hospitals
2900 and nursing homes reported to the HERDS survey.
2901 And bucket one was fatalities of people who
2902 died within a nursing home and bucket two was
2903 fatalities of people who died within a hospital

2904 and those were the two categories that were
2905 reported both separately.

2906 Q. The double-counting issues that
2907 concern over someone being reported as death in a
2908 nursing home and the exact same person reported
2909 as death in a hospital; is that fair?

2910 A. I am not entirely sure -- I think
2911 what I would think -- potentially. I think it
2912 was more -- I don't recall being like, here is
2913 the definition of double-counting. It is more
2914 like I am going to go through this and if there
2915 is obvious discrepancies or inconsistencies, I
2916 will flag them and like I will -- that was kind
2917 of how I viewed my role.

2918 EXAMINATION BY

2919 MR. EMMER:

2920 Q. Again, I believe that you testified
2921 in the previous hour that the audit that you
2922 conducted took a couple of days, no longer than a
2923 week, right?

2924 A. Yes.

2925 Q. Can -- generally, can you
2926 summarize -- can you just provide a general
2927 summary of what you found?

2928 A. To the best of my recollection, this

2929 was some time ago, there was like an Excel
2930 spreadsheet on a DOH computer. For every
2931 fatality there was like a line that had like the
2932 initials, it had the facility, it had date of
2933 admission, date of death, like the comorbidities.

2934 I had like -- like ran some like
2935 Excel formulas. Was really looking to see is
2936 there anything here like -- I am not a data
2937 scientist. I was more looking at this like a
2938 common sense kind of approach. And I was looking
2939 for things like -- you know, anything that looked
2940 inconsistent. And I think I flagged maybe 600 or
2941 so entries that had some sort of thing that could
2942 be considered inconsistent.

2943 Like someone had been marked as
2944 having passed away like before they had been
2945 admitted. There were like some cases of people
2946 who were confirmed to have died of COVID before
2947 COVID had been reported in New York.

2948 There was some like interesting
2949 things that I said this would -- at a minimum we
2950 should follow up and see like why they were
2951 reported this way. Like there were like some
2952 entries that look duplicative, like identical
2953 fatalities. I just marked them like we should

2954 follow up on these.

2955 Q. But is the extent of your
2956 involvement, your audit that was -- it was just
2957 identifying inconsistencies?

2958 A. Yes.

2959 Q. At this time I want to direct your
2960 attention back to the impeachment report. And we
2961 are looking at page 41.

2962 MS. MURPHY: That's Exhibit 2?

2963 MR. BENZINE: Yes.

2964 MS. MURPHY: What page did you say,
2965 again?

2966 MR. EMMER: Page 41.

2967 BY MR. EMMER:

2968 Q. We are looking at subsection G, the
2969 third paragraph.

2970 A. Okay.

2971 Q. I'll read it into the record.

2972 It states, "Around August 2020 the
2973 same senior DOH official also prepared a letter
2974 to members of the legislature reporting the full
2975 nursing home death numbers and provided it to the
2976 executive chamber for approval. To the senior
2977 DOH official's knowledge, the executive chamber
2978 never authorized releasing the letter.

2979 "A task force member also advised
2980 releasing the full data set at this time, but the
2981 executive chamber did not do so. The task force
2982 member believed that it was because the executive
2983 chamber wanted to audit the data further."

2984 In the first hour we discussed it
2985 was your belief that the senior DOH official was
2986 referred to Dr. Zucker; is that correct?

2987 A. I believe so, yes.

2988 Q. Mr. Rhodes, do you know who the task
2989 force member that supported releasing the data
2990 was?

2991 A. I believe it refers to myself, but
2992 I am not -- you know, there could have been other
2993 task force members that also had the same advice,
2994 but I am not exactly sure.

2995 MS. MURPHY: Look at the footnote --
2996 sorry. It looks like 345.

2997 MR. EMMER: It says interview one.

2998 MS. MURPHY: Was it cleared by you
2999 before -- before when Davis Polk wrote it,
3000 did they clear -- did they tell you Davis --

3001 THE WITNESS: Davis Polk -- I had no
3002 communications after that. I did not have
3003 communications with Davis Polk following my

3004 interview as part of the compilation of this
3005 report.

3006 BY MR. EMMER:

3007 Q. But for the record, you are
3008 testifying today that you did support releasing
3009 the numbers in August of 2020?

3010 A. Yes.

3011 Q. And do you recall why you supported
3012 releasing the numbers?

3013 A. In my view -- as part of my kind of
3014 review of these numbers, I thought maybe my
3015 review, you know, was -- you know, I thought
3016 I had done my job. I found kind of any
3017 discrepancies, I identified them. We could --
3018 Department of Health could maybe follow up on the
3019 discrepancies and that would be -- you know, if
3020 there were any concerns, you know, about the
3021 inconsistencies like maybe my review had helped
3022 resolve those, I was not sure, but like at least
3023 maybe provided some -- some input or helpfulness
3024 on that side.

3025 And that -- you know, there's a
3026 mention here about the legislature had written a
3027 letter requesting the numbers and, you know, I
3028 thought that it made sense to put those -- put

3029 the numbers in that letter and then maybe add an
3030 asterisk that said, you know, review had found
3031 maybe there were 600 that were continued to be
3032 followed up on.

3033 Those -- just as a note that those
3034 were being validated. That's what I thought made
3035 sense based on what my review was.

3036 EXAMINATION BY

3037 MR. BENZINE:

3038 Q. Did you assist Dr. Zucker in
3039 drafting that letter?

3040 A. I don't recall assisting in drafting
3041 it. I recall that maybe it was -- I was on an
3042 e-mail chain when it was like sent around
3043 afterwards, but I don't recall like drafting it,
3044 like playing a role in like drafting it.

3045 Q. The "sent around afterwards," you
3046 are referring to the e-mail chain within the
3047 executive chamber?

3048 A. And probably DOH as well. Because
3049 the letter wasn't just about -- the letter had
3050 like 30 questions. I think some of the questions
3051 for me were about testing and the Javits Center.
3052 There were questions about PPE that went to other
3053 people who did PPE.

3054 So it wasn't like the nursing home
3055 numbers were the only thing in this letter. It
3056 was like a pretty extensive letter, if I recall,
3057 and in areas especially that I would have had
3058 knowledge of that I could have given an input,
3059 areas such testing and the hospital capacity.

3060 Q. Understanding it's anonymous, the
3061 task force member quoted here is anonymous, but
3062 you said advising the data set is consistent with
3063 your testimony to Davis Polk, is it also
3064 consistent with your testimony to Davis Polk that
3065 the executive chamber not releasing the letter
3066 was because they wanted to audit the data
3067 further?

3068 A. I don't recall exactly what I said
3069 to Davis Polk. I don't recall exactly what I
3070 said to them. Is that what the question was?

3071 Q. Yes. I am just trying to pin --
3072 obviously they interviewed a number of task force
3073 members and trying to pin down --

3074 A. Yes.

3075 Q. -- who this task force member is.
3076 And I agree with you that it's obviously
3077 potential that it's multiple task force members
3078 advice for the full data set to be released, so

3079 the second part of the testimony would be that
3080 the executive chamber wanted to audit the data
3081 further. So I was just trying to see if that
3082 refreshed your recollection on if you testified
3083 to that?

3084 A. I don't -- I don't recall what
3085 exactly.

3086 Q. Do you recall any conversations
3087 within the executive chamber regarding not
3088 releasing this letter?

3089 A. I am not aware -- I don't recall any
3090 conversations about why the letter was not
3091 released.

3092 EXAMINATION BY

3093 MR. EMMER:

3094 Q. You testified in the previous hour
3095 that the full data set was not released until
3096 February or after the Attorney General's report,
3097 correct?

3098 A. Yes.

3099 Q. Were there -- were you involved in
3100 any discussions within that time from the moment
3101 that you completed your audit to releasing the
3102 full data set? Were you involved -- were you --
3103 did you -- were you involved in any discussions

3104 about releasing the numbers?

3105 A. I don't recall any conversations
3106 about like specifically like releasing the
3107 numbers. I recall there was a conversation in --
3108 on Columbus Day -- there was like a conversation
3109 regarding -- I think the governor had been asked
3110 in a press conference about the release of this
3111 data. And there was like a conference call after
3112 the press conference where the governor had
3113 basically said to a number of people, you know,
3114 instead of -- there -- have we ever looked at how
3115 many people -- the question is about how many
3116 people went from nursing homes to hospitals, have
3117 we ever looked at people who went from hospitals
3118 to nursing homes. And DOH replied to something
3119 along lines of we haven't and we can.

3120 That was like -- and that makes
3121 sense, and that was something that -- I don't
3122 know what happened after that, but like I recall
3123 that conversation.

3124 EXAMINATION BY

3125 MR. BENZINE:

3126 Q. About when did that conversation
3127 occur?

3128 A. To the best of my knowledge, it was

3129 on like Columbus Day, around early October some
3130 time.

3131 Q. That was what -- I am just making
3132 sure I am getting it right, that the Department
3133 of Health hadn't done an analysis on how many
3134 nursing home residents had gone from hospitals to
3135 nursing homes, but they had analyzed how many
3136 nursing home residents had gone to hospitals; is
3137 that true?

3138 A. I think it was more in the question
3139 press coverage was referring to the number of
3140 nursing home fatalities -- people who had
3141 transferred from a nursing home to a hospital and
3142 had died in the hospital. That was the question
3143 at the press conference.

3144 Then after the press conference, the
3145 governor had put together a conference call and
3146 said, have we ever looked at the opposite? Like
3147 have we ever looked at people who left hospitals,
3148 transferred to nursing homes, and then died in
3149 that nursing home? Have we ever looked at that
3150 subcategory data.

3151 DOH, to the best of my recollection,
3152 had said they had not and it made sense to maybe
3153 look at that as well. And then I don't recall

3154 what happened after that in terms of that data.

3155 EXAMINATION BY

3156 MR. EMMER:

3157 Q. Mr. Rhodes, it's been widely
3158 reported that Secretary DeRosa admitted on a
3159 phone call with legislature on February 10, 2021,
3160 that the state froze, in response to the DOJ
3161 request -- by froze, was she referring to
3162 withholding nursing home numbers?

3163 A. I don't recall the exact quote from
3164 the press conference coverage or from the meeting.

3165 Q. Were you on that phone call on
3166 February 10 of 2021?

3167 A. Yes. It was a Zoom call with
3168 members of the state legislature. It was like a
3169 dozen staff members from the COVID task force and
3170 DOH.

3171 Q. And do you recall the purpose of
3172 that call?

3173 A. To the best of my recollection, the
3174 DOH had sent like a letter to the legislature
3175 kind of answering a bunch of questions and
3176 offered to do this call with members of the
3177 legislature to answer any follow-up questions.

3178 EXAMINATION BY

3179 MR. BENZINE:

3180 Q. Do you recall Ms. DeRosa saying that
3181 the state froze withholding nursing home numbers
3182 in response to the DOJ investigation?

3183 A. I don't really recall her saying
3184 that in the midst of a two-hour meeting,
3185 I don't recall her saying it in the meeting, but
3186 I recall obviously the news reports afterwards
3187 and it becoming the focus of the media.

3188 Q. Do you recall being a part of any
3189 conversations within the governor's office
3190 regarding the DOJ investigation?

3191 A. I vaguely remember when -- you know,
3192 in August when -- I think one of the letters came
3193 in, it being, you know, discussed but I don't
3194 really recall the specifics.

3195 Q. Do you recall the kind of -- how the
3196 governor's office was going to respond?

3197 A. I don't recall being part of any
3198 strategic or political communications, decisions
3199 regarding it, no.

3200 Q. Were you ever interviewed by the
3201 Department of Justice?

3202 A. I was interviewed by the Eastern
3203 District of New York.

3204 Q. In regard to the nursing home
3205 investigation?

3206 A. Yes.

3207 Q. Is -- this is just kind of
3208 custodial, again, but your testimony to them is
3209 consistent with your testimony today?

3210 A. I believe so, yes.

3211 Q. Okay. I don't have it. I was just
3212 asking you.

3213 A. Okay.

3214 Q. And you were involved in -- were you
3215 involved in any of the responses to DOJ?

3216 A. I may have -- you know, they may have
3217 shown them to me before they went, but I don't
3218 recall like providing a lot of input or being --

3219 EXAMINATION BY

3220 MR. EMMER:

3221 Q. Do you remember when the state would
3222 have responded to the DOJ request?

3223 A. I don't recall when they responded,
3224 no.

3225 MR. EMMER: We can go off the
3226 record.

3227 (Whereupon, a brief recess was
3228 taken.)

3229 EXAMINATION BY

3230 [REDACTED]

3231 Q. Welcome back, Mr. Rhodes. I just
3232 want to ask you some questions about a topic that
3233 my Republican colleagues briefly touched on,
3234 which is the release of the New York Department
3235 of Health, July 6, 2020, report.

3236 This was titled, "Factors associated
3237 with nursing home infections and fatalities in
3238 New York State during the COVID-19 global health
3239 crisis." I will introduce this as Minority
3240 Exhibit D.

3241 (Whereupon, Minority Exhibit D,
3242 Report, was marked for identification.)

3243 BY [REDACTED]

3244 Q. Mr. Rhodes, are you familiar with
3245 this report or have you seen this report before?

3246 A. Yes.

3247 Q. This was the first in-depth analysis
3248 of nursing home data publicly released by DOH.
3249 And it's a pretty lengthy report with a lot of
3250 information. So I assume multiple people were
3251 involved in pulling it together.

3252 Do you have any knowledge of who was
3253 involved in drafting this report?

3254 A. I don't know who like originally
3255 drafted this report.

3256 Q. Okay. It's released from, as it
3257 says on the bottom very first page, the New York
3258 State Department of Health, correct?

3259 A. It says the New York State
3260 Department of Health on the first page.

3261 Q. And do you know if staff from the
3262 executive chamber worked on this report?

3263 A. I believe it's yes, that staff
3264 from the executive chamber, you know, had input
3265 into the report.

3266 Q. You mentioned Jim Malatras earlier
3267 talking to you about this report. Is he one of
3268 the people you are referencing?

3269 A. Jim was a member of the task force.
3270 I don't think he was a member of the chamber at
3271 the time. He was a member of the task force.

3272 Q. And did he work on this report?

3273 A. I know he mentioned it was happening
3274 but I believe that he was doing some -- had some
3275 inputs or some but I don't know exactly the
3276 extent of his involvement.

3277 Q. Okay. Are there any other members
3278 of the task force or the executive chamber that

3279 you know worked on this report?

3280 A. So as I mentioned earlier, like I
3281 had bits to put into a PowerPoint at some point
3282 kind of toward -- right before it was presented,
3283 and I know -- I recall like some of the people I
3284 worked with on the PowerPoint side had helped
3285 with that process.

3286 Q. Any names that you recall?

3287 A. We have a number of people in the
3288 press office who work on PowerPoints. I don't
3289 remember every one of them. I don't recall
3290 exactly.

3291 Q. Okay. And were you involved in the
3292 drafting of this report in any way?

3293 A. Excuse me. To the best of my
3294 recollection, there is a reference in here to a
3295 Bio-Reference study of antibody testing that I --
3296 Bio-Reference was another lab we worked with to
3297 do nursing home testing, and they had at some
3298 point sent me like an antibody test they had
3299 done, and I passed it along and it somehow ended
3300 up in this report. And I had, you know, been
3301 asked to like make sure that how it was described
3302 was accurate.

3303 Q. Who asked you to review that

3304 description?

3305 A. I don't recall.

3306 Q. Do you recall if it was somebody

3307 from DOH or from executive chamber?

3308 A. I don't remember.

3309 Q. Okay. Do you know who had final
3310 approval on this report before it was released?

3311 A. I am not sure.

3312 Q. I just want to take a look at some
3313 numbers in the report for us to discuss what went
3314 into the report. So we are going to turn to
3315 page 7. And there's sort of one very big
3316 paragraph on page 7. Feel free, take your time,
3317 you can read it over, but it does list a number
3318 for New York's fatalities, which is referring to
3319 fatalities from the coronavirus in facilities for
3320 older adults, which is at the top of the
3321 paragraph.

3322 And it says New York had 6,432 such
3323 fatalities. Take a moment to review, if you
3324 would like, but I just want you to confirm that's
3325 the number that you see.

3326 A. I am sorry. Was there a question
3327 associated with this?

3328 Q. If you can just confirm it lists

3329 New York's fatalities as 6,432?

3330 A. I see that number.

3331 Q. Is it your understanding that this
3332 was the actual number of nursing home-related
3333 deaths at this point in the pandemic?

3334 A. It appears that they're describing
3335 what The New York Times is reporting as total
3336 deaths in nursing homes in New York state.

3337 Q. Okay. At the time of this report,
3338 so July 6th of '20, do you recall any discussions
3339 among -- that you were involved in with either
3340 DOH staff, executive chamber staff, or both about
3341 what the number of nursing home deaths was at
3342 this time?

3343 A. I do not.

3344 Q. I am going to introduce Minority
3345 Exhibit E.

3346 (Whereupon, Minority Exhibit E, New
3347 York Times article, was marked for
3348 identification.)

3349 BY ■■■ ■■■■

3350 Q. This is a New York Times article
3351 originally published on March 4th, 2021, updated
3352 September 23rd, 2021, and I just want to go over
3353 a couple of sections of this article.

3354 Right on that first page just a few
3355 words into that first paragraph, the article
3356 states, "A report written by state health
3357 officials had just landed, and it included a
3358 count of how many nursing home residents in New
3359 York had died in the pandemic.

3360 "The number, more than 9,000 by that
3361 point in June, was not public and the governor's
3362 most senior aides wanted to keep it that way.
3363 They rewrote the report to take it out, according
3364 to interviews and documents reviewed by The New
3365 York Times."

3366 9,000 is a fairly significantly
3367 higher number than 6,432 which is what was
3368 included in the DOH report. Do you have any
3369 knowledge about those two differing numbers?

3370 A. Do I have knowledge about the
3371 difference between 9,000? Maybe a little more --

3372 Q. Sure. About why the DOH report
3373 included 6,432 deaths, when later reporting --
3374 when the report was drafted in June, there were
3375 over 9,000 deaths?

3376 A. I don't know why the report says one
3377 or the other.

3378 Q. Okay. Do you recall hearing any

3379 conversations about keeping the full number of
3380 nursing home deaths at that time out of public
3381 reporting?

3382 A. I do not. Full number of nursing
3383 home deaths, what do you mean by that? I
3384 think -- just to be clear, I think the State
3385 reported like these are the people who died in
3386 nursing homes and these are the people who died
3387 in hospitals. I don't recall any discussions
3388 about not reporting those numbers.

3389 Q. Looking at the next excerpt on the
3390 next page, the paragraph right above the picture
3391 box.

3392 It says, "The changes sought by the
3393 governor's aides fueled bitter exchanges with
3394 health officials working on the report. The
3395 conflict punctuated an already tense and evolving
3396 relationship between Mr. Cuomo and his health
3397 department."

3398 You were working closely with the
3399 executive chamber and with the Department of
3400 Health around the time of this report in July of
3401 2020. Do you recall a tense relationship between
3402 the governor and the health department at that
3403 time?

3404 A. I would categorize it as this was
3405 the middle of a global pandemic. There was a
3406 lot -- people were stressed, no question about
3407 it, people working 24/7.

3408 There was a lot of -- there was
3409 certainly a lot of stress involved. You know,
3410 I don't think that I would deny that. That's how
3411 I would characterize it.

3412 Q. And do you know any specific points
3413 of conflict between the executive chamber and the
3414 Department of Health?

3415 A. I can't recall any specific points
3416 of conflict.

3417 Q. On the next page, the third full
3418 paragraph that begins with "The aides."

3419 A. Yes.

3420 Q. It says, "The aides who were
3421 involved in changing the report included Melissa
3422 DeRosa, the governor's top aide, Linda Lacewell,
3423 the head of the state's department of financial
3424 services, and Jim Malatras, a former top advisor
3425 to Cuomo brought back to work on the pandemic.
3426 None had public health expertise."

3427 Do you have knowledge -- we already
3428 spoken about your awareness of Mr. Malatras's

3429 work on this report. Are you aware of work
3430 involving Ms. DeRosa or Ms. Lacewell on this
3431 report?

3432 A. I am not. Just to clarify, Jim had
3433 mentioned this report to me, but he didn't
3434 describe what his involvement was, so.

3435 Q. Okay. Thank you. Is it accurate to
3436 your knowledge that none of these three had
3437 public health expertise?

3438 A. I don't know what their expertise
3439 involved in public health is.

3440 Q. Did they have -- strike that.
3441 The select subcommittee was told in
3442 a previous interview as well that Jim Malatras
3443 was involved with editing this report.
3444 Mr. Malatras was not a Department of Health
3445 employee, right?

3446 A. He was not.

3447 Q. Was he regularly involved in
3448 drafting Department of Health reports, to your
3449 knowledge?

3450 A. I am not sure. Not to my knowledge.

3451 Q. So he never mentioned any other
3452 Department Health reports he was working on?

3453 A. Not to my recollection.

3454 Q. Later on in the article also touches
3455 on -- and I think we have discussed it earlier,
3456 that the New York Attorney General conducted an
3457 investigation and issued a report titled "Nursing
3458 Home Response to the COVID-19 Pandemic," which
3459 was released on January 28, 2021.

3460 You mentioned you were familiar with
3461 that report, correct?

3462 A. That's part of the story here?

3463 Q. It's mentioned towards the end of
3464 the story, but we don't need to look at the
3465 specific cite to it. I am just confirming that
3466 you are familiar with the Attorney General's
3467 report that was released on January 28th, 2021.

3468 A. I recall it being released, yes.

3469 Q. And just to be clear, the Attorney
3470 General in New York is not appointed by the
3471 governor, correct?

3472 A. The Attorney General is elected.

3473 Q. Correct. So it's an independent
3474 role from the governor?

3475 A. The Attorney General is elected by
3476 the people, so.

3477 Q. So any reports they do would be an
3478 independent investigation, based on your

3479 knowledge?

3480 A. I am not aware. I don't want to
3481 speculate on whether reports are independent or
3482 not. I am not sure.

3483 Q. Okay. The report from the Attorney
3484 General found -- and I am going to quote here,
3485 "Discrepancies remain over the number of New York
3486 nursing home residents who died of COVID-19.
3487 Data obtained by the OAG shows that DOH
3488 publicized data vastly undercounted these deaths."
3489 The report then recommended that DOH, quote,
3490 "Ensure public reporting by each nursing home as
3491 to the number of COVID-19 deaths of residents
3492 occurring at the facility, and those that
3493 occurred during or after hospitalization of the
3494 residents in a manner that avoids creating
3495 double-counting of residents' deaths at hospitals
3496 in reported COVID-19 death statistics."

3497 We looked at some e-mails earlier
3498 from February of 2021 that talked about data and
3499 updating data. Do you know if those requests and
3500 updated data information was in response to these
3501 recommendations from the New York Attorney
3502 General report?

3503 MS. MURPHY: Could you clarify who

3504 is making the updated --

3505 [REDACTED] [REDACTED] The e-mails we were
3506 looking at earlier that had spreadsheets,
3507 some of them were from February of 2021. So
3508 after the Attorney General report.

3509 MR. EGGLESTON: I said Exhibit B.

3510 THE WITNESS: I will give the same
3511 answer that I gave your colleagues when asked about
3512 whether this was in response to a State
3513 Supreme Court decision. I don't know what --
3514 I don't know.

3515 BY [REDACTED] [REDACTED]

3516 Q. Okay. And I think you would agree,
3517 you mentioned that you advised that full data be
3518 released to the public, correct?

3519 A. I said that, yes.

3520 Q. Can you tell us why you think it is
3521 important for the public to have full and
3522 accurate public health data?

3523 A. I think this is a global pandemic
3524 where the more data that's available to the
3525 public and to experts and to -- it helps with
3526 decision-making. It's -- you know, I have -- I
3527 think it's -- I think everyone would agree that,
3528 I mean.

3529 Q. Did you ever hear any conversations
3530 about keeping public health data that was
3531 released publicly limited or anything of that
3532 nature?

3533 A. Keeping data that had already been
3534 released and then limiting it after?

3535 Q. No. Like when Department of Health
3536 executive chamber was reviewing data, were there
3537 ever any conversations, that you were a part of,
3538 about limiting what would be publicly released?

3539 A. I don't -- I don't recall any
3540 conversations in the chamber about reviewing data
3541 that was being released.

3542 Q. Any conversation with DOH about
3543 that?

3544 A. Like I said earlier, I was not
3545 reviewing like the data that was about to be
3546 released.

3547 Q. Sure.

3548 A. I played that role in August where I
3549 was -- I had done that kind of common sense
3550 review of the numbers and then like in terms of
3551 like the daily release of the numbers, like I was
3552 not someone saying this should or should not be
3553 released. That is something that was not in my

3554 purview if that's what you're asking.

3555 Q. You mentioned putting together the
3556 PowerPoint or helping put together the PowerPoint
3557 presentations that Governor Cuomo gave every day.
3558 There was fatality data included in those
3559 PowerPoint presentations, right?

3560 A. He must have gave hundreds of those
3561 presentations. I don't know if every one of them
3562 had fatality data, but a number of them had
3563 fatality data in them.

3564 Q. And was there discussion of
3565 putting -- when you were putting those PowerPoint
3566 presentations together, was there ever any
3567 discussion about limiting the data that went in?

3568 A. Not to my recollection.

3569 [REDACTED] [REDACTED] We can go off the record.

3570 (Whereupon, a brief recess was

3571 taken.)

3572 BY [REDACTED] [REDACTED]

3573 Q. I am going to change topics a little
3574 bit here. There has been a lot of discussion
3575 about the New York State March 25th, 2020,
3576 readmit order. I know you were not involved in
3577 that, so I am not going to ask -- so you may have
3578 to reiterate that for some of these questions,

3579 but just trying to gauge some of the federal
3580 involvement.

3581 Recognizing that in March 2020
3582 everyone was working with very limited
3583 information about COVID-19 and how it's spread;
3584 is that reasonable?

3585 A. I can speak to my own experience.
3586 Like I was not an expert on COVID in March of
3587 2020. So if that's -- yes, I learned -- I think
3588 the team at Wadsworth taught me an enormous
3589 amount. They are quite few -- they're
3590 extraordinary professionals and some of the best
3591 experts in testing and they were incredible
3592 people. So I think -- but what I learned, I
3593 learned from, you know, those people.

3594 Q. I think probably March 2020 there
3595 was a lot of learning as we went...

3596 A. Yes.

3597 Q. ...as New York state, as a country,
3598 individuals trying to deal with COVID-19 in our
3599 personal lives --

3600 A. Yes.

3601 Q. -- there was a lot of changing
3602 information, right?

3603 A. I think that sounds accurate.

3604 Q. To the extent you can answer, do you
3605 know how federal guidance such as guidance from
3606 the Centers for Medicare and Medicaid services
3607 might inform state-level policy making?

3608 A. The best I can speak to that is what
3609 I would hear from the Department of Health. And
3610 the Department of Health would say like this
3611 guidance on the federal level informed our
3612 thinking, then I would have no reason to question
3613 that.

3614 [REDACTED] But you would agree
3615 as sort of a general matter, if a federal
3616 entity like CMS is issuing guidance, even if
3617 it's not binding, it does inform the actions
3618 with the policies that a state level will be
3619 implemented, generally to match what is put
3620 out at the federal level?

3621 THE WITNESS: So when you say it, it
3622 makes sense. But there are things that I did
3623 during the pandemic, like I wasn't involved
3624 in like receiving federal guidance and making
3625 sure that state guidance reflected it.

3626 It was -- you know, my roles were --
3627 I think I have described, like not -- I
3628 was -- more of a utility operational

3629 player in this. I just want to go -- I'm
3630 only going to speak to things I can directly
3631 address myself, if that's okay.

3632 BY [REDACTED]

3633 Q. Yeah. Absolutely. Would it be your
3634 understanding that there were people,
3635 particularly at the Department of Health, who
3636 were checking to make sure state guidance was in
3637 line with federal guidance?

3638 A. That sounds like it makes sense to
3639 me. I mean, if that's what the Department of
3640 Health says, I would have no reason to disagree
3641 with them.

3642 Q. Okay. Thinking as we are about
3643 those very early days of the pandemic when we
3644 were still gathering information, I would just
3645 like to get a little bit of your perspective
3646 about the working relationship between the
3647 federal government and state governments in sort
3648 of figuring those questions out and trying to
3649 decide how to best handle this public health
3650 crisis.

3651 Based on what you experienced, did
3652 the federal government provide enough support to
3653 New York State in those very early stages of

3654 March 2020 when the pandemic was spreading?

3655 A. So like specific to the issues that
3656 I was responsible for, which was testing and like
3657 the Army Corps of Engineer project early on, I
3658 think -- you know, I think early on, like it's
3659 been publicly reported early on, there were a lot
3660 of, I think, frustrations around testing, you
3661 know, and I -- my focus was really on how to get
3662 these labs operationalized. It wasn't like I was
3663 personally like reaching out to the federal
3664 government and saying I need X, Y, Z.

3665 It wasn't really my role, I guess,
3666 so it would be hard for me to speculate and
3667 say -- I mean, the governor was saying things in
3668 press conferences and other people were saying
3669 things, but like in terms of like what I was
3670 involved in, like that's what I know.

3671 And then I worked -- you know, when
3672 the Army Corps of Engineers was here and the
3673 members of the military was here helping us out,
3674 I think I had a very good working relationship
3675 with them. I mean, Javits Center was stood up in
3676 less than a week. Like, that was an enormous
3677 undertaking, and there were numerous federal and
3678 state agencies that we worked with, state

3679 agencies and city agencies, and you know, the
3680 military staff that I worked with. I know what I
3681 worked on. I can't really speak beyond that.

3682 Q. Sure. One of the things that we've
3683 learned that was not adequate was the amount of
3684 PPE that was provided to states to help reduce
3685 the spread of the COVID-19 infection.

3686 I know you said earlier that PPE was
3687 not your direct responsibility, but I think it's
3688 related to the need for testing and things like
3689 that, so I am sure you have some awareness of
3690 what was going on with PPE; is that right?

3691 A. PPE would be like -- what I've read.
3692 I just don't recall at that time period.

3693 Q. I know we are asking you to think
3694 back?

3695 A. I mean, I don't think I am the best
3696 situated to answer questions about PPE.

3697 EXAMINATION BY

3698

3699 Q. But just taking a step back, right,
3700 we are here in New York City, of course. We all
3701 recall sort of those initial weeks of the
3702 pandemic, sort of months of the pandemic, there
3703 was a shortage of PPE.

3704 There were images of people wearing
3705 trash bags as gowns. Does that all sound
3706 familiar to you?

3707 A. I remember seeing those images, yes.

3708 Q. Are you roughly familiar that the
3709 federal government generally has a role in
3710 stockpiling and encouraging supply and making
3711 sure that across the United States we have an
3712 adequate amount of PPE?

3713 A. That sounds like -- I don't if
3714 that's what they're statutorily required to do.
3715 I am sorry. Like are you saying if that's not an
3716 ideal scenario, like sure. But I don't know if
3717 that's a statutory requirement. I don't know.
3718 If that's what the question is or --

3719 Q. The question is that are you
3720 familiar or do you recall that at that sort of
3721 early stage of the pandemic we did observe -- I
3722 would say missteps from the federal government as
3723 it related to its responsibilities to amass
3724 appropriate amounts of PPE to disperse them to
3725 states like New York so that they could be
3726 provided to different communities sort of at the
3727 discretion of the state government.

3728 Does that sound familiar to you?

3729 A. I remember in press conferences this
3730 coming up and the governor talking about this and
3731 others, like this being -- but like I know it's
3732 like -- in retrospect it's like -- but I was
3733 really focused on like the things I was
3734 responsible for. And like when I was sitting
3735 next to the governor at a press conference, if
3736 the question wasn't about testing or something I
3737 had like direct knowledge of, I was not answering
3738 that question.

3739 I was not like -- I heard other
3740 people talk about that, but like that was -- the
3741 governor wasn't coming to me and saying, why
3742 isn't there PPE? That wasn't taking place.

3743 People were coming to me and saying
3744 why weren't we testing more, but he wasn't coming
3745 to me and asking about PPE. I was like honed in
3746 on testing. That was like my primary -- so I
3747 will just refer to you to whatever his comments
3748 were about this, but I don't have like the kind
3749 of detail to think -- I just don't know if I have
3750 what you're looking for, if that makes sense.

3751 Q. Would you say you recall challenges
3752 of this nature with testing, as well as supply,
3753 adequate number, ability to make sure everyone

3754 who would have benefited from being tested had
3755 access to a test?

3756 A. I mean, there was always a push for
3757 more. You know, the governor was always, we need
3758 to test more. That was always -- spent a lot of
3759 my time on the phone with lab directors, like how
3760 do you go from 1,000 a day to 2,000 a day? How
3761 do you go from here to there?

3762 You know, getting those nursing
3763 homes -- you know, basically tripling testing
3764 capacity for the nursing home staff members, I
3765 mean, was very difficult. I mean, we weren't
3766 doing that many tests at the time. And it
3767 required -- this was right around the time of
3768 like the Quest, Labcorp, kind of the big labs
3769 are coming online on serious capacity.

3770 I basically made a list of like
3771 every nursing home in the state and every lab
3772 that did testing for the state and we said to the
3773 labs, if you have extra capacity like let us
3774 know. We said to the nursing homes, if you need
3775 a testing partner, let us know.

3776 And we kind of like played
3777 matchmaker with them and put them together. And
3778 yes, we had to call -- we don't have test kits.

3779 How do we find test kits? Where can we source
3780 them? Does FEMA have them? Can we buy them? It
3781 was like a daily process.

3782 Then, you know, the lab would call,
3783 hey, we don't have these reagents that we need.
3784 So we'd like, who do we call? And who's the
3785 vendor? Oh, they are coming in a week. Can we
3786 call UPS and like speed that up? Do we send our
3787 own truck to pick them up?

3788 There was just a lot of these
3789 logistical things that we were figuring out on a
3790 daily basis. So I mean, there were frustrations
3791 every day, no question about it. It's a global
3792 pandemic. -We did the best we
3793 could.

3794 Q. Do you recall why in those early
3795 stages of the pandemic it was so difficult to
3796 ensure an adequate supply of tests? What factors
3797 were contributing to a shortage of tests?

3798 A. Okay. So early on there wasn't an
3799 approved -- I think there wasn't like an approved
3800 test that was reliable nationwide yet. And then
3801 the chemical, the reagents -- and once New York
3802 designed its own test and was getting other labs
3803 to run that, the reagents, which are needed to

3804 extract the RNA and then do the analysis process,
3805 were limited in supply. Like they weren't being
3806 produced enough and the demand was through the
3807 roof, as you can imagine.

3808 Q. Right.

3809 A. So then there was a shortage of --
3810 certain labs, like testing machines that do like
3811 thousands of tests a day, like those were all in
3812 short supply. Just like -- I don't think -- I
3813 mean, I don't think these companies were in a
3814 place where they were preparing for a global pandemic,
3815 so they just didn't have the supplies ready to
3816 go.

3817 EXAMINATION BY

3818 [REDACTED]

3819 Q. Did you feel like states were
3820 competing for those resources in a way that
3821 wasn't being managed by the federal government?

3822 A. I mean, there was definitely
3823 competition for those resources, there's no
3824 question about it. You know, that was not being
3825 managed? I don't know the extent of what the
3826 federal government managed. I don't know what
3827 their management process was for that.

3828 Q. Sure. But did -- I mean, states

3829 competing seems like it was not an ideal
3830 situation.

3831 A. I mean, none of this was ideal. It
3832 was a lot of -- it was a lot of like problem
3833 solving on a daily basis. There was always some
3834 issue that had to be fixed.

3835 EXAMINATION BY

3836 [REDACTED]

3837 Q. But do you recall early in the
3838 pandemic that there was sort of a decision point
3839 I think here in the United States for the federal
3840 government whether or not to proceed with the
3841 testing assay that had been put out by the World
3842 Health Organization or to develop our own
3843 versions of the test kits here in the United
3844 States? Does that sound familiar?

3845 A. It does.

3846 Q. Does it sound, do you recall, that
3847 the United States federal government opted
3848 through the CDC to proceed with its own testing
3849 assay?

3850 A. I do remember doing that, yes.

3851 Q. Do you recall that ultimately the
3852 assays that the CDC proceeded with, again,
3853 distinct from what other parts the world were

3854 proceeding with, ultimately experienced
3855 contamination issues and were largely unusable?

3856 A. That was in February of 2020. That
3857 was before I started, but after I started,
3858 I learned about that from the DOH team.

3859 Q. Of course, in that sort of initial
3860 period, February of 2020, having issues with our
3861 testing supply here in the United States
3862 contributed to the ultimate sort of outbreak and
3863 spread, advancement of the virus of the COVID-19
3864 pandemic.

3865 Would you agree with that?

3866 A. Yes. I think certainly like had we
3867 had widespread testing early on, like test people
3868 coming in through the airports and would have
3869 certainly -- there were a lot of these studies
3870 that then came out later that said COVID was
3871 spreading like wildfire in February and January,
3872 and a lot was asymptomatic.

3873 To the extent there was testing
3874 available, I think everyone would agree more
3875 testing earlier would have been very helpful.

3876 Q. So ultimately the administration's
3877 decision -- former administration's decision or
3878 administration at that time, their decision to

3879 proceed with an independent assay out of the CDC
3880 of the United States, sort independent testing
3881 assay and its contamination, its non-usability or
3882 its failure to roll that out successfully did
3883 hamper efforts across the country, but for you in
3884 New York state to ensure everyone who would
3885 benefit from a COVID-19 test in those early
3886 days of the pandemic got a test. You agree with
3887 that?

3888 A. Quite a question. I am not a public
3889 health expert. Like my role here was an
3890 operational like person. Like I could -- you
3891 know, I don't really know the WHO assay and the
3892 CDC assay. I don't have the expertise to say
3893 which like -- I am not a lab scientist.

3894 Like I think more testing earlier on
3895 would have been obviously very helpful. Like my
3896 role here was take what we have, Wadsworth has
3897 created this test, they want to help other labs
3898 run this test. Like how do we make that happen
3899 as globally as possible. That was my role and I
3900 didn't really have time to be like, you know -- I
3901 didn't have time to really think about the other
3902 issues. So I hope that's helpful.

3903 Q. So looking back on four years ago,

3904 the initial period of the COVID-19 pandemic, you
3905 noted your role of testing and helping to slow
3906 the spread, the importance in containing the
3907 spread. That, of course, would apply for nursing
3908 homes, too; is that correct?

3909 A. What would I have supplied to
3910 nursing homes?

3911 Q. The value of tests, an adequate
3912 supply of tests in reducing or slowing the spread
3913 of COVID-19.

3914 A. Yes. I think more testing earlier
3915 would have been -- also, I think about where
3916 testing is today. Like today, testing is point
3917 of care. It's like rapid. It could be done in a
3918 device on the table. Like that didn't exist
3919 until basically the fall of 2020. You know, I
3920 think like fast -- testing that could be done
3921 quickly, accurately is more universally valuable.

3922 Of course, if you could have given
3923 every nursing home like point-of-care testing on
3924 day one, that would have been, of course, a huge
3925 benefit.

3926 Q. Right. And so ultimately, as we
3927 look back at that period of time, a number of
3928 experts, including some individuals we've had

3929 testify before this select subcommittee, have
3930 noted that a critical aspect of infection in
3931 nursing homes and congregate care facilities was
3932 community spread.

3933 This idea that the virus had spread
3934 so far, that it was asymptomatic among people and
3935 they didn't know that they were carrying the
3936 virus. Staff, for example, at nursing homes were
3937 unknowingly perhaps bringing the virus in and
3938 infecting residents, and that in many ways was a
3939 driving force of the number of the infection and
3940 fatality rates we saw in congregate care
3941 facilities here in New York, but also around the
3942 country.

3943 Do you agree with that?

3944 A. The question that -- I think there
3945 was -- that was -- the view within the Department of Health,
3946 like community spread and staff members,
3947 asymptomatic, you know, was certainly a cause of
3948 COVID coming into nursing homes.

3949 Q. And so ultimately, if the federal
3950 government had done a better job in that opening
3951 period of the pandemic in rolling out a test kit
3952 successfully or appropriately scaling up the
3953 supply of tests in the United States, do you

3954 agree we ultimately would have been better
3955 positioned to reduce infection rates and fatality
3956 rates in nursing homes due to community spread?

3957 A. Sure. I think if the federal
3958 government had the ability to widely expand and
3959 ensure widespread testing earlier in the
3960 pandemic, would that have helped? Absolutely.
3961 There's no question.

3962 [REDACTED] Thank you.

3963 EXAMINATION BY

3964 [REDACTED]

3965 Q. Similarly, but on the flip side, you
3966 have spoken about your involvement with the
3967 vaccine once that became available in December of
3968 2020.

3969 A. Yes.

3970 Q. The vaccine became available in
3971 December 2020, but when did it start to be widely
3972 available to the public, do you recall?

3973 A. It arrived in New York on
3974 December 14th and I would say it was not until
3975 February or March when we were doing like maybe
3976 100,000 shots a day that would consider it like
3977 more widely available.

3978 Q. You may recall that was right around

3979 the transition between administrations and when
3980 President Biden came into office in January of
3981 2020, he made it his mission to roll out a
3982 vaccine campaign across the country, which is in
3983 line with that February 2021 date that you gave.

3984 Did vaccine -- did the mass release
3985 of vaccines, the 100,000 shots a day, reduce the
3986 threat of COVID-19 posed to nursing home
3987 residents?

3988 A. I am not a public health expert, but
3989 I think more people being vaccinated -- we worked
3990 very hard on -- we basically put up a dashboard
3991 showing staff vaccination rates at every nursing
3992 home, more as a way to like show families like if
3993 you are sending a loved one to this facility,
3994 like you should know what the staff vaccination
3995 rates are and then to also do maybe some public
3996 encouragement of staff at these facilities to get
3997 vaccinated. I think we were very focused on
3998 ensuring that staff members at these fatalities
3999 were vaccinated.

4000 Q. And nursing home residents and
4001 nursing home staff members were given priority in
4002 getting vaccinations, correct?

4003 A. They were.

4004 Q. And that was with the goal of stopping
4005 the spread amongst the most vulnerable
4006 populations?

4007 A. Yes.

4008 Q. Once the vaccine -- I know you're
4009 not a public health expert, but I think this has
4010 become common knowledge, that in order for
4011 vaccines to be effective, the majority of the
4012 population needs to have that immunity from the
4013 vaccine or some sort of immunity to the virus.

4014 A. It's not my expertise, that sounds
4015 like it makes sense.

4016 Q. And you may have had to deal with this
4017 in your vaccine roll out, but how does vaccine
4018 hesitancy impact the widespread adoption of
4019 vaccines?

4020 A. We ran into -- we basically hit --
4021 I have to look at this dashboard again, but maybe
4022 like 65 percent in some of these facilities and
4023 was getting from zero to 65 was pretty quick.
4024 Once you hit that 65, like 70 percent, it was
4025 very hard to go beyond that.

4026 I think there was an effort to like
4027 really -- there were incentives or things that
4028 could be done to bring that number higher.

4029 Because we really wanted everyone to be
4030 vaccinated especially in those facilities.

4031 Q. Were there specific reasons that
4032 people were giving you for not getting the
4033 vaccine that you tried to combat?

4034 A. I don't recall anything being said
4035 to me. Probably just whatever the general
4036 hesitancy, reasons were that were circulating.

4037 Q. Was there a goal percentage of
4038 vaccination that you were trying to reach with
4039 your vaccine program?

4040 A. 100 percent.

4041 Q. I know you left the COVID task force
4042 in March of 2021. Was there 100 percent
4043 vaccination rate when you left the COVID task
4044 force?

4045 A. I left in February of 2021. And no,
4046 there was not 100 percent.

4047 EXAMINATION BY

4048 [REDACTED]

4049 Q. If you'll indulge me, I just want to
4050 quickly revisit the discussion briefly about
4051 federal guidance that was sort of issued in the
4052 early stages of the pandemic relating to the
4053 readmission of patients in nursing homes.

4054 I want to enter into the record
4055 Minority Exhibit F. This is guidance that was
4056 issued on March 4, 2020, by the former
4057 Administration Center For Medicare and Medicaid
4058 Services.

4059 I'll give you a moment to look at
4060 it.

4061 (Whereupon, Minority Exhibit F,
4062 Guidance issued on March 4, 2020, was marked
4063 for identification.)

4064 BY [REDACTED]

4065 Q. We are going to focus on page 3.

4066 A. Okay.

4067 Q. On page 3 under the heading, "When
4068 should a nursing home accept a resident who was
4069 diagnosed with COVID-19 from a hospital," the
4070 first sentence of that paragraph reads, quote, "A
4071 nursing home can accept a patient diagnosed with
4072 COVID-19 and still under transmission-based
4073 precautions for COVID-19, as long as it can
4074 follow CDC guidance for transmission-based
4075 precautions, if a nursing home cannot, it must
4076 wait until these precautions are discontinued."

4077 Do you see that sentence?

4078 A. I do.

4079 Q. Would you agree as a general matter
4080 that that sentence in the federal guidance from
4081 the former administration is not barring the
4082 readmission of COVID-19 positive patients from
4083 nursing homes?

4084 A. No, it does not. A nursing home can
4085 accept a patient diagnosed with COVID-19. It
4086 says it right there.

4087 Q. On the flip side, would you also
4088 agree that this federal guidance establishes a
4089 premise that COVID-19-positive hospital patients
4090 can be readmitted to nursing homes under certain
4091 circumstances safely?

4092 A. That's what it says.

4093 Q. Thank you.

4094 EXAMINATION BY

4095 ■■■■■

4096 Q. Just finally getting back to nursing
4097 homes, it seems that your -- there were several
4098 programs in place to try to protect the residents
4099 of nursing homes and the staff.

4100 You were a part of two of those
4101 programs: Testing and then later vaccines. We
4102 have spoken about PPE also being necessary for
4103 everyone's protection.

4104 Would you agree that it was
4105 important to have this multi-pronged approach as
4106 we sort of moved through the pandemic to ensure
4107 the safety of all vulnerable populations?

4108 A. What were the two prongs again?

4109 Q. Three prongs: Testing, PPE, and
4110 then later vaccines.

4111 A. All very important.

4112 Q. Having the support of the federal
4113 government to adequately provide those
4114 necessities to the nursing homes was vital in
4115 getting those vulnerable populations the
4116 protection they needed?

4117 A. To the extent that any federal,
4118 state, local -- any government can get -- can be
4119 helpful in getting -- the private sector can play
4120 a big role in it, too. Any entity that can help
4121 get those three things to nursing homes was
4122 enormously important.

4123 ██████████ We can go off the record.

4124 (Whereupon, a brief recess was
4125 taken.)

4126 MR. EMMER: We can go on the record.

4127 EXAMINATION BY

4128 MR. EMMER:

4129 Q. Mr. Rhodes, in the last hour the
4130 minority asked you about the July 6th report.
4131 Before we skip ahead, I just want to summarize
4132 what was discussed.

4133 First, besides that specific
4134 reference to antibody testing, you had no
4135 involvement in the drafting of the July 6th
4136 report; is that correct?

4137 A. To the best of my recollection, I
4138 did not have any involvement. I just don't
4139 recall any involvement beyond that.

4140 Q. And as far as -- you previously
4141 testified in the last hour that you have no
4142 knowledge of who provided inputs and edits to
4143 that July 6th report?

4144 A. I saw -- they showed me a New York
4145 Times story that had some people's names, but I
4146 don't have like any direct knowledge of who was
4147 like the principal drafter of this.

4148 Q. And the July 6th report, obviously
4149 there was a discussion of which numbers were
4150 included and not included. You had no
4151 involvement, not just on the July 6th report but
4152 throughout the pandemic in deciding what numbers
4153 were going to be released to the public?

4154 A. So, I mean, I want to make sure I'm
4155 consistent. Every day I was part of that
4156 PowerPoint process. DOH provided to McKinsey who
4157 provided to the PowerPoint team like numbers that
4158 were put out every day. So like I was part of
4159 that process.

4160 In terms of like the decision-making
4161 of like -- you know, I was very involved in like
4162 the testing numbers, right? The vaccination
4163 numbers were involved in that. But like the
4164 fatalities statistics, I was not on a day-to-day
4165 basis deciding what numbers should and should not
4166 be released.

4167 EXAMINATION BY

4168 MR. BENZINE:

4169 Q. Were you a part of any conversations
4170 that you can recall regarding shielding some of
4171 the nursing homes numbers because the governor
4172 was writing a book?

4173 A. I was not involved in those
4174 conversations.

4175 EXAMINATION BY

4176 MR. EMMER:

4177 Q. Were you aware that the governor was
4178 writing a book?

4179 A. At what time period?

4180 Q. When did you become aware that the
4181 governor was writing a book?

4182 A. I learned that he was writing a book
4183 sometime, I would say, in early summer he
4184 mentioned it in like a radio interview.

4185 Q. So you had no involvement in the
4186 drafting of the book?

4187 A. There was a chapter on testing.
4188 There was a chapter on the hospital like Javits
4189 mobilization with the Army Corps of Engineers.
4190 And I provided input on those sections. I think
4191 I did some fact-check of some other sections as
4192 well. I was asked to -- I've been involved in a
4193 number of these issues and was asked to do a
4194 fact-check and make sure that what was being said
4195 was accurate in terms of the things I had
4196 knowledge of.

4197 Q. Do you have an idea of when -- I
4198 believe you said early summer, when you would
4199 have been providing this input or fact-checks?

4200 A. It was in July and August, probably.
4201 I don't recall the exact dates.

4202 EXAMINATION BY

4203 MR. BENZINE:

4204 Q. We interviewed Dr. Adams a few weeks
4205 ago and she said that she recalled a phone call
4206 between herself, the governor, and a couple of
4207 others, I believe she said in August of 2020,
4208 where the governor instructed Dr. Zucker to fire
4209 her?

4210 Were you on that phone call?

4211 A. I was not.

4212 Q. Were you on any phone calls that
4213 sound similar, I guess? Were you on any other
4214 phone calls with Dr. Adams, Dr. Zucker, and the
4215 governor that maybe she got that confused with or
4216 do you have any recollection of --

4217 A. I don't recall any phone call that
4218 I was on with that -- those three people in
4219 specific.

4220 Q. Were you a part of any other
4221 conversations in the chamber or with DOH
4222 officials expressing concerns about the DOH
4223 report?

4224 A. Was I in any other conversations
4225 expressing...

4226 Q. Did you have any conversations with
4227 anybody where they expressed concerns about the
4228 DOH report?

4229 MS. MURPHY: Are you asking about
4230 any particular time frame?

4231 MR. BENZINE: After the publication.

4232 THE WITNESS: I don't recall any
4233 conversation with people expressing concerns
4234 about the report.

4235 EXAMINATION BY

4236 MR. EMMER:

4237 Q. I know we discussed this, I believe
4238 in the first hour, but one of the main concerns
4239 at the beginning of the pandemic was the
4240 overcrowding of hospitals and the state's
4241 capacity to handle an influx of patients. I
4242 believe you have brought up the Javits Center, as
4243 well as the Comfort; is that correct?

4244 A. I don't know if I mentioned the
4245 Comfort before, but I know I mentioned the Javits
4246 Center.

4247 Q. Were you involved in any of the
4248 discussions related to those two -- well, I guess
4249 to bring those in to increase the state's
4250 capacity?

4251 A. I was involved in the Javits Center
4252 extensively. To the extent -- the Comfort, I was
4253 not as involved in.

4254 Q. Do you recall whether these
4255 facilities were able to accept COVID-19 patients?

4256 A. So at the beginning when they were
4257 first set up, the design was they would accept
4258 non-COVID patients from the hospitals -- so that hospital
4259 beds would be free for COVID patients. That was
4260 the original design. At some point -- again,
4261 there was multiple -- there was federal staff
4262 there, city staff, state -- there was a number of
4263 different staffs there.

4264 So at some point there was a
4265 decision made and it had to be made by all
4266 different branches of government, right, to
4267 basically change that and say, we are going to
4268 allow -- we are going make these COVID facilities
4269 but for like people who had been at the hospital
4270 for a while, were on the way out, not quite ready
4271 to go home yet, they could come to the Javits or
4272 these other places.

4273 There was like a facility on Staten
4274 Island. There was like a handful of these
4275 called step-down facilities for lack of a better
4276 word, that we had set up.

4277 EXAMINATION BY

4278 MR. BENZINE:

4279 Q. It was reported that -- we will
4280 stick to Javits, but it's been reported that it
4281 was underutilized. Were there any kind of
4282 procedural hurdles in sending patients there
4283 or --

4284 A. As I got -- I would say this: There
4285 was a -- because there were so many different
4286 agencies working there, federal government had I
4287 think several agencies, FEMA, there was the Air
4288 Force, medics, there were a number of agencies,
4289 the City had a number, the State had a number.

4290 There was a team basically created
4291 at this point that would kind of make
4292 admissions -- I think Northwell was like -- had
4293 some operational role as well here, that like to
4294 make admissions decisions regarding all of these
4295 facilities, right? And do proactive outreach to
4296 hospitals, like who can we take from your
4297 facility, how can we take patients.

4298 I think there was also -- like
4299 Javits Center wasn't a hospital. There weren't
4300 Bathrooms in each room. You have seen the photos. There
4301 were
4302 individual kind of like rooms. There were no
4303 bathrooms in the rooms. Like I think you had to

4304 climb a little stair to get to the bathroom.

4305 Like you couldn't have someone in
4306 there who like needed support to go do -- unless
4307 they -- if they needed support for the restroom,
4308 it would become a problem. So like there -- I
4309 remember discussions about like concern about
4310 making sure that the people who were in the
4311 Javits, it was medically appropriate for them to
4312 be there, especially if there were empty hospital
4313 beds.

4314 And remember, New York has 50,000
4315 hospital beds, like 35,000, let's call it the
4316 Downstate area. We emptied out a lot of hospital
4317 capacity with the cancellation of elective
4318 surgeries. We had increased by 50 percent the
4319 hospital capacity. So they're adding beds in
4320 cafeterias and things like that.

4321 New York State state-wide peaked at
4322 18,000 COVID patients. So there was a -- I heard
4323 this repeatedly from DOH, which was like if there
4324 was an empty hospital bed in a hospital, like our
4325 priorities was to make sure people are in the
4326 hospitals.

4327 We will use Javits like as much as
4328 we can, but like this is very much a medical

4329 decision of like where is the best empty bed.

4330 And like I remember -- people would come to me,

4331 there's 3,000 beds there, are we using them all?

4332 DOH is like looking at this at an

4333 individual patient level. Like we are not going

4334 to like -- I think Javits served like over 1,000

4335 people. I am thankful we didn't have to have

4336 more people go through there. I am very -- like

4337 I was very like -- this like a medical -- DOH is

4338 making these decisions about like who goes where.

4339 This is not going to be a decision that other

4340 people should be making.

4341 Q. Were you involved at all in the

4342 planning for the Comfort?

4343 A. Comfort was part of that group of

4344 step-down facilities, but I don't recall. Like

4345 our focus was really on the Javits Center as the

4346 place for people to go.

4347 EXAMINATION BY

4348 MR. EMMER:

4349 Q. And you already discussed the

4350 limitations, but do you recall any conversation

4351 related to discharging nursing homes residents to

4352 the Javits Center rather than back to the nursing

4353 home?

4354 A. You mean nursing home patients from
4355 hospitals?

4356 Q. Yes.

4357 A. I don't recall any specific
4358 conversations regarding nursing homes. I
4359 remember there were some news reports later about
4360 that, but I don't recall anything specifically at
4361 that time.

4362 Anything regarding admission
4363 decisions was the -- that was like a DOH decision
4364 or was asked to make that decision.

4365 Q. During the last hour you discussed
4366 your involvement, obviously as a task force
4367 member, one of the main things that you were
4368 tasked with was increasing the state's testing
4369 capacity; is that right?

4370 A. Yes.

4371 Q. Did you ever have any involvement or
4372 make any decisions related to how tests were
4373 allocated?

4374 A. You mean like the eligibility of who
4375 is able to get a test?

4376 Q. Yes.

4377 A. Yes. I was -- the DOH -- when
4378 testing capacity was limited at the very

4379 beginning, DOH had like guidance online. It was
4380 tied to a website that we had at some point set
4381 up that would be like enter information, it would
4382 help you find a site and we had to keep updating
4383 the eligibility criteria.

4384 So like as testing expanded, like
4385 the eligibility continued to expand as well, like
4386 who was eligible. Like at the beginning it was
4387 just people who had symptoms or exposed to some
4388 symptoms or travelers from certain regions and
4389 like over time that eligibility expanded.

4390 Q. And we have obviously discussed your
4391 involvement in the March 25th order that you
4392 didn't have any, but were you aware that it
4393 restricted nursing homes from testing patients
4394 returning from the hospital?

4395 A. If I saw a copy of the order, I
4396 would probably read it, but I don't recall
4397 exactly what the memo said.

4398 Q. For the record, we will introduce
4399 Majority Exhibit 7.

4400 (Whereupon, Majority Exhibit 7,
4401 March 25, 2020 order, was marked for
4402 identification.)

4403 BY MR. EMMER:

4404 Q. I will give you a minute to review
4405 it.

4406 A. Okay.

4407 Q. And for the record, you were not
4408 involved in any, I guess, how -- as it relates to
4409 the March 25th order, you were not involved in
4410 this provision to restrict the testing of
4411 patients returning from the hospitals?

4412 A. Correct.

4413 EXAMINATION BY

4414 MR. BENZINE:

4415 Q. It's been -- has been relatively
4416 widely reported and confirmed in a few interviews
4417 that the State of New York had a priority testing
4418 program, specifically for those that were going
4419 to interact with the governor.

4420 Were you involved in that?

4421 A. There was at some point -- once like
4422 point-of-care testing, use Abbott machines that
4423 could do rapid testing, like table-top machines,
4424 once those became widely available, we had
4425 purchased several hundred and distributed them
4426 all over the state and at that point there was
4427 two machines in the state capitol and some of us
4428 -- people who there in person would get tested

4429 every once in a while.

4430 Q. Were tests ever directed to go to
4431 the governor's friends and family?

4432 A. I was not. I have read about that,
4433 but I was not involved in that.

4434 MR. BENZINE: I appreciate that.
4435 Thank you.

4436 MR. EMMER: We can go off the
4437 record.

4438 (Whereupon, a brief recess was
4439 taken.)

4440 MR. BENZINE: We can back on record.

4441 One final question from us. I don't
4442 remember the exact date when the chairman
4443 sent the request for you to take this
4444 interview. I am sure I can look it up if it
4445 helps. But generally since that date have
4446 you had any conversations with the former
4447 governor or Ms. DeRosa?

4448 THE WITNESS: I have not.

4449 MR. BENZINE: Thank you. We can go
4450 off the record.

4451 (Time noted: 1:45 p.m.)

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

I, MONIQUE CABRERA, a Shorthand Reporter and Notary Public, within and for the State of New York, do hereby certify that I reported the proceedings in the within-entitled matter, on May 3, 2024, at 601 Lexington Avenue, New York, New York, and that this is an accurate transcription of these proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand this 3rd day of May, 2024.

MONIQUE CABRERA