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IN THE MATTER OF THE INDEPENDENT
INVESTIGATION UNDER EXECUTIVE
LAW 63(8)
----- x

VIRTUAL ZOOM INVESTIGATION
June 11, 2021
10:00 a.m.

VIDEO RECORDED INTERVIEW of TECHNICAL LIEUTENANT
DAVID DIVELY taken by First Deputy Attorney General of the
New York Attorney General's Office in the above-entitled
action, remotely held via Zoom before Sara K. Killian, a
Registered Professional Reporter, Certified Court Reporter
and Notary Public of the State of New York.

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

CLEARY GOTTLIEB STEEN & HAMILTON, LLP
Attorneys for the New York State Attorney
General's Office
One Liberty Plaza
One Liberty Place
New York, New York 10006

BY: ANDREW WEAVER, ESQ.
JENNIFER KENNEDY PARK, ESQ.
JOON R. KIM, ESQ.
LILIANNA REMBAR, LAW CLERK

ALSO PRESENT:
CRAIG JONES, Veritext Videographer
MARIA MORRIS, ESQ., for New York State PBA

1

2

THE VIDEOGRAPHER: Good morning. We are going on the record at 10:06 a.m. on Friday, June 11th, 2021.

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5

Audio and video recording will continue to take place unless all parties agree to go off the record. This is media unit one of the video recorded interview of Witness 6/11/21 in the matter of Independent Investigation under New York State Executive Law Section 63(8). This interview is being held via video conference.

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My name is Craig Jones from the firm Veritext New York. I'm the videographer. The court reporter is Sara Killian from the firm Veritext New York. I'm not related to any party in this action, nor am I financially interested in the outcome.

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Will counsel and all present in the room and everyone attending remotely now state their appearance and affiliation for the record?

23

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25

MR. WEAVER: Andrew Weaver from the law firm Cleary Gottlieb Steen & Hamilton here today in my capacity as an appointed

1

2 special assistant to the First Deputy
3 Attorney General of the State of New York.

4

MS. KENNEDY PARK: My name is
5 Jennifer Kennedy Park. I'm also with Cleary
6 Gottlieb Steen & Hamilton and today I'm here
7 in my capacity as the Special Deputy to the
8 first Attorney General of the State of New
9 York.

10

MS. REMBAR: My name is Lilianna
11 Rembar. I'm also with Cleary Gottlieb Steen
12 & Hamilton here in my capacity today as a
13 special assistant to the First Deputy
14 Attorney General.

15

MS. MORRIS: My name is Maria Morris,
16 M-O-R-R-I-S. I am representing Tech
17 Lieutenant David Dively.

18

THE VIDEOGRAPHER: Will the court
19 reporter please swear in the witness?

20

D A V I D D I V E L Y, after having first been
21 duly sworn by a Notary Public of the State of New
22 York, was examined and testified as follows:

23

EXAMINATION BY

24

MR. WEAVER:

25

Q. Good morning, Tech Lieutenant Dively.

1 D. Dively

2 A. Good morning.

3 Q. As I noted, my name is Andrew Weaver
4 and I'm here today in my capacity as a Special
5 Assistant to the First Deputy Attorney General for
6 the State of New York.

7 As you know, the New York Attorney
8 General has appointed the law firms of Cleary
9 Gottlieb Steen & Hamilton and Vladeck Raskin &
10 Clarke to conduct an independent investigation
11 under New York Executive Law Section 63(8) into
12 allegations of sexual harassment brought against
13 Governor Andrew Cuomo, as well as the surrounding
14 circumstances. You are here today pursuant to a
15 subpoena issued in connection with this
16 investigation.

17 I'd like to note at the outset that
18 today's proceeding is being video recorded.
19 Today, you are under oath. That means you must
20 testify fully and truthfully just as if you were
21 in a court of law sitting before a judge or a
22 jury.

23 Do you understand?

24 A. Yes, sir.

25 Q. Your testimony is subject to a

1 D. Dively

2 penalty of perjury.

3 Do you understand?

4 A. Yes, sir.

5 Q. If you would like to make any brief
6 sworn statement today, I'd ask that you do so at
7 the conclusion of my examination.

8 Although this is a civil
9 investigation, this office also has criminal
10 enforcement powers. You have the right to refuse
11 to answer a question if to do so would incriminate
12 you. However, any failure to answer can be used
13 against you in a court of law in a civil,
14 non-criminal proceeding. Asserting your Fifth
15 Amendment privilege does have evidentiary
16 significance. If you choose to do so, that fact
17 could be presented to a judge or a jury in a civil
18 proceeding who could be free to draw a conclusion
19 from your assertion of the privilege.

20 Do you understand?

21 A. Yes.

22 Q. You are appearing today with your
23 attorney present. You may consult with your
24 attorney about privileged matters. But this is
25 not a deposition. Otherwise, your attorney will

1 D. Dively

2 not be participating in the examination.

3 As you can see, we also have a court
4 reporter virtually present with us. She needs to
5 take down my questions and your answers to create
6 a transcript. So the reporter can create a clean
7 record, please provide verbal responses to my
8 questions. Please do not shake your head or nod
9 or give sounds such as mm-hmm or uh-huh.

10 Do you understand?

11 A. Yes, sir.

12 Q. If you do not know the answer to a
13 question, please say you don't know.

14 Please allow me to finish my question
15 before you answer so we do not talk over each
16 other. This is important to create a clean record
17 for our court reporter, particularly in this
18 virtual environment.

19 You will not be permitted to review a
20 transcript of this hearing; however, if at time
21 today you want to clarify an answer that you've
22 given, please let me know.

23 Do you understand?

24 A. Yes, sir.

25 Q. If you don't understand a question

1 D. Dively

2 that I ask, please let me know and I will try to
3 ask the question in a different way.

4 Today, I'll be asking about names and
5 dates and other specific information. Even if you
6 don't remember a specific name or date, I would
7 ask that you give me your best approximate answer
8 while indicating that your answer may not be
9 exact.

10 Do you understand?

11 A. Yes.

12 Q. If you need a break at any point,
13 please just let me know. However, if there is a
14 question pending, assuming there's no issue of
15 privilege, please answer the question first and
16 then we'll take a break.

17 Can you please confirm that you and
18 your counselor are alone in the room where you're
19 sitting today?

20 A. Yes, sir, we are.

21 Q. Can you also confirm that neither you
22 or your counsel are utilizing any technology to
23 create a recording of the proceedings on your end,
24 including the use of screen capturing tools?

25 A. That is correct.

1 D. Dively

2 Q. Can you also confirm that neither you
3 nor your counsel are allowing anyone else to
4 listen in through any devices?

5 A. That is correct.

6 Q. Can you also please confirm that
7 neither you nor your counsel are or will
8 communicate in realtime or during breaks with
9 anyone else about the substance of your testimony?

10 A. That is correct.

11 Q. Executive Law 63(8), the provision
12 under which this investigation is being conducted,
13 prohibits you and your counsel from revealing
14 anything about what we ask or what you testify
15 about to anyone. If anyone asks you to disclose
16 any such information, please let us know,
17 including any reason they provide for seeking such
18 information and we'll discuss with you whether a
19 disclosure will be permitted.

20 Do you understand?

21 A. Yes, sir.

22 Q. Please note that you are protected
23 from retaliation for participating in today's
24 proceeding. We ask that you let us know if you
25 are concerned about any potential retaliation from

1 D. Dively

2 the Executive Chamber or anyone else.

3 Tech Lieutenant Dively, are you
4 taking any medications or drugs that might make it
5 difficult for you to understand or answer my
6 questions today?

7 A. No, sir.

8 Q. Have you had any alcohol today?

9 A. No, sir.

10 Q. Is there any reason why you would not
11 be able to answer my questions fully and
12 truthfully?

13 A. No, sir.

14 Q. I would just ask if you could speak
15 with a loud enough voice so that our court
16 reporter will be able to hear you clearly. The
17 computer microphones sometimes are difficult.

18 A. Yes, sir.

19 Q. Thank you.

20 For the record, could you please
21 state your full name?

22 A. My name is David Dively, D-I-V-E-L-Y.

23 Q. Please state your date of birth.

24 A. [REDACTED]

25 Q. Please state your current home

D. Dively

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address.

A. [REDACTED]

[REDACTED].

Q. Please state your business address.

A. [REDACTED]

[REDACTED].

Q. Tech Lieutenant, have you ever given testimony before?

A. Yes, sir.

Q. How many times?

A. I'm not sure. Dozen or so, sir, just over the years with traffic court, etc., criminal court.

Q. So at least probably around ten or so times, it sounds?

A. Yes, sir.

Q. Have you always testified in your capacity as an officer?

A. Yes, sir.

Q. So you've not testified in any other proceedings or given testimony in any other proceedings except when in your role as an officer?

A. Yes, sir, I believe that's correct.

1 D. Dively

2 Q. What type of cases have you typically
3 provided testimony in?

4 A. Vehicle and traffic law and criminal
5 cases.

6 Q. Have you ever testified at a trial?

7 A. Yes.

8 Q. How many times do you think that's
9 occurred?

10 A. Other than Grand Jury?

11 Q. Other than Grand Jury.

12 A. I believe just once.

13 Q. What type of case was that?

14 A. That was an assault second case.

15 Q. Again, in your official role as an
16 officer?

17 A. Yes, sir.

18 Q. Other than conversations with your
19 counsel, what did you do to prepare for this
20 examination?

21 A. I really didn't do anything other
22 than consult with my counsel.

23 Q. Did you speak to anyone other than
24 your counsel?

25 A. No, sir.

1 D. Dively

2 (Whereupon, Exhibit 1 was marked for
3 identification.)

4 Q. If you could, please take your binder
5 that we provided to you and turn to tab one.

6 A. Okay.

7 Q. I'm showing you what's a subpoena.
8 Have you seen this document before?

9 A. No, sir.

10 Q. Can you take a moment just to quickly
11 read it?

12 A. Sure. Okay.

13 Q. Tech Lieutenant, this is a subpoena
14 calling for your testimony today; is that correct?

15 A. Yes, sir.

16 Q. Is this the subpoena for which you
17 are appearing here today to testify?

18 A. Yes, sir.

19 Q. Thank you.

20 Before we get into more substance, I
21 just want to ask you a few questions about
22 confidentiality and nondisclosure.

23 A. Sure.

24 Q. In your role as a member of
25 Protective Services Unit, have you executed a

1 D. Dively

2 nondisclosure agreement?

3 A. Yes.

4 Q. What are generally the terms of that
5 nondisclosure agreement?

6 A. Just a basic outline that no content
7 of what you hear in an official capacity while
8 around the Executive Chamber or outside
9 dignitaries, etc., will be discussed outside of
10 the Protective Services Unit with family, friends,
11 other members of the State Police, etc.

12 Q. Are there any exceptions under the
13 nondisclosure agreement?

14 A. There are no exceptions listed in it.

15 Q. You're appearing here today pursuant
16 to a subpoena from the New York Attorney General,
17 correct?

18 A. Yes, sir.

19 Q. Will that nondisclosure agreement in
20 any way limit your ability to answer my questions
21 honestly and truthfully today?

22 A. No, sir.

23 Q. Let's just start with some basic
24 background, if we could.

25 What is your educational background?

1 D. Dively

2 A. I have an associate's degree in
3 advertising from Mohawk Valley Community College.

4 Q. Do you have any other forms of
5 degrees or licenses?

6 A. No, sir.

7 Q. Can you walk us through your
8 employment history prior to joining the New York
9 State Police?

10 A. I was a corrections officer with the
11 Department of Corrections -- New York State
12 Department of Corrections -- from 1994 until I
13 joined the State Police in 2000.

14 Q. Do you remember approximately when
15 within the year 2000 you joined the State Police?

16 A. October 30th of 2000.

17 Q. Describe for me briefly the process
18 for applying to work for the State Police.

19 A. There is an application process,
20 testing process, written test which then
21 progresses to physical fitness testing, medical
22 exams, psychological exams, background
23 examination, polygraph examination, drug testing.
24 That probably consists of most of it.

25 Q. Did you interview for the position?

1 D. Dively

2 A. Interview with respect to, like, the
3 background portion and the psychological portion,
4 but not an interview per se for the job I don't
5 think.

6 Q. Are there various positions or roles
7 that you held as a state trooper?

8 A. Yes. I was a uniformed state
9 trooper, I was an investigator in the Bureau of
10 Criminal Investigation, I hold the permanent rank
11 of sergeant and I was a senior investigator, which
12 is a drug criminal investigation supervisory role.

13 Q. What were your roles and
14 responsibilities as a uniformed trooper?

15 A. I enforced vehicle traffic laws,
16 investigated initial criminal complaints, accident
17 investigation. General law enforcement
18 activities.

19 Q. What about your role and
20 responsibility as an investigator?

21 A. My role as an investigator, I was
22 actually assigned to the Protective Services, so
23 my primary role was the protective duties.

24 Q. Is that Protective Services for the
25 Executive Chamber or is that some other form or

1 D. Dively

2 part of the state troopers?

3 A. The Protective Services Unit for the
4 New York State Police.

5 Q. When did that transfer happen?

6 A. Roughly December of 2010.

7 Q. Prior to December of 2010 when you
8 joined the Protective Services or PSU, you were a
9 uniformed trooper for the State Police?

10 A. Correct.

11 Q. Describe for me the process to apply
12 for the Protective Services Unit.

13 A. There is typically a canvass for
14 interest that goes out to the field from the
15 division of state police. Members who are
16 interested in becoming a member of the Protective
17 Services Unit submit their transfer request as
18 prescribed and once that transfer request is on
19 file, those names get sent to the detail commander
20 and at some point typically there's an interview
21 process to become a member of the PSU.

22 Q. You described those as the typical
23 procedures.

24 Were those the procedures that you
25 followed in applying for PSU?

1 D. Dively

2 A. They were not.

3 Q. Describe for me your specific process
4 for applying for PSU.

5 A. I came to PSU during a transitional
6 period where there was going to be a new detail
7 commander and the new detail commander, for lack
8 of a better term, was able to kind of hand select
9 a number of folks that he wanted to come to the
10 detail to work for him.

11 Q. Who was that detail commander?

12 A. That was Major [REDACTED].

13 Q. I assume that you knew [REDACTED]?

14 A. Yes, sir.

15 Q. Did he approach you about joining
16 PSU?

17 A. I think a third party had spoken to
18 me about it and I spoke to Major [REDACTED] and ended
19 up coming to the unit.

20 Q. Do you recall who you spoke to, who
21 the third party was?

22 A. I believe that was [REDACTED].

23 Q. Who was [REDACTED]?

24 A. He was at the time -- I believe he
25 was a sergeant with the State Police.

1 D. Dively

2 Q. Describe to me the sum and substance
3 of your discussion with Major [REDACTED] about joining
4 the PSU.

5 A. I expressed my interest and I worked
6 for -- at the time, he was Captain [REDACTED] -- and
7 he indicated that he would be happy to have me
8 come to the detail.

9 Q. Did you have to submit a transfer
10 memo?

11 A. There was a -- you know what? To be
12 honest with you, sir, I don't recall.

13 Q. Did you have to take any testing?

14 A. No, sir.

15 Q. Was there any interview other than
16 your discussion with Major [REDACTED]?

17 A. No, sir.

18 Q. Did Major [REDACTED] discuss any
19 specifics about changes to PSU as a part of this
20 process?

21 A. The initial process, no, I don't
22 believe so.

23 Q. Was this in some way associated with
24 a new Executive Chamber coming into office?

25 A. Yes, I would say so.

1 D. Dively

2 Q. Do you recall anything else Major
3 [REDACTED] told you about this opportunity within PSU
4 that the time?

5 A. No, sir.

6 Q. Were you aware of other members of
7 the state troopers who joined PSU through a
8 process similar to what you experienced?

9 A. Yes, sir.

10 Q. Do you know approximately how many?

11 A. I wouldn't really be able to put an
12 exact number on it, but I would say at least 15 to
13 20.

14 Q. Is that a significant percentage of
15 the PSU?

16 A. It's a fraction, I would say.

17 Q. How big of a fraction?

18 A. The current numbers of the detail are
19 roughly 70.

20 Q. Was this process in 2010 somewhat of
21 a cleaning up or refinement of PSU in some way?
22 It seems like a significant number.

23 A. All I can tell you from my
24 perspective, there was a transitional period and
25 there was a new -- new leadership was coming in.

1 D. Dively

2 Q. What were the qualifications to join
3 PSU in 2010?

4 A. I believe you had to be a member in
5 good standing, be endorsed by your troop commander
6 and I believe the minimum time in service was four
7 years.

8 Q. You had been in service for
9 approximately how many years?

10 A. Approximately ten.

11 Q. When you joined PSU in 2010, you came
12 in at the level of investigator; is that correct?

13 A. I came into the PSU, I was still a
14 trooper.

15 Q. You were still a trooper?

16 A. Yes, sir.

17 Q. How long did you remain a trooper
18 before being promoted to investigator?

19 A. 2014.

20 Q. I want to come back to that promotion
21 here in a few minutes.

22 What was your first assignment as a
23 member of PSU?

24 A. My first assignment to the PSU was a
25 member of the Dignitary Protection Unit.

1 D. Dively

2 Q. What is --

3 A. Visiting dignitaries when they come
4 into the state and request assistance.

5 Q. What did -- your understanding
6 there's no typical day, but what would be some of
7 your standard roles and responsibilities in that
8 role?

9 A. I would be assigned to help other
10 protective details from other agencies, whether
11 they're federal or state or local, with their
12 navigating their way through the local, whether
13 it's New York City, upstate New York, etc., and be
14 a liaison to them and help them.

15 Q. Did you work in a team?

16 A. I did help assist the -- what we call
17 our travel team for the Governor. I at times
18 worked with folks who were assigned to the
19 Lieutenant Governor. As the visiting dignitary
20 role, they typically work as a team with those
21 visiting details.

22 Q. Who was your -- who did you report to
23 when you were on the dignitary role?

24 A. I believe at the time that was Senior
25 Investigator [REDACTED].

1 D. Dively

2 Q. How often would you assist the travel
3 teams for the Governor during this time period?

4 A. Weekly.

5 Q. In those instances, what was the
6 responsibility in your role?

7 A. The responsibility was to perform
8 anything from advanced work to site security work,
9 driving a vehicle as part of a motorcade for a
10 transport, providing site surveys, etc.

11 Q. Was there a particular person that
12 you reported to when you were assisting the travel
13 team?

14 A. I think that primarily was Senior
15 Investigator [REDACTED].

16 Q. I'm sorry. Senior Investigator --

17 A. Senior Investigator [REDACTED].

18 Q. When you were still with the
19 dignitary detail, but assisting with the travel
20 team, did you have interactions with the Governor
21 in that role?

22 A. To a limited, you know -- no big
23 interactions, no. Very limited.

24 Q. How long did you serve on the
25 dignitary detail?

1 D. Dively

2 A. I believe that was only for a period
3 of maybe three to six months and I was absorbed
4 into one of the travel teams.

5 Q. Who was on that travel team that you
6 were absorbed into?

7 A. Give me a second. I'm sorry. It's
8 been a few years. That would have been, I
9 believe, Investigator [REDACTED], [REDACTED]
10 [REDACTED].

11 I'm trying to think who else was on the team at
12 that point. I'm trying to think who was on that
13 specific team, sir. Those are some of the names.
14 There's probably a couple others.

15 Q. Did you have a specific role in that
16 travel team?

17 A. No.

18 Q. Were your activities similar to the
19 things you just described before when assisting
20 the travel teams?

21 A. Yes, sir.

22 Q. Did you drive the Governor?

23 A. Early on, not so much, no.

24 Q. Did there come a time when you did
25 start to drive the Governor more?

1 D. Dively

2 A. Yes, sir.

3 Q. Approximately when was that?

4 A. I'm going to say maybe 2012.

5 Q. Why did you start to drive the
6 Governor?

7 A. I was assigned to.

8 Q. Assigned by whom?

9 A. At the time, it would have been my
10 direct supervisor, which was Senior Investigator
11 [REDACTED].

12 Q. How long did you drive the Governor?

13 A. I was kind of considered in that
14 regular driving role for probably four years or
15 so.

16 Q. Until around 2016?

17 A. Yeah. Actually, I'm sorry. It's
18 probably until closer to 2017.

19 Q. So you continued to work on this
20 travel team until 2017 --

21 A. Yes, sir.

22 Q. -- the second half, I mean primary
23 responsibility for driving the Governor?

24 A. Yes, sir.

25 Q. By 2017, who was your supervisor?

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D. Dively

A. I think in 2017, it was [REDACTED]
[REDACTED].

Q. Who else was on the travel team with you by 2017?

A. [REDACTED]. [REDACTED]
[REDACTED] may or may not have been. He switched to a uniformed supervisory role and came back to a team. I'm sorry. We've had a little bit of a turnover. I'm trying to remember exactly who he was on the team at that point. Sorry. Those are the only names I could think of right now, sir.

Q. You mentioned before you were promoted to investigator in 2014, correct?

A. Correct.

Q. The promotion took place while you were driving the Governor?

A. Correct.

Q. Describe for me the process for promotion from trooper to investigator.

A. You typically sit for an interview with depending on the panel, it could be senior investigator or senior investigators and a commission officer or some kind of combination thereof.

1 D. Dively

2 Q. Are there any specific qualifications
3 required?

4 A. Yes. Again, time in service, which,
5 again, I believe the minimum for that would have
6 been a four-year service requirement, member in
7 good standing, endorsements by troop commanders
8 and supervisors.

9 Q. Was that four-year requirement in
10 addition to the four years to join PSU or was it
11 the same four years that you needed before you
12 could become an investigator?

13 A. It's just the standard that's set
14 forth regardless of whether you're in PSU or not.

15 Q. I see.

16 So to become an investigator for the
17 State Troopers, you need four years of service?

18 A. Yes, sir.

19 Q. You also need four years of service
20 to join PSU?

21 A. Correct.

22 Q. You said that was typically the
23 process.

24 Was that the process you went through
25 for promotion to investigator?

1 D. Dively

2 A. Yes, sir.

3 Q. Do you recall who you interviewed
4 with for the investigator role?

5 A. I believe it was Lieutenant [REDACTED] at
6 the time.

7 Q. Prior to your promotion to
8 investigator, did you ever discuss the issue of
9 promotion with the Governor?

10 A. No, sir.

11 Q. Does the promotion to investigator
12 happen somewhat automatically? Do you apply?
13 What starts the process?

14 A. Yes. There's a memorandum requesting
15 the promotional appointment to a VCI and an
16 abstract outlining of your career history and
17 training.

18 Q. Other than, I assume, a pay increase,
19 what other changes occur when you were promoted to
20 investigator?

21 A. Your functions -- work functions --
22 and responsibilities change.

23 Q. How did your work functions and
24 responsibilities change when you became
25 investigator?

1 D. Dively

2 A. In my role that I was serving, I was
3 technically already serving in a role that is
4 typically conducted by an investigator, so my
5 personal or professional responsibilities and job
6 responsibilities did not significantly change.

7 Q. So when you began driving for the
8 Governor in 2012, typically that would be done by
9 an investigator?

10 A. Typically, yes.

11 Q. When you began driving for the
12 Governor in 2012, was there any discussion of the
13 fact that you were not yet an investigator?

14 A. I didn't have a discussion like that,
15 no.

16 Q. Did it surprise you that you were
17 driving the Governor prior to becoming an
18 investigator?

19 A. No, sir. When I say typically, those
20 travel team roles are primarily investigators, but
21 there are troopers that are assigned to the travel
22 teams and troopers have been in that driver role.

23 Q. So you were promoted in 2014 to
24 investigator?

25 A. Yes, sir.

1 D. Dively

2 Q. What was your next promotion?

3 A. I had tested for and was on the
4 promotional list for sergeant in I want to say
5 January 2017.

6 Q. You noted previously that your role
7 in driving the Governor ended approximately the
8 start of 2017; is that correct?

9 A. I'm sorry. Could you repeat that for
10 me?

11 Q. You mentioned earlier that your role,
12 your position of driving the Governor ended around
13 the start of 2017.

14 Is that fair?

15 A. Actually probably around late 2017,
16 September of 2017.

17 Q. So you were still driving the
18 Governor when you were promoted to sergeant?

19 A. Yes, sir.

20 Q. Describe for me the promotion process
21 to sergeant.

22 A. That's a written exam and then an
23 oral interview.

24 Q. Did you take the written exam?

25 A. Yes, I did.

1 D. Dively

2 Q. Again, is that something that happens
3 automatically or is it something that you initiate
4 or apply for?

5 A. When the exams are announced, you
6 have to indicate your intention to sit for the
7 exam.

8 Q. Prior to your sitting for the exam
9 for sergeant, did you ever discuss the issue of
10 promotion with the Governor?

11 A. No.

12 Q. Again, assuming there's a pay
13 increase at the sergeant rank, what are the
14 changes to roles and responsibilities as sergeant?

15 A. Again, if a member is in an
16 investigative role, a VCI role, and obtains the
17 permanent rank of sergeant, they can essentially
18 accept that permanent rank that's continued in
19 their investigative VCI role, which is what I
20 chose to do, rather than go back to the uniformed
21 side as a sergeant. Again, at that point, I
22 really had no change in professional
23 responsibilities.

24 Q. You said towards late 2017 is when
25 you stopped driving the Governor.

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What was your next assignment?

A. In September of 2017, I was promoted to senior investigator.

Q. Describe for me the promotion process to become senior investigator.

A. It is primarily merit based on the judgment of your superiors.

Q. Was that the basis for your promotion to senior investigator?

A. I believe so.

Q. Who were your superiors who made that assessment?

A. At the time, I believe Captain [REDACTED], who was the detail commander.

Q. Prior to being promoted to senior investigator, did you discuss your promotion with the Governor?

A. No, sir.

Q. Once you were promoted to senior investigator in September 2017, what was your duties and role?

A. I was supervising a team of investigators and I believe one trooper assigned to travel team responsibilities, primarily for the

1 D. Dively

2 movements of the Governor.

3 Q. And one question I should have asked.

4 The travel team that you were a part
5 of from 2011 to 2017, was that a New York City
6 travel team or an upstate travel team?

7 A. That was New York City, sir.

8 Q. The team that you were supervising
9 once you became senior investigator, was that also
10 a New York City based team?

11 A. That was an Albany based role.

12 Q. Did you have to physically relocate?

13 A. No.

14 Q. Who was the travel -- who were the
15 members of the travel team that you were
16 supervising when you were promoted?

17 A. That was [REDACTED]
18 [REDACTED]. I'm missing somebody. [REDACTED]
19 [REDACTED] -- and I had [REDACTED] a
20 while, but I don't think he was there originally.
21 There's another person that slips my mind right
22 now.

23 Q. Describe for me in a general way your
24 activities and roles as a senior investigator
25 supervising a travel team. What do you do?

1 D. Dively

2 A. So you designate -- as the senior
3 investigator, you would designate assignments for
4 your team, coordinate with other seniors for help
5 as needed from their team members, especially when
6 that involves travel, like to another region,
7 coordinate with the other troops for assistance
8 when we travel to those various regions, conduct
9 annual and semiannual performance ratings of your
10 subordinates, monitor scheduling from the Chamber,
11 updates, etc.

12 Q. Did you have an office in Albany?

13 A. I shared -- yeah, I did have an
14 office, yes.

15 Q. Where was that office located?

16 A. That was in the PSU command center.

17 Q. Where is that?

18 A. That's on [REDACTED] in Albany.

19 Q. How long were you in the role of
20 senior investigator that was supervising the
21 travel team?

22 A. Until April of 2019.

23 Q. What happened in April of 2019?

24 A. I was appointed to a technical
25 lieutenant position.

1 D. Dively

2 Q. Appointed by whom?

3 A. Captain Vincent Straface.

4 Q. What is a technical lieutenant?

5 A. Actually, can we back up to the last
6 question, sir?

7 Q. Please.

8 A. Technically, those promotions and
9 appointments are from the Superintendent of the
10 State Police. Those are my direct supervisors who
11 put me forth for those promotions.

12 Q. So the promotions and appointments
13 come from the Superintendent?

14 A. Correct, sir.

15 Q. But from a practical standpoint, your
16 supervisors are the ones facilitating those
17 promotions and appointments?

18 A. They recommend for the promotion,
19 correct.

20 Q. What does it mean to be a technical
21 lieutenant?

22 A. I am a commissioned officer who has
23 additional oversight responsibilities and
24 administrative responsibilities.

25 Q. What are those additional oversight

1 D. Dively

2 responsibilities?

3 A. It broadens from -- are you asking in
4 comparison to, like, a senior investigator in that
5 role?

6 Q. Correct.

7 A. That now becomes oversight of
8 multiple teams, different dynamics of the --
9 different units within the unit, the visiting
10 dignitary folks, the Lieutenant Governors, the
11 folks that are assigned to protect and provide
12 security to the Lieutenant Governor, oversight of
13 the supervisors themselves, doing their
14 performance evaluations, cultivating, training,
15 etc.

16 Q. Do you supervise the teams
17 responsible for residents or executive management
18 protection?

19 A. Yes.

20 Q. In your current role today, do you
21 oversee the teams? They may have their own
22 supervisor, but do you oversee the team, for
23 example, at the executive level?

24 A. Yes, sir.

25 Q. The role technical lieutenant, is

1 D. Dively

2 that a standard position that's always existed
3 within PSU?

4 A. I don't want to say always, but I
5 know there's been folks that held that rank at PSU
6 prior to myself.

7 Q. What is the promotion process to
8 become a technical lieutenant?

9 A. A technical lieutenant is an
10 appointed position appointed by the
11 superintendent.

12 Q. There's no testing?

13 A. No, sir.

14 Q. No interview?

15 A. No, sir.

16 Q. No specific qualifications required?

17 A. Other than, you know, a skill set and
18 performance, nothing more.

19 Q. Did you request a promotion to
20 technical lieutenant?

21 A. No. I was approached by Captain
22 Straface and we had a conversation about
23 potentially having me promoted to that role.

24 Q. Did you replace someone who had
25 previously been in this role?

1 D. Dively

2 A. Yes. The captain, Captain Straface.

3 Q. I see.

4 What role was Captain Straface
5 taking?

6 A. He was going to maintain his role as
7 the captain.

8 Q. I'm sorry.

9 So prior to your promotion and
10 appointment to technical lieutenant, was there
11 someone in the role as technical lieutenant?

12 A. So the last person to have that role
13 before me was Captain Straface before he was
14 promoted to captain.

15 Q. I see.

16 How much time -- do you know --
17 existed between when he was promoted until you
18 were promoted?

19 A. I am not sure, sir.

20 Q. Prior to being promoted to technical
21 lieutenant, did you have any discussions with the
22 Governor about promotion?

23 A. No, sir.

24 Q. Your current role today is technical
25 lieutenant; is that right?

1 D. Dively

2 A. Correct.

3 Q. In addition to what we've already
4 talked about, are there any other
5 responsibilities, roles or administrative
6 obligations that you have as technical lieutenant
7 that we haven't covered?

8 A. No. I think we covered -- the
9 physical security as well as the oversight and
10 administration of the travel team folks.

11 Q. Does your oversight cover both Albany
12 and New York City travel teams?

13 A. Right now, yes.

14 Q. Has it always been the case?

15 A. Administratively, for a time I only
16 had the Albany end administratively. When it came
17 to operationally, it would expand as needed.

18 Q. Are there any other technical
19 lieutenants within the PSU currently today?

20 A. Yes, sir.

21 Q. How many are there?

22 A. One.

23 Q. Who is that?

24 A. Tech Lieutenant [REDACTED].

25 Q. Does he have the same

1 D. Dively

2 responsibilities that you have?

3 A. Slightly different right now.

4 Q. What are those differences?

5 A. Currently, I am designated the acting
6 detail commander, so -- what's the best way to put
7 this? Ultimately, the responsibilities are very
8 similar. Ultimately, if he has a question or
9 wants to run something by me, he brings that to my
10 attention.

11 Q. When were you appointed acting detail
12 commander?

13 A. January 22nd, 2021.

14 Q. Who made that appointment? Who
15 recommended that appointment?

16 A. I believe that that would have been
17 at the time Acting Superintendent Kevin Bruen.

18 Q. Why were you named acting detail
19 commander?

20 A. I would have to have him answer that
21 question as to why.

22 Q. Do you understand the reason why it's
23 acting? That implies some kind of temporal
24 limitation.

25 A. Yes, that's correct. At the time,

1 D. Dively

2 Major Straface, who is now retired off the books,
3 was still on terminal leave. He was still
4 technically on paper and still on the books as the
5 detail commander. It is not -- I will say it's
6 not unusual for folks in various roles in the
7 State Police to be inactive in positions. If that
8 will become a permanent thing, I don't know.

9 Q. Have you had any discussions with
10 anyone about it becoming a permanent role?

11 A. I have had conversations with the
12 superintendent, but there's nothing set in stone.

13 Q. Who do you report to today?

14 A. We are kind of in the process
15 of trying to -- Division of State Police is kind
16 of in the process of trying to change that
17 structure and have the detail report directly to
18 the assistant deputy superintendent of VCI, who is
19 Colonel [REDACTED], so I typically report to
20 Colonel [REDACTED].

21 Q. From a practical standpoint, who do
22 you report to?

23 A. I would say from a practical
24 standpoint, I report to Colonel [REDACTED]. I just
25 don't know if that officially has happened.

1 D. Dively

2 Q. Are you the most senior member of the
3 PSU today?

4 A. By time in service?

5 Q. By rank.

6 A. By rank, yes.

7 Q. Does anyone have more time and
8 service than you in the PSU?

9 A. Yes, sir.

10 Q. Who is that?

11 A. Sergeant [REDACTED], Senior
12 Investigator [REDACTED], Senior Investigator [REDACTED]
13 [REDACTED], Senior Investigator [REDACTED],
14 Investigator [REDACTED]. That might be it.

15 Q. Can you describe -- again,
16 generally -- how the PSU is organized from an
17 organizational structure and perspective?

18 A. We have what we call PSU New York
19 City and PSU Albany. On both of those sides we
20 have a uniform contingent. The uniform contingent
21 typically are assigned to static security posts at
22 either the New York City Executive Chamber offices
23 or here at the Executive Mansion in Albany.

24 We also have a VCI element between
25 both PSU New York City and PSU Albany. Again, we

1 D. Dively

2 have those folks broken down to folks that are
3 primarily assigned to travel to duties that are
4 primarily assigned to the Governor. We also have
5 some folks that are assigned to primarily the
6 Lieutenant Governor and we have folks that are
7 assigned, again, primarily to assist those
8 visiting dignitaries.

9 We have four -- actually five --
10 uniformed sergeants, we have two uniformed
11 sergeants on each end of New York City and Albany
12 with a zone sergeant overseeing both zones, so to
13 speak, New York City and Albany.

14 Each travel team has a designated
15 supervisor, a senior investigator. We have a
16 senior investigator assigned to our intel unit, as
17 well as another investigator. We have a senior
18 investigator assigned to the Lieutenant Governor's
19 squad as well who takes care of all the scheduling
20 and assignments on that side.

21 Q. As the acting detail commander, what
22 role do you play in assignments?

23 A. Like day-to-day assignments?

24 Q. Correct.

25 A. I really leave that to the senior

1 D. Dively

2 investigators to make those assignments. If
3 there's a concern on their behalf about having
4 enough personnel or where we're going to move
5 personnel to or from to accomplish our security
6 mission, they have no problems contacting me for
7 that. So as far as making the day-to-day
8 assignments, I really don't do that.

9 Q. Are you responsible for assigning the
10 senior investigators or -- I'm sorry -- the
11 supervisors?

12 A. I haven't been in this role long
13 enough to actually have an opportunity to do that,
14 but theoretically, yes, I would be in that
15 position.

16 Q. As the acting detail commander, what
17 role do you play in promotion decisions?

18 A. Which promotion, sir?

19 Q. Any promotion within PSU, someone
20 going from trooper to investigator, investigator
21 to senior investigator, for example.

22 A. I would say based on interviews and
23 other recommendations from other supervisors if I
24 was not specifically part of an interview process,
25 then yes, I would play a role in making that

1 D. Dively

2 determination to recommend to the superintendent
3 for promotion. Yes.

4 Q. Do you make the ultimate
5 recommendation to the superintendent?

6 A. As the detail commander, yes.

7 Q. So am I correct that no one gets
8 promoted within PSU without the detail commander
9 recommending that promotion to the superintendent?

10 A. Correct.

11 Q. As the acting detail commander, are
12 you familiar with all of the PSU's policies and
13 procedures?

14 A. I'd like to think that I am.

15 Q. When you became acting detail
16 commander, did you have to take any specific
17 training regarding the PSU's policies and
18 procedures?

19 A. No.

20 Q. Are you familiar with the policies
21 and procedures for security at the New York City
22 Executive Chamber office?

23 A. Yes.

24 Q. Are you familiar with the policies
25 and procedures for security at the Executive

1 D. Dively

2 Mansion?

3 A. Yes.

4 Q. During your time at PSU, have you
5 ever been stationed, even on a temporary basis, at
6 either the New York City office or the Executive
7 Mansion?

8 A. In a uniformed capacity, sir.

9 Q. In a role as a trooper -- I'm sorry,
10 as a member of PSU -- I don't know if there are
11 non-uniformed personnel assigned, but in a uniform
12 or non-uniform non-union form, have you ever
13 worked -- let's start with the New York City
14 office.

15 Have you ever worked at the New York
16 City office as a PSU trooper?

17 A. Yes, but not on a -- more of an --
18 never assigned there, so to speak, in that
19 capacity. I've helped there, I've worked in that
20 atmosphere, but I've never technically been
21 assigned there to that post on a permanent basis.

22 Q. What work in New York City did you do
23 on that post?

24 A. As a member of the travel team, we
25 would regularly come and go from that location

1 D. Dively

2 from the New York City Executive Chamber offices,
3 assist the uniformed folks who were assigned in
4 static positions there for reliefs or if there's
5 protests, we would provide additional resources,
6 etc.

7 Q. Have you ever assisted at the
8 Executive Mansion?

9 A. Yes.

10 Q. What have you done to assist at the
11 Executive Mansion?

12 A. Very similar. Provide additional
13 resources for protests, sit at relief at the
14 command center desk for a few minutes. That type
15 of thing.

16 Q. When you joined the State Police, did
17 you participate in any sexual harassment training?

18 A. When I joined? You know what? I
19 don't recall. Like initially, like in the
20 academy? Is that what you mean, sir?

21 Q. At any point when you began working
22 as a member of the State Police.

23 A. Yes. Throughout my career, yes. I
24 just don't remember initially when that first
25 sexual harassment training would have been.

1 D. Dively

2 Q. Have you undergone sexual harassment
3 training as a member of PSU?

4 A. As a member of the State Police.
5 Nothing additional as a member of PSU, if that
6 answers the question.

7 Q. That was my question.

8 First, have you continued to receive
9 training on sexual harassment once you joined PSU?

10 A. Yes, sir.

11 Q. Is it the same training that's
12 provide to at State Police or is there something
13 specific or additional for the PSU?

14 A. It's the same training as all State
15 Police members.

16 Q. What is your understanding as a
17 member of the State Police of the obligation of
18 individuals who have witnessed forms of sexual
19 harassment?

20 A. Can you --

21 Q. Let me ask a better question.

22 What is your understanding of the
23 obligations to report instances of sexual
24 harassment as a member of the State Troopers?

25 A. You mean as the person who's been

1 D. Dively

2 sexually harassed?

3 Q. To the extent you're aware of any
4 allegations or instances of sexual harassment,
5 what is your obligation to report?

6 A. It is my understanding that if, like,
7 as a member of the State Police, and especially as
8 a supervisor, if someone brought an allegation of
9 sexual harassment to your attention, you are
10 obligated to report that to a supervisory chain
11 and if need be, you know, take the additional step
12 to contact another resource.

13 Q. What other resources exist?

14 A. You have, like, the Governor's office
15 of Employee Relations through the State Police,
16 there's the EAP, which is an Employee Assistance
17 Program, you could always contact. If you felt
18 there was something criminal there, you could
19 always refer that to the Attorney General's office
20 I assume.

21 Q. What about if you witness what you
22 considered to be sexual harassment? Do the same
23 obligations exist?

24 A. Yes.

25 Q. Is that obligation limited to just

1 D. Dively

2 being told about or witnessing harassment within
3 the State Troopers or more generally within the
4 state government?

5 A. I think that's in general. I
6 don't -- if I understand your question, you're
7 saying is that limited to only if you see
8 something that occurs within the -- with the
9 membership of the State Police?

10 Q. Correct.

11 A. No. Broader brush. If you see it
12 throughout the state government.

13 Q. So, for example, as a member of the
14 State Police, if you were to witness sexual
15 harassment in the Executive Chamber, it's your
16 understanding of the policy you have the
17 obligation to report that to a supervisor?

18 A. Correct.

19 Q. Or if you are told of an incident of
20 sexual harassment in the Executive Chamber, you
21 have an obligation to report that to a supervisor?

22 A. Correct.

23 Q. How often do you receive training on
24 the sexual harassment policy?

25 A. I believe right now it's an annual

1 D. Dively

2 basis.

3 Q. Are you required to certify
4 completion?

5 A. I believe that that is certified
6 electronically. I believe that's an online
7 training.

8 Q. Have you taken the required sexual
9 harassment training each year of your employment
10 with the State Police?

11 A. Yes, to the extent that -- let me
12 just clarify. We haven't always done electronic
13 trainings. So every year that it's been presented
14 and required, yes.

15 Q. Do you recall when electronic
16 trainings began approximately?

17 A. I do not.

18 Q. Was it within the past five years?

19 A. It may go back a little farther than
20 that.

21 Q. What about document retention
22 policies? What is the State Police's policy on
23 document retention?

24 A. I think it depends on the individual
25 documents.

1 D. Dively

2 Q. What are the different categories of
3 documents covered by the document retention
4 policy?

5 A. I don't think there's a blanket
6 document retention policy. I think each --
7 there's the State Police manual when it comes to,
8 say, the first 29s, the sign-in sheet, for
9 example, or certain administrative reports,
10 there's a designated retention period for each
11 document.

12 Q. What about for communications?

13 A. What kind of communications, sir?

14 Q. Electronic communications.

15 A. I do not know if there is a blanket
16 policy. When you say electronic communications,
17 you mean email?

18 Q. Email would certainly be one form of
19 electronic communications.

20 A. I don't know that there's a spelled
21 out -- I'm not aware of a spelled out retention
22 policy for electronic communications.

23 Q. That would include also text messages
24 as well?

25 A. Correct.

1 D. Dively

2 Q. When you joined the PSU, what type of
3 communication devices were you given? Official
4 communication devices?

5 A. A Blackberry.

6 Q. Were you given a laptop?

7 A. No.

8 Q. So the only thing you were given was
9 a Blackberry?

10 A. Correct.

11 Q. How did you use your Blackberry in
12 those early days to communicate?

13 A. Phone -- the obvious phone, email,
14 text and pin messages.

15 Q. What's the difference between a text
16 and a Blackberry pin message?

17 A. To the best of my knowledge, the pin
18 message is like a -- kind of person-to-person
19 communication. The technicalities of the
20 difference in the two, I can't explain it.

21 Q. Did you have any understanding if a
22 pin message is more secure than a text message?

23 A. That's what I've been told.

24 Q. What have you been told specifically
25 about that?

1 D. Dively

2 A. Just that it's more secure.

3 Q. Who told you that?

4 A. That was just kind of common --
5 common knowledge in conversation.

6 Q. Throughout -- we'll finish this line.
7 Throughout your time as a member of
8 PSU, have you always held a blackberry device?

9 A. Yes, sir.

10 Q. Did you ever transition to an iPhone?

11 A. Yes, sir.

12 Q. When was that?

13 A. With the caveat that I still
14 maintained the Blackberry, just to be clear.

15 Q. That was my next question, so that's
16 fine.

17 A. I still maintained the Blackberry. I
18 did get an iPhone within the last two years, but
19 without trying to figure it out, I don't know
20 exactly when it was.

21 Q. You said you also have retained your
22 Blackberry?

23 A. Yes, sir.

24 Q. To this day, does it still function?

25 A. Occasionally.

1 D. Dively

2 Q. Fair.

3 Why did you retain your Blackberry?

4 A. As the supervisors of the PSU, we are
5 the only group that still has retained the
6 Blackberry primarily for using that pin function
7 to communicate the Governor's movements.

8 Q. With whom do you communicate the
9 Governor's movements?

10 A. Primarily ourselves and a couple of
11 the Executive Chamber staff folks.

12 Q. Who in the Executive Chamber?

13 A. With our movements, we include the
14 secretary to the Governor and the executive
15 assistant, Stephanie Benton.

16 Q. During your time as a member of PSU,
17 have you ever communicated via electronic means
18 directly with the Governor?

19 A. Yes.

20 Q. What form of communication have you
21 used with the Governor?

22 A. Telephonic and pin message.

23 Q. Have you ever emailed with him?

24 A. I don't believe so, sir.

25 Q. Have you ever texted with him?

1 D. Dively

2 A. I don't believe so.

3 Q. What, in general, are the nature of
4 your phone conversations with the Governor?

5 A. It would have been something very
6 simple like the Governor calling and saying that
7 he's ready to depart for the next destination or a
8 conversation about what's happening with, let's
9 say, for example, with a storm scenario, what that
10 travel may look like, etc. That would pretty much
11 be the extent of it.

12 Q. What about your pin communications
13 with the Governor? What were the nature of those
14 types of communications?

15 A. Very similar, sir.

16 Q. My assumption is that you did not --
17 when you joined PSU, you were not calling the
18 Governor or pin messaging the Governor in those
19 early days.

20 Is that correct?

21 A. That is correct.

22 Q. Can you approximate when you started
23 to have phone calls with the Governor?

24 A. For the most part -- again, this is a
25 very occasional basis, I would say probably around

1 D. Dively

2 the 2017 when I became senior investigator in
3 Albany.

4 Q. Same for pin messages?

5 A. Yes.

6 Q. Prior to that period, did you
7 communicate with members of the Executive Chamber
8 via electronic means?

9 A. Potentially, but it would have been a
10 very limited basis that would primarily be
11 reserved for the supervisor to make those
12 communications.

13 Q. Is it fair to say then prior to this
14 time period in 2017 you used your Blackberry to
15 communicate with other members of the PSU?

16 A. Yes, sir.

17 Q. Was there anyone else you used your
18 Blackberry during that time period to communicate
19 with?

20 A. Like specifically? No.

21 Q. Starting in 2017 when you began
22 communicating with the Governor electronically,
23 who in the Executive Chamber did you communicate
24 with?

25 A. If there was communications, it would

1 D. Dively

2 have been with the two Chamber employees that I
3 mentioned already or potentially someone in the
4 scheduling office.

5 Q. Is that still the -- today, is that
6 still the same?

7 A. Yes, sir.

8 Q. During your time in the PSU, have you
9 ever communicated with members of the Executive
10 Chamber on personal devices?

11 A. Maybe occasional phone call, but no,
12 otherwise, no.

13 Q. Did you ever text from a personal
14 device members of the Executive Chamber?

15 A. Potentially yes. Potentially yeah.

16 Q. What would be the circumstances when
17 you would text from a personal device?

18 A. The responding to a text that someone
19 sent and that was it.

20 Q. You would receive texts on your
21 personal device from the Executive Chamber?

22 A. On a very, very limited basis. It's
23 been a couple of times, yes.

24 Q. What were the circumstances of those
25 limited instances?

1 D. Dively

2 A. Could have been something like
3 arranging a transport for one of the Governor's
4 daughters or about a movement of the Governor,
5 etc.

6 Q. Why would they use your personal
7 device instead of a Blackberry?

8 A. I don't know, sir.

9 Q. Were you surprised when you received
10 texts from a personal device from the Executive
11 Chamber?

12 A. No, not really.

13 Q. Did you have their numbers in your
14 phone so you know who was texting you?

15 A. Yes. We typically make sure
16 everybody has an open line communication in case
17 there's an issue reaching someone.

18 Q. Have you ever communicated with the
19 Governor electronically on a personal device?

20 A. No, sir.

21 Q. Has the Governor ever called you on
22 your personal cell phone?

23 A. No, sir.

24 Q. Did he ever text you on your personal
25 cell phone?

1 D. Dively

2 A. No, sir.

3 Q. Do you have an understanding of how
4 long the pin messages that we've been discussing
5 would stay on your Blackberry device?

6 A. I don't. I've been told that they
7 stay indefinitely, but I don't know.

8 Q. Have you ever had reason to try to go
9 back and try to find a historic pin message on
10 your Blackberry device?

11 A. Yes, I have.

12 Q. Were you able to locate the pins?

13 A. Most of the time, yes.

14 Q. Have you ever been told that they
15 delete after a certain set period of time?

16 A. I've never been told that, but I have
17 had instances in the past where I tried to go back
18 and find pin messages that related to movements
19 and I was unable to find the messages.

20 Q. When communicating about the
21 movements of the Governor, is there, like, a set
22 list of people that you communicate? Is there a
23 saved name within your Blackberry pins to
24 communicate movement of the Governor?

25 A. A designated group? Is that what

1 D. Dively

2 you're asking?

3 Q. Yes.

4 A. Yes, I -- the Blackberry that I
5 currently work with and I have worked with for
6 some time does not allow to save a group. The
7 older style Blackberries did allow a group
8 function.

9 Q. So today, if you're involved in
10 communicating the movements of the Governor, you
11 have to type in everyone individually?

12 A. Correct.

13 Q. Is there a general address for the
14 PSU command center or something along those lines?

15 A. Yes, sir.

16 Q. Who receives communications to the
17 command center?

18 A. The trooper assigned to that desk at
19 that given time.

20 Q. It doesn't go broader than that?

21 A. That initial communication to them?

22 Q. Correct. Let me step back.

23 If I sent a message to the command
24 center, is it only going to one specific trooper
25 or does it go to a broader distribution?

1 D. Dively

2 A. Initially, it goes to the trooper at
3 that desk. Are you asking if he then distributes
4 it? Is that the question?

5 Q. That would be my next question of how
6 the communication is further distributed.

7 A. So once that -- no, the first
8 question is it doesn't go any broader than that.
9 It goes to the small group you sent it to, which
10 would include the trooper at the command center
11 desk. The trooper then distributes that
12 message -- that movement, I should say -- to the
13 PSU in general internally.

14 Q. Is that all done on Blackberry
15 devices?

16 A. It was at one point and now because
17 we have two different devices, it's initially
18 generated on the Blackberry and the additional
19 message to the rest of the unit is sent out via
20 iMessage.

21 Q. I see.

22 So information about the Governor's
23 movements are communicated -- are in fact
24 communicated by iMessage, just not the initial
25 communication?

1 D. Dively

2 A. Now, correct, yes.

3 Q. Do you have any understanding why
4 then Blackberries are still required?

5 A. I do not.

6 Q. Have you ever asked?

7 A. To the best of my knowledge, it's so
8 that we could continue to communicate with the
9 staffing folks and the Executive Chamber.

10 Q. Have you ever asked why you still
11 need Blackberries?

12 A. Yes.

13 Q. Who did you ask?

14 A. At the time, it was the detail
15 commander, Captain Straface.

16 Q. What did he specifically tell you?

17 A. We need to retain the Blackberries so
18 we could continue that Blackberry communication
19 with the Chamber.

20 Q. I want to turn to just some policies
21 and procedures within PSU for security for the
22 Governor.

23 What is the process in New York -- in
24 New York City -- for logging or keeping track of
25 visitors to the 39th and 38th floor for the

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Executive Chamber?

A. So for New York City visitors to the
38th and 39th floor?

Q. Correct.

A. Outside of Executive Chamber
employees?

Q. Correct.

A. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Q. [REDACTED] [REDACTED]

[REDACTED]

A. [REDACTED] [REDACTED]

[REDACTED]

Q. [REDACTED].

[REDACTED]

[REDACTED]

A. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Q. When does PSU -- does PSU at some
point become involved in providing security when

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there are visits to the Executive Chamber in New York City?

A. [REDACTED]

Q. But there is security screening [REDACTED] is that correct?

A. [REDACTED]

Q. Is there a station [REDACTED] for PSU past [REDACTED] ?

A. [REDACTED]

Q. [REDACTED]

A. [REDACTED]

[REDACTED]

Q. Is there any presence of PSU on [REDACTED]

[REDACTED]

A. [REDACTED]

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[REDACTED]

Q. And where is the PSU stationed at that point?

A. [REDACTED]

[REDACTED]

Q. [REDACTED]

A. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Q. People often use the terms differently.

[REDACTED]

[REDACTED]

A. Yes.

Q. Are there [REDACTED] for cameras, security cameras?

A. There are.

Q. Were are those [REDACTED] located?

A. The majority of those are located [REDACTED]

[REDACTED]

Q. And what generally -- what areas are covered by the security cameras?

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A. Generally, [REDACTED]

[REDACTED] Specifically like [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Q. What about [REDACTED]

A. [REDACTED]

[REDACTED]

Q. How long are those security tapes maintained?

A. I think that's [REDACTED]

Q. Why is that?

A. I think it's a system that [REDACTED]

[REDACTED]

Q. Have you ever had reason to suspend overwriting the security cameras for a legal request or some other basis?

A. At the Third Avenue office?

Q. Correct.

A. Yes.

Q. When has that occurred?

A. That was -- I could look back at the dates, but for this investigation with that request, that request was made.

1 D. Dively

2 Q. Any time prior to this investigation?

3 A. Not to my knowledge.

4 Q. How was that effectuated? How was
5 the overwrite stopped?

6 A. I believe they had to pull the
7 record, device.

8 Q. And was it replaced, I assume?

9 A. Yes, but I think there was a gap in
10 the timing, I think.

11 Q. What does that mean?

12 A. I don't remember -- I was not present
13 for that, but I don't remember if they initially
14 had another recording device to plug in there to
15 continue to record in order to preserve what was
16 on the initial device.

17 Q. So when they pulled the initial
18 device for a period of time the security feeds
19 were not being recorded? Is that what you're
20 saying?

21 A. That is correct.

22 Q. Do you know -- I'm sorry.
23 Do you know for how long that gap
24 was?

25 A. That one may have been like a day, if

1 D. Dively

2 I'm not mistaken.

3 Q. Are those tapes now being the ones
4 from that period forward being overwritten every
5 30 days?

6 A. Yes, sir.

7 Q. Does the PSU provide specific
8 security on the second floor of the state capitol?

9 A. Only when the Governor would be on
10 the floor typically.

11 Q. What is the PSU's presence? What
12 does that look like?

13 A. It would typically be -- you're
14 talking about on the second floor specifically?

15 Q. Correct.

16 A. I would say if the Governor is
17 present on the second floor during normal course
18 of business, it would be [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED] on

25 the second floor.

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Q. Where are they physically located?

A. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Q. Do they have a sight line to the Governor's office?

A. [REDACTED] [REDACTED]
[REDACTED].

Q. Are there security cameras [REDACTED]
[REDACTED]?

A. You know, I apologize. I should know this. There are [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED].

Q. Do you know what [REDACTED] are covering?

A. I think they are mostly like some of [REDACTED] [REDACTED], some of [REDACTED].

Q. What about at the Executive Mansion? What is the PSU presence?

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A.

[REDACTED]

Q.

Is there a specific station at the

mansion?

A.

[REDACTED]

Q.

[REDACTED]

A.

[REDACTED]

Q.

[REDACTED]

A.

[REDACTED]

Q.

I'm coming to the Executive Mansion.

What are my interactions with PSU?

A.

[REDACTED]

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[REDACTED]

Q. [REDACTED] How does that work?

A. [REDACTED]
[REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Q. [REDACTED]
[REDACTED]

A. [REDACTED]

Q. [REDACTED]
[REDACTED]

A. [REDACTED]

Q. Does that station have [REDACTED]
[REDACTED]

A. Yes.

Q. What do those [REDACTED] cover?

A. Those [REDACTED] cover [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [REDACTED]
[REDACTED] at the property.

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Q. Are there security cameras within the Executive Mansion?

A. [REDACTED]

Q. What about the pool area of the Executive Mansion?

A. Are there security cameras?

Q. Yes.

A. [REDACTED]

Q. Other than [REDACTED], are there any other places where you would find uniformed PSU members at the Executive Mansion?

A. [REDACTED]

Q. Are there security sweeps done by troopers at the Executive Mansion?

A. Yes.

Q. And how are those done?

A. They are done -- are we talking -- what time of day, sir?

Q. [REDACTED]

[REDACTED]

A. [REDACTED]

[REDACTED]

[REDACTED]

1 D. Dively

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 Q. What is the procedure for -- let me
10 take a step back.

11 Do the PSU officers keep track of
12 individuals coming and going from the Executive
13 Mansion?

14 A. Other than Executive Chamber
15 employees, yes.

16 Q. What do you mean by other than
17 Executive Chamber employees?

18 A. We don't keep track or a log of
19 Executive Chamber employees.

20 Q. Why not?

21 A. I don't know. I didn't set that
22 policy. I would have to assume because it's kind
23 of normal course of business.

24 Q. Has that always been the case since
25 you've been with PSU?

1 D. Dively

2 A. As far as I know, yes, sir.

3 Q. Does PSU communicate with anyone when
4 Executive Chamber staff comes and goes from the
5 mansion?

6 A. Yes.

7 Q. How is that handled?

8 A. We typically -- if an Executive
9 Chamber employee is showing up, whether they're
10 supposed to meet with the Governor, travel with
11 the Governor, etc., we typically notify, again,
12 the secretary to the Governor, Stephanie Benton,
13 to get a confirmation on whether or not they are
14 supposed to have access.

15 Q. Is that done by Blackberry pin?

16 A. Typically, yes.

17 Q. What about when members of the
18 Executive Chamber leave the Executive Mansion?

19 A. That's not tracked.

20 Q. So there are no pin messages sent
21 when folks leave the Executive Chamber?

22 A. Internally, yes, to our folks there
23 would be a message just so that we know for the
24 purpose of how many bodies are there. You know,
25 if there's a fire, an active shooter scenario, you

1 D. Dively

2 want to know how many people we're responsible for
3 in that element.

4 Q. So that is done ad hoc via pin
5 message?

6 A. Right.

7 Q. It's not done on a log?

8 A. It's not done on a log, no.

9 Q. In those active shooter examples or
10 other emergencies, presumably you're keeping track
11 so you know how many people are in the Executive
12 Mansion, correct?

13 A. Correct.

14 Q. How would someone know how many
15 people are in the Executive Mansion if they're not
16 listed on a log?

17 A. Well, we're keeping track of it
18 internally. Our folks at the command center desk,
19 they're always aware of who is there, the
20 numbers --

21 Q. I'm sorry.

22 A. As far as the numbers, that trooper
23 at the command center desk, you know, would have
24 an idea of who is there and who is not there.

25 Q. Is that trooper keeping a scratch

1 D. Dively

2 list? If people are coming and going throughout
3 the day and you're getting pins that someone is
4 in, someone is out, how does that trooper know how
5 many people are in the mansion?

6 A. Whether or not they keep a scratch
7 list or one does or doesn't, I am not -- I can't
8 confirm that. I don't know.

9 Q. But the objective is to have an
10 accurate count who is in the mansion?

11 A. Yes.

12 Q. Wouldn't it be better to have an
13 actual log of who is in the mansion?

14 A. It could be.

15 Q. The PSU responsibility is security at
16 the mansion, correct?

17 A. That's correct.

18 Q. So as, for example, the detail
19 commander of PSU, could you ensue a policy where
20 everybody is logged coming and going from the
21 mansion?

22 A. Potentially, yes.

23 Q. Has that --

24 A. You know, to just kind of elaborate
25 on my answer here to your questions when you are

1 D. Dively

2 saying are they keeping track, this isn't
3 typically -- you know, it's single digit counts
4 here typically. You know, it's this person went
5 in, this person went out. I don't think it's
6 overwhelming, the number of people that do come
7 and go.

8 Q. But it is important to know who is
9 coming and going from your perspective, security
10 perspective?

11 A. Absolutely.

12 (Whereupon, Exhibit 2 was marked for
13 identification.)

14 Q. If you could take your binder again
15 and look at tab number two, this is an undated
16 excerpt from the PSU Standards Operation Procedure
17 manual. I take it you're familiar with the
18 Standards Operations Procedure manual?

19 A. Yes, sir.

20 Q. If you look on the second page of
21 that document between the redactions, you'll see
22 [REDACTED] just for
23 the court reporter.

24 [REDACTED]
25 Do you see that?

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A. Yes, sir.

Q. This states that the member assigned to that post is responsible for and it lists certain things, [REDACTED]

[REDACTED]

A. Correct.

Q. [REDACTED]

Do you see that?

A. Yes, sir.

Q. [REDACTED]

A. I don't think I could answer that for you, sir. I didn't set the policy. That's what it's been set as.

Q. [REDACTED]

A. [REDACTED]

Q. Right.

A. No.

Q. Have you ever had reason to go back

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and look at who has come or gone from the Executive Mansion and needed to rely upon the log?

A. No.

Q. At no time during your career at the PSU have you been involved in any of that exercises?

A. No.

Q. If you look at [REDACTED], which is right behind the redactions there, this is part of still responsibilities of the member [REDACTED]

[REDACTED]

[REDACTED]

Do you see that?

A. Yes.

Q. Just to be clear, what is OGS?

A. The Office of General Services.

Q. So under this policy, [REDACTED]

[REDACTED]

A. Correct.

Q. [REDACTED]

[REDACTED]

A. Correct.

Q. [REDACTED]

[REDACTED]

1 D. Dively

2 [REDACTED]

3 A. Correct.

4 Q. [REDACTED]

5 A. It does.

6 Q. But you've testified today that
7 visitors doesn't mean any visitor, correct?

8 A. You want to --

9 Q. Sure.

10 The term visitor doesn't mean just
11 any visitor being logged, correct? There's a
12 category of visitors who are not logged?

13 A. Correct. Yes.

14 Q. Individuals from the Executive
15 Chamber who don't live at the mansion, thus
16 visiting, are not logged in and out, correct?

17 A. That is correct.

18 (Whereupon, Exhibit 3 was marked for
19 identification.)

20 Q. If you will turn to tab four, this is
21 an email in 2018, specifically November, it's
22 from -- I forget his title at the time, but from
23 Vincent -- I'm sorry. It's to Vincent Straface
24 from [REDACTED].

25 Do you know who [REDACTED] is?

1 D. Dively

2 A. Yes, sir.

3 Q. Who is that?

4 A. At this time, he would have been the
5 sergeant station commander at PSU Albany.

6 Q. Have you ever seen this email before?

7 A. I may have, sir. I don't recall.

8 Q. You're not on it. I'm just curious
9 if you recall ever seeing this email before.

10 The subject line is "EM visitor log
11 procedure." I assume that's Executive Mansion is
12 my assumption.

13 Do you make the same assumption?

14 A. Yes, sir.

15 Q. And this seems to be referring to the
16 language we just looked at in the procedures,
17 right? [REDACTED] and this
18 lists -- there was some things redacted, but
19 presumably, you know, [REDACTED]

20 [REDACTED]

21 Do you see that?

22 A. Yes, sir.

23 Q. But if we look at [REDACTED]
24 it says [REDACTED]

25 [REDACTED]

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D. Dively

Do you see that?

A. I do.

Q. [REDACTED]

[REDACTED]

A. No, it does not.

Q. [REDACTED]

[REDACTED]

A. Correct.

Q. Were you aware of a change being made around this time to the procedures at the Executive Mansion for signing folks in and out?

A. No.

Q. But we're correct, though, that as you talked about before, other visitors that are not Executive Chamber employees would be signed in and out, correct?

A. Yes.

Q. Like a nurse. If a nurse was coming into the Executive Mansion as a visitor, they would be signed in and out?

A. Correct.

Q. [REDACTED]

[REDACTED]

A. Yes, correct.

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Q. [REDACTED]."

What is a [REDACTED]?

A. I think that's -- they expect the trooper when they get on post [REDACTED]

[REDACTED]

Q. I see. So -- I apologize.

A. [REDACTED]

[REDACTED]

Q. So the [REDACTED] is specific to the PSU members?

A. Correct.

Q. [REDACTED]

[REDACTED]

[REDACTED]

Is that the same [REDACTED]

A. I believe that it is the same, yes.

Q. [REDACTED]

[REDACTED]

[REDACTED]

A. [REDACTED] [REDACTED] [REDACTED]

[REDACTED]

Q. I assume it's important to know who is in the mansion at any given time, correct?

A. Correct.

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Q. [REDACTED]

[REDACTED]

A. [REDACTED]

(Whereupon, Exhibit 4 was marked for identification.)

Q. Turn next to tab five. This is a little bit later in the year. It's December 19, 2018. You're not on the email. I'll preface with that.

You'll see it's an email at the bottom from Straface to a few troopers, including [REDACTED], who is copied.

I'll just ask -- you could take a moment to look at it.

Have you seen this email before?

A. I don't believe so, sir.

Q. Okay.

The email says -- it's an email to the Superintendent, correct?

A. That probably would have been the First Deputy at the time.

Q. Fair enough.

It's someone more senior than Mr. Straface, correct?

1 D. Dively

2 A. Correct, sir.

3 Q. So it says "Per their phone
4 conversation, you'll find the current PSU SOP."

5 I assume that's standard operating
6 procedure. I'm sorry. I'm just reading the
7 email --

8 A. I'm sorry.

9 Q. -- from Mr. Straface?

10 A. Are we on tab five, sir?

11 Q. We are on tab five. My tab --
12 sometimes things get confused. My tab at the top
13 is an email from December 19, 2018. I'm looking
14 at the second email below.

15 A. I got you. I'm sorry.

16 Q. No problem. I'm just amazed we could
17 do this from different places all around the
18 state.

19 So you'll see that "As per our phone
20 conversation" -- this, again, is Mr. Straface --
21 "below you'll find the current PSU SOP" --

22 I assume that's standard operating
23 procedure?

24 A. Correct.

25 Q. -- "for our mansion visitor logs,

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along with a proposed name change." It says [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Do you see that?

A. Yes, sir.

Q. Then it goes on to say [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

It goes on to say that [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] It says [REDACTED]
[REDACTED]
[REDACTED] [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] It goes on to say
that [REDACTED]
[REDACTED]

Do you see that? Does that
accurately describe your understanding of the
standard operating procedure at the mansion?

1 D. Dively

2 A. Yes, sir.

3 Q. It appears the proposed changes is to
4 call the log now the Mansion Employees, OGS
5 Employees and Contractors Log. Correct?

6 A. That's what it looks like, yes.

7 Q. That changes it from the Visitors
8 Log?

9 A. That's what it would appear to be,
10 yes.

11 Q. Were you aware of any discussions in
12 2018 about changing the name of the log or any
13 change in what the log was supposed to capture?

14 A. No, I don't believe so, sir.

15 Q. Is it fair to say that prior to your
16 time as acting detail commander that you don't
17 know if other visitors, including Executive
18 Chamber staff, were ever logged at the Executive
19 Mansion?

20 A. If I don't know of specific visitors?
21 Is that what you're --

22 Q. I understand now as acting
23 executive -- acting detail commander, you have
24 oversight over all this and I understand that.
25 But prior to that, you didn't, correct? In your

1 D. Dively

2 role even as a senior investigator, you did not
3 have oversight over the Executive Mansion
4 troopers, correct?

5 A. Correct.

6 Q. So my question is did you know one
7 way or the other prior to being acting detail
8 commander whether at any point over the Governor's
9 administration Executive Chamber employees were
10 logged on the visitor log?

11 A. To the best of my knowledge, they
12 never were.

13 Q. Okay.

14 Do you have any idea why in late 2018
15 this was all being discussed?

16 A. I do not.

17 Q. Did you ever have a discussion with
18 Mr. Straface about this issue?

19 A. No.

20 THE WITNESS: Can we take a quick
21 break?

22 MR. WEAVER: Can we go off the
23 record, please?

24 THE VIDEOGRAPHER: We are going off
25 the record.

1 D. Dively

2 The time is 11:52 a.m.

3 (Recess taken)

4 THE VIDEOGRAPHER: We are back on the
5 record.

6 The time is 12:40 p.m.

7 (Whereupon, Exhibit 5 was marked for
8 identification.)

9 Q. Tech Lieutenant, could you look to
10 tab 16 in your binder, please?

11 A. Yes, sir.

12 Q. This is the New York City State
13 Police Employee Contractor Log, Executive Mansion
14 for select days in March 2021.

15 Is that right?

16 A. Yes, sir, it appears to be.

17 Q. Is this essentially the visitor log
18 that we've been talking about prior to our break?

19 A. Yes, sir.

20 Q. So this is indicating the person's
21 name, what their connection is, their vehicle
22 registration, their time in and their time out,
23 correct?

24 A. Yes, sir.

25 Q. [REDACTED]

1 D. Dively

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 A. [REDACTED]

9 Q. [REDACTED]

10 [REDACTED]

11 A. [REDACTED]

12 Q. You also, I believe, testified
13 earlier that when members of the Executive Chamber
14 staff come to the Executive Mansion, there's a pin
15 sent out to PSU but also the Executive Chamber
16 about someone entering the mansion from the
17 Executive Chamber, correct?

18 A. Correct.

19 Q. When they leave, a pin is sent out
20 just amongst PSU so you know who is in and out of
21 the building, but not to the Executive Chamber?

22 A. Correct.

23 (Whereupon, Exhibit 6 was marked for
24 identification.)

25 Q. If you could look with me at tab 15

1 D. Dively

2 of your binder, this is a pin from March 6th,
3 2021. The subject is "Executive Assistant # 3 is out at
4 the mansion, Trooper [REDACTED]."

5 Do you know who Executive Assistant # 3 is?

6 A. Yes, sir.

7 Q. Who is Executive Assistant # 3?

8 A. I may have her exact title wrong, but
9 she's like an executive assistant at the Executive
10 Chamber.

11 Q. Okay.

12 So she's an Executive Chamber
13 employee?

14 A. Yes, sir.

15 Q. Okay.

16 This pin is announcing that she's
17 leaving the mansion, correct?

18 A. No. It's saying that she's at the
19 mansion.

20 Q. I see. So out doesn't refer to
21 leaving, it refers to arriving?

22 A. The wording is confusing, but out at
23 the Executive Mansion, the way I interpret that is
24 she's arriving at the mansion.

25 Q. I see.

1 D. Dively

2 This is directed to yourself,

3 correct?

4 A. Yes, sir.

5 Q. Other troopers?

6 A. Yes, sir.

7 Q. As well as Stephanie Benton and

8 Melissa DeRosa, correct?

9 A. Yes, sir.

10 Q. Is this pretty much the form that the
11 pins take when Executive Chamber employees come to
12 the mansion?

13 A. Yes, sir.

14 Q. And is this process under the --
15 controlled by the troopers at the mansion? Is
16 that who is running this process?

17 A. The notification process, yes, sir.

18 Q. The approval who is allowed to come
19 or go is controlled by the Executive Chamber?

20 A. Yes, or the mansion staff. One of
21 the two would give an okay.

22 Q. But the procedure, the process is a
23 trooper process, correct?

24 A. That's fair.

25 (Whereupon, Exhibit 7 was marked for

1 D. Dively

2 identification.)

3 Q. If you could turn to tab nine in your
4 binder -- actually, no. That's not the one. I
5 apologize. I wanted tab ten. I apologize. Tab
6 ten.

7 This is a pin chain from August 17th,
8 2020 and the first pin is from Trooper [REDACTED] and
9 the subject is "Benton out at EM, Trooper [REDACTED]."

10 Again, as you testified, out at means
11 that Benton has arrived at the Executive Mansion?

12 A. Correct.

13 Q. You received this pin, correct?

14 A. Yes, sir.

15 Q. So did Melissa DeRosa and Stephanie
16 Benton, as we saw in the prior pin?

17 A. Correct.

18 Q. Then about an hour later, above that,
19 Melissa DeRosa responds and says "We don't pin
20 when Steph comes and goes."

21 Do you see that?

22 A. I do.

23 Q. Do you remember this exchange from
24 2020?

25 A. Specifically, no.

1 D. Dively

2 Q. Do you understand today that there is
3 a different protocol for Stephanie Benton coming
4 and going from the Executive Mansion?

5 A. We typically as the PSU at some
6 point -- I don't recall when that was when we
7 started to perform these notifications -- the way
8 I was informed was that the two people who would
9 not have notifications sent to the Chamber group
10 would be Stephanie Benton and Melissa DeRosa.

11 Q. Who told you that?

12 A. Major Straface.

13 Q. What did he give you as the reason
14 why?

15 A. You know, I don't know if there
16 really was a reason other than the inner workings
17 of the Chamber and anyone else in that Chamber
18 doesn't necessarily need to know when these two
19 are there.

20 Q. Did the troopers continue to send a
21 pin amongst themselves for their coming and going?

22 A. We do.

23 Q. Does the Executive Chamber -- is the
24 Executive Chamber aware that the PSU sends pins
25 internally about comings and goings?

1 D. Dively

2 A. I can't say for certain.

3 Q. Have you ever discussed with anyone
4 at Executive Chamber?

5 A. Not specifically, no.

6 Q. Was there anyone else besides
7 Ms. Benton and Ms. DeRosa who was on that list of
8 not being the subject of a pin coming and going
9 from the Executive Mansion?

10 A. No, sir.

11 Q. I notice obviously this is not in
12 your words, but I notice Ms. Benton [sic] says
13 "When Steph comes and goes."

14 Am I correct that the procedure was
15 not to pin the Executive Chamber when Executive
16 Chamber staff leaves the Executive Mansion?

17 A. We do not include them as a rule.

18 Q. Do you understand that this message
19 from Ms. DeRosa then therefore applies to any pins
20 coming and going, including just internally to the
21 PSU?

22 A. You know, I can't say that I would
23 interpret it that way. Again, I'm not sure that
24 they're aware that -- I think they are, but I'm
25 not sure if they're aware that we do that

1 D. Dively

2 internally.

3 Q. But they should be aware that they
4 don't typically receives a pin when someone leaves
5 the Executive Mansion, correct?

6 A. Right.

7 Q. But she did include that in her pin
8 here, correct?

9 A. Correct. Correct.

10 (Whereupon, Exhibit 8 was marked for
11 identification.)

12 Q. Looking at tab -- now we can look at
13 tab nine. This is an email chain that you're on
14 from March 2020. There's three emails here. The
15 second one is on the back page. This is an email
16 from Straface -- I'm sorry. The bottom email is
17 from [REDACTED].

18 Who is [REDACTED]?

19 A. At the time, he was a uniformed
20 sergeant assigned to the mansion.

21 Q. It goes to a number of folks,
22 including yourself, and talks about Executive
23 Mansion guests is the subject?

24 A. Correct.

25 Q. This notes there were three guests

1 D. Dively

2 staying at the Executive Mansion. It appears [REDACTED]
3 [REDACTED] and Larry Schwartz.

4 Do you see that?

5 A. Yes, sir.

6 Q. This talks about the procedure to
7 send a pin and an iMessage to the supervisors of
8 PSU when those folks come and go, correct?

9 A. Correct.

10 Q. It notes it should also be done for
11 any other guests that may be staying at the
12 Executive Mansion in the coming weeks.

13 A. Correct.

14 Q. Below that, it specifically notes
15 "Notification procedures for daily visits, such as
16 Chamber staff, remains unchanged."

17 Do you see that?

18 A. I do.

19 Q. Do you remember receiving this email?

20 A. Vaguely, yeah.

21 Q. What do you remember about it?

22 A. I just remember this time period
23 vaguely and the communications that kind of went
24 back and forth is a relative new thing for us that
25 we would have additional guests on a regular basis

1 D. Dively

2 in the mansion.

3 Q. Okay.

4 Any other idea why Trooper [REDACTED]
5 or Sergeant [REDACTED] was emphasizing the fact that
6 the procedures for daily visitors, including
7 specifically Chamber staff, would remain
8 unchanged?

9 A. No, not specifically. And really,
10 I'm not so sure that, you know, his first
11 paragraph I don't really interpret that as a
12 change to the policy. I think we -- it's just
13 kind of, in my interpretation, just a reminder
14 that this needs to be done, that that is the
15 current policy.

16 Q. But he certainly did feel the need to
17 indicate specifically that the daily visitor
18 procedures for Chamber staff did not change,
19 correct?

20 A. It is indicated there, yes.

21 Q. Do you have a sense of whether or not
22 logging Chamber staff coming and going from the
23 Executive Chamber is important to senior members
24 of the Executive Chamber?

25 A. Do I think it's important to them?

1 D. Dively

2 Q. Do you have an understanding of
3 whether it is important to them?

4 A. Let me just make sure I'm on the
5 right track here. You want to know if I
6 understand if they feel it's important that we log
7 them in?

8 Q. Let me restate the question.
9 You testified before that as far as
10 you knew there was -- the PSU did not log
11 Executive Chamber staff coming and going in the
12 visitor log.

13 That's just what you understood was
14 the practice, correct?

15 A. Yes.

16 Q. Do you have an understanding of
17 whether that practice is important to senior
18 members of the Executive Chamber?

19 A. I have no idea, sir.

20 Q. Okay. I just note that it was
21 specifically called out in this email.

22 Do you recall other instances over
23 the past couple of years where this specific
24 procedure of not logging Executive Chamber
25 employees was discussed or disseminated amongst

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the PSU members?

A. Specifically with Chamber folks, no. There's been discussion back and forth, as we have had different personnel come in, as we've had, again, additional mansion guests, etc., so there may have been periods of confusion, but to my knowledge, that's been a consistent protocol.

Q. Turning back to the document, the email above the one we were just looking at, Mr. Straface responds and says, in the middle of the first page, that "[REDACTED]

[REDACTED] [REDACTED]
[REDACTED]
[REDACTED]" like we discussed.

What is the [REDACTED]?

A. It's simply a [REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Q. So there's a [REDACTED] [REDACTED]
[REDACTED]
[REDACTED]

There's also the [REDACTED] is that correct?

1 D. Dively

2 A. The [REDACTED] don't get --
3 should not get put on that [REDACTED] either.

4 Q. We talked earlier today -- there was
5 an email about the procedures noting that the
6 [REDACTED]
7 the [REDACTED] Do you remember that? We could look
8 back. It's tab four. It's [REDACTED]

9 [REDACTED]
10 [REDACTED]

11 A. Okay. I stand corrected then.

12 Q. Again, this is to keep track of who
13 is in the mansion, correct?

14 A. Yes, sir.

15 Q. Okay.
16 But Executive Chamber staff are only
17 logged if [REDACTED]
18 [REDACTED] correct?

19 A. Logged where, sir?

20 Q. Logged anywhere. They're only
21 logged -- they only appear on a written log if
22 they're [REDACTED]
23 [REDACTED]?

24 A. Yeah, but I'm not even sure, like,
25 [REDACTED]

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They may just go on that [REDACTED]. I don't know that we really --

Q. Fair enough.

What about -- [REDACTED]

[REDACTED], correct?

A. Correct.

Q. [REDACTED]

[REDACTED]

A. I believe they do.

(Whereupon, Exhibit 9 was marked for identification.)

Q. Okay.

Actually, if you look at tab 11, this is an Executive Mansion security check from February 1st, 2021, tour two. It's a Monday. There appears to be two sections, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

A. Yes.

Q. The bottom includes [REDACTED]

[REDACTED] There's a section

called [REDACTED]

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Do you see that?

A. Yes, sir.

Q. Do you see in this particular one,
[REDACTED] are listed,
correct?

A. Yes, sir.

Q. Would this represent [REDACTED]
[REDACTED]
[REDACTED]

A. [REDACTED],
[REDACTED]
[REDACTED]
[REDACTED]

Q. [REDACTED]
[REDACTED]
[REDACTED]

A. [REDACTED]

Q. [REDACTED]

A. [REDACTED]

Q. I know there was a lot going on with
COVID during the past year, but even prior to the
COVID time period, [REDACTED]
[REDACTED]

A. [REDACTED] [REDACTED]

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D. Dively

[REDACTED]
Q. In the email we were looking at before, it was noted that [REDACTED], correct?

A. Correct.

Q. Okay.
Do you know if -- prior to the COVID period -- [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] Do you know if that was the procedure?

A. I'm not sure that we had that scenario, so I don't know.

Q. That's a fair point.
Let me ask you this: Are you aware pre-COVID of any situations when [REDACTED]
[REDACTED]
[REDACTED]

A. Not that I could think of.

(Whereupon, Exhibit 10 was marked for identification.)

Q. Tab 14, this is around, again, the same time period. It's pins from March 2nd, 2021 and the top one is from you, noting that Mogul,

1 D. Dively

2 Lacewell, Pollack and Smith anticipated overnight
3 at Executive Mansion.

4 Do you see that?

5 A. Yes, sir.

6 Q. Do you recall this event?

7 A. I recall it just by refreshing my
8 memory reading the email, yes.

9 Q. Were there members of the Executive
10 Chamber staff regularly staying all night at the
11 Executive Mansion over the 2020/2021 time period?

12 A. During this time period, yes.

13 Q. Did you have an understanding of why?

14 A. Officially, no.

15 Q. Informally?

16 A. I was under the impression that due
17 to the attempt to limit contact with outside
18 sources due to the COVID, etc., and to protect
19 everybody's health, that potentially had something
20 to do with it.

21 Q. How would you be informed of who was
22 going to be staying overnight?

23 A. In this case, sir, I don't know. It
24 would have been someone either from the staff at
25 the mansion or from the Chambers.

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(Whereupon, Exhibit 11 was marked for identification.)

Q. If you look at tab seven, this document is entitled "Mansion Sign Through Sheet."

Do you see that?

A. I do, sir.

Q. What is the "Mansion Sign Through Sheet"?

A. I believe this is a document that was -- and potentially still is -- [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Q. I see.

[REDACTED]

A. [REDACTED]

Q. Are you aware that, particularly prior to the COVID time period, that the Governor would occasionally host members of the Executive Chamber staff for informal gatherings at the mansion, social -- for lack of a better word --

1 D. Dively

2 parties type things?

3 A. Sure, yes.

4 Q. And sometimes in the pool area, etc.?

5 A. Yes.

6 Q. When folks would come for those
7 events, would the only record of their attendance
8 be the pins amongst the PSU troopers?

9 A. Executive Chamber guests? Yes, I
10 believe that would be correct.

11 Q. If -- hypothetically speaking,
12 because I know some of these events took place
13 late at night -- if people ended up staying at the
14 Executive Chamber -- Executive Mansion that night,
15 would that be captured in any log, report,
16 anything if they weren't a scheduled guest?

17 A. Other than the documents that we've
18 identified here already, I don't believe so, so.

19 Q. And the documents we've identified
20 all indicate situations where an overnight guest
21 was anticipated, correct?

22 A. I don't want to say in all cases that
23 we anticipated that, no.

24 Q. How would a trooper know if someone
25 who was attending a social event was going to be

1 D. Dively

2 staying the evening?

3 A. Sometimes they may not. They may get
4 a -- if there is information of that in advance,
5 sometimes the director of the mansion or the staff
6 at the mansion would pass that along to us if they
7 had that information.

8 Q. But if not, it's possible that it
9 would not be logged anywhere?

10 A. Correct.

11 Q. Again, assuming some of these events
12 are late at night or whatnot, as Executive Chamber
13 staff leaves, every time someone leaves, there
14 would be a pin sent amongst the PSU that someone
15 is leaving?

16 A. There should be, yes.

17 Q. But there won't be a log of time
18 in/time out, it'll just be the pin if it's
19 Executive Chamber staff?

20 A. That should be correct.

21 Q. In your role as acting detail
22 commander are you involved in decisions such as
23 the discipline or either demotion or transfers out
24 of PSU for PSU personnel? Is that something
25 you're involved with?

1 D. Dively

2 A. Potentially, yes.

3 Q. Since you've been acting detail
4 commander, have you been involved in any, for lack
5 of a better word, disciplinary matters for
6 troopers?

7 A. Only when it pertains to
8 adjudicating, like a trooper car accident.

9 Q. If there was -- are you aware of
10 situations where troopers are removed from PSU?

11 A. Yes.

12 Q. Have you ever been involved in any of
13 those proceedings or decisions?

14 A. Conversations, yes.

15 Q. Any of those situations did you have
16 decision-making authority?

17 A. No.

18 Q. What role does the Executive Chamber
19 play in personnel decisions such as that?

20 A. To my knowledge, none.

21 Q. Does the Executive Chamber have any
22 input into transfers of roles within PSU, meaning
23 you're on a travel team and you might get assigned
24 to a house or you might get assigned to the
25 mansion? Does the Executive Chamber play any role

1 D. Dively

2 in those decisions?

3 A. No, not to my knowledge.

4 Q. What if the Governor doesn't like a
5 member of the PSU? Can he say that he doesn't
6 want them on his detail?

7 A. I guess theoretically, yes. I have
8 never personally been involved in that situation,
9 so I'm not sure, you know, how that all looks.

10 Q. Have you ever heard the Governor
11 expressing dissatisfaction with members of the PSU
12 and asking for them no longer to be part of his
13 detail?

14 A. No. Have I heard him say that? No.

15 Q. Have you heard from anyone else that
16 he said that?

17 A. Like hearsay stuff, yes.

18 Q. What hearsay stuff have you heard?

19 A. Years ago, maybe 2012 or 2013 -- I
20 may have the timeframe wrong -- Senior
21 Investigator **Former Trooper #1** left the detail and the
22 buzz was that that stemmed from some type of
23 disagreement with the Governor.

24 Q. What was the disagreement?

25 A. I'm not really sure, sir. It had to

1 D. Dively

2 do with a question that he'd asked the Governor,
3 allegedly.

4 Q. Do you know what the subject matter
5 of the question was?

6 A. I think it had to do with, like,
7 scheduling.

8 Q. Do you know specifically what the
9 scheduling question was?

10 A. I do not.

11 Q. Is it typical for troopers to
12 understand the Governor's schedule?

13 A. Yes.

14 Q. Is there a protocol for troopers to
15 know the Governor's schedule?

16 A. The schedule as far as the actual
17 drafting confidential we do receive on a daily
18 basis.

19 Q. Are there changes to that schedule
20 during the course of the day?

21 A. Yes.

22 Q. Do troopers need to understand what
23 those changes are?

24 A. Yes.

25 Q. How would troopers know about those

1 D. Dively

2 changes?

3 A. There would either be an official
4 update or if there was a change, someone from
5 either the scheduling office or some form from the
6 Chamber would let -- would communicate that to a
7 member of the detail who would then disseminate
8 that out to the rest of the detail.

9 Q. This buzz that you heard about a
10 possible disagreement between the trooper and the
11 Governor, what specifically was the buzz?

12 A. Just as I said, sir, that there was
13 some kind of a manner maybe or the question
14 itself, I don't know what it was, and allegedly
15 the Governor was unhappy with that and that
16 created some uncomfortable -- an uncomfortable
17 situation.

18 Q. Who did you hear this from?

19 A. Specifically, I don't know. It was
20 just kind of chatter among the detail.

21 Q. Did you hear of any other examples of
22 the Governor not being happy with the trooper and
23 them being removed from his detail?

24 A. No, not really.

25 Q. That's the only one?

1 D. Dively

2 A. Yes.

3 Q. Have you ever heard of any situations
4 where the Governor requested that troopers be
5 transferred within PSU?

6 A. Transferred within PSU?

7 Q. Yes.

8 A. No.

9 Q. For example, office travel team?

10 A. No.

11 Q. When it comes to promotions, does the
12 Executive Chamber have any say within promotions
13 in PSU?

14 A. To my knowledge, no.

15 Q. Have you ever heard of the Governor
16 recommending a member of the PSU for a promotion?

17 A. I don't -- I don't think so.

18 Q. You're not aware of any situation
19 where the Governor had requested a promotion for
20 any members of PSU?

21 A. No, not to my knowledge.

22 Q. Does the Governor have any say in who
23 his principal driver is?

24 A. Again, it really a lot of that falls
25 kind of on us to make a read on who is

1 D. Dively

2 comfortable, you know, in that position and makes
3 the Governor comfortable. There could have been
4 at some point, you know, feedback there from him
5 to certain supervisors, but not that I'm aware of.

6 Q. Have you ever been involved in
7 hearing feedback from the Governor as to drivers?

8 A. No.

9 Q. Have you ever received feedback on
10 any trooper from the Governor? And by trooper, I
11 mean any member of PSU, regardless of title.

12 A. Yes. To some extent, just regards to
13 expressing a comfort level, you know.

14 Q. Who specifically has the Governor
15 indicated having a comfort level with?

16 A. I think more to the uncomfortable
17 level.

18 Q. Fair.

19 Who has the Governor identified to be
20 uncomfortable with?

21 A. At one point, it was Investigator

22 [REDACTED].

23 Q. Did the Governor say why he was
24 uncomfortable with --

25 A. I don't remember the specific

1 D. Dively

2 incident that made him feel a lack of confidence
3 or uncomfortable, but I do recall, in general,
4 like some comments about his lack of comfort
5 there.

6 Q. Were you supervising [REDACTED] at the
7 time?

8 A. Yeah, I believe I was. Yeah.

9 Q. What did you do in reaction to the
10 Governor's feedback?

11 A. Really, Investigator [REDACTED] was
12 already assigned to the Lieutenant Governor's
13 detail at that point, I believe, so really just as
14 a supervisor, just try to keep him out of any
15 spotlight to bring, you know, put him in a
16 situation where he's potentially going to be
17 subject to further scrutiny.

18 Q. Did the Governor provide any feedback
19 as to any other troopers during your time?

20 A. Not really, not that I could think
21 of, no.

22 Q. Did anyone have a reputation within
23 the troopers as getting along better with the
24 Governor than others?

25 A. I don't want to characterize it as

1 D. Dively

2 getting along with better, but I think just as
3 part of human nature some people you're going to
4 be more comfortable with than others. Our senior
5 investigators that are our team leaders, they
6 typically have regular contact with the Governor.
7 I think they are members who typically have a more
8 comfortable relationship, you know, from both
9 perspectives there.

10 Q. Is there any member of PSU that you
11 feel has a strong, positive relationship with the
12 Governor?

13 A. Beyond, like, a working relationship?

14 Q. No. I mean within the working
15 environment, someone that you feel gets along --
16 works well with the Governor?

17 A. I think our supervisory folks, our
18 folks that are in the supervisory roles, myself,
19 Lieutenant [REDACTED] our senior investigators
20 assigned to the travel teams I think all maintain
21 a fairly comfortable relationship there as far as
22 a working relationship. One more than the other
23 or anyone else that I would single out, no.

24 Q. Is there any member of the PSU that
25 you feel has a bad working relationship with the

1 D. Dively

2 Governor?

3 A. I wouldn't say a bad work
4 relationship, no.

5 Q. Is there anyone that you're concerned
6 with keeping out of sight from the Governor?

7 A. No.

8 Q. Did you ever receive feedback from
9 others within the Executive Chamber as to any
10 troopers?

11 A. No.

12 Q. Nothing from Melissa DeRosa?

13 A. No.

14 Q. Or Stephanie Benton?

15 A. No.

16 Q. Have you ever heard of a situation
17 when the Governor basically made a trooper get out
18 of his car and stop driving him?

19 A. Not that I can recall.

20 Q. You never heard of a situation where
21 a trooper was left by the side of the road at the
22 direction of Governor?

23 A. No. Do you have a specific incident?

24 Q. I'm just asking if you've ever heard
25 of a situation.

1 D. Dively

2 A. Not that I can recall, no.

3 Q. Has the Governor ever requested
4 specific troopers to be added to his detail?

5 A. Not to my knowledge, no.

6 Q. Just to be clear, I'm not asking
7 about any members of PSU.

8 Has he ever asked a member of PSU to
9 be assigned to his travel or any particular role?

10 A. Not to my knowledge, no.

11 Q. Are you aware of the Governor ever
12 requesting that state troopers who are not in PSU
13 be assigned to the PSU unit?

14 A. Not to my knowledge, no.

15 Q. When you say not to your knowledge,
16 do you mean you're not personally aware of it or
17 you've never even heard of it happening?

18 A. I'm not aware of it. I did hear a
19 little buzz in one instance, but I have nothing
20 factually to back that up.

21 Q. What's the buzz that you heard?

22 A. When -- sorry -- Trooper #1
23 came to the detail, the little bit of buzz was
24 that the Governor had an interaction with her
25 somewhere and somehow identified her as a good

1 D. Dively

2 candidate for the detail.

3 Q. What do you mean he identified her as
4 a good candidate for the detail?

5 A. Someone that he would like to have on
6 the detail.

7 Q. Does that seem appropriate to you as
8 a member of PSU?

9 A. I don't know that it seems
10 appropriate, but I don't know that it seems
11 inappropriate.

12 Q. Did she become a member of PSU?

13 A. She did.

14 Q. Was she qualified at the time to
15 become a member of PSU?

16 A. As far as I know, yeah.

17 Q. How long had she been a trooper at
18 that point?

19 A. I'm not sure. Three or four years.

20 Q. If she had less than the required
21 amount of time to join PSU, do you consider --
22 would you consider that to be inappropriate for
23 her to join PSU at that point?

24 A. I would say it didn't meet the
25 initial requirement, yes.

1 D. Dively

2 Q. Did you hear anything at all as to
3 why this Governor thought she would be a good
4 member of PSU?

5 A. I did not.

6 Q. Do you remember approximately what
7 year this took place?

8 A. 2019.

9 Q. So at that point you were senior
10 investigator?

11 A. Yes. Yes.

12 Q. If there was buzz around it, I assume
13 there were discussions amongst members of PSU
14 about this taking place?

15 A. I don't know about discussions, but
16 I'm sure there was conjecture.

17 Q. What was the -- what conjecture did
18 you make about this?

19 A. Honestly, I really didn't because I
20 didn't know that there was any fact to it or
21 truth, so I tried to avoid anything that I don't
22 know is factual or truthful.

23 Q. So over the past two or three years,
24 you've not had any discussion about the
25 circumstances of her joining the troop, PSU?

1 D. Dively

2 A. No.

3 Q. Were you made aware of a change in
4 the qualifications required for troopers to join
5 PSU, meaning the number of years of service
6 required?

7 A. Yes.

8 Q. What do you recall about that change?

9 A. The only thing I recall about that is
10 it happened, I believe, in 2018 or 2019.

11 Q. Do you have any understanding that
12 it's associated with Trooper #1 coming into PSU?

13 A. I have no idea.

14 Q. You've never had a discussion with
15 anyone about the change in qualifications as it
16 relates to her appointment or promotion to PSU?

17 A. No.

18 Q. Just to be clear, you've not talked
19 about her joining PSU with anyone within PSU?

20 Let me restate.

21 Have you had any discussion with
22 anyone within PSU about the circumstances of her
23 joining PSU?

24 A. No.

25 Q. Not at all? Not one?

1 D. Dively

2 A. The circumstances with which she came
3 to PSU, no.

4 Q. Tech Lieutenant, when did you first
5 become aware of the New York Attorney General's
6 investigation into Governor Cuomo?

7 A. I don't know that I could supply you
8 a date. I would say when it was announced
9 publically or thereabout.

10 Q. At the time when you learned of the
11 investigation, did you have any communications
12 with PSU members as the acting detail commander
13 about the investigation?

14 A. About the investigation? No, not
15 beyond the fact that once we received, like, a
16 preservation order notifying everyone that if they
17 are contacted that they should comply, that they
18 have the right to PBA or a NYSPTBA and legal
19 representation, beyond that, don't talk about it
20 with anyone. That's it.

21 Q. Did you ask that any trooper who's
22 contacted by the New York Attorney General to let
23 a supervisor know that they'd been contacted?

24 A. Yes.

25 Q. Why did you ask for that information?

1 D. Dively

2 A. Just to that we could be aware that
3 we were involved in the process.

4 Q. How so?

5 A. So that we could have an
6 understanding that our unit was now, you know,
7 part of this investigation.

8 Q. Why did you have to have an
9 understanding if your unit was part of the
10 investigation?

11 A. I think just situational awareness so
12 we could all be prepared. We kind of knew at the
13 point we got a preservation order that we were
14 involved to some degree, but situational awareness
15 that, you know, an interview process had begun and
16 that our folks were going to be interviewed.

17 Q. Did you ask to be informed of when
18 members of PSU were being interviewed?

19 A. No.

20 Q. What information did you request
21 regarding if --

22 A. Notification that they'd been
23 contacted for interview. That's it.

24 Q. And just a reminder, we've been going
25 for a while, but let me finish my question. The

1 D. Dively

2 poor court reporter needs to be able to write down
3 what I say and take down what you say, if that's
4 okay.

5 A. My apologies.

6 Q. It's fine.

7 How did you anticipate handling
8 counsel for members of the PSU? Were you going to
9 be involved in that process of making counsel
10 available?

11 A. No. That was all up to the
12 individual members if they chose to do so to
13 contact their representative from either NYSPTBA
14 or the PBA and whatever they -- whether they chose
15 to or not, for them to take that direction.

16 Q. Once you had received -- any time
17 after the start of the investigation, including
18 once you received a document preservation notice,
19 did you have any discussion with anyone at the
20 Executive Chamber about the investigation?

21 A. No.

22 Q. So you had no contact with any member
23 of the Executive Chamber about the nature or scope
24 of the investigation?

25 A. No.

1 D. Dively

2 Q. Did you inform members of the
3 Executive Chamber that you had received a document
4 preservation notice?

5 A. I think -- they weren't Executive
6 Chamber. They were OGS personnel involved because
7 of the surveillance systems, the electronic
8 surveillance systems are under the OGS purview
9 ownership. Beyond that, no.

10 Q. Have you had any communications with
11 the members of the Executive Chamber regarding the
12 fact that the New York Attorney General's office
13 has interviewed troopers?

14 A. No.

15 Q. Have you provided a list of who's
16 been interviewed to anyone from the Executive
17 Chamber?

18 A. No.

19 Q. Do you have a list of who's been
20 interviewed by New York Attorney General's office?

21 A. No.

22 Q. Did you have any concerns about
23 members of PSU being interviewed as part of the
24 investigation?

25 A. No.

1 D. Dively

2 Q. No concerns about the scope of the
3 potential investigation?

4 A. No.

5 Q. The topics that would be covered?

6 A. No.

7 Q. You never expressed concern to other
8 members of the PSU about the scope of the
9 investigation?

10 A. No.

11 Q. Do you know if anyone has provided
12 information to the Executive Chamber about who
13 within PSU has been contacted by the
14 investigation?

15 A. I do not.

16 Q. In your role at the PSU over time,
17 have you traveled with the Governor out of state?

18 A. Yes.

19 Q. Have you traveled internationally
20 with him?

21 A. Yes.

22 Q. Do you always travel with the
23 Governor now when he travels out of state or is it
24 -- what would be the reason why you would go as
25 opposed to someone else from PSU?

1 D. Dively

2 A. It really depends upon the trip and
3 the personnel who are available and from a
4 supervisory perspective, the same thing.
5 Typically, if it's an out-of-state trip,
6 historically, a commissioned officer has traveled
7 with the Governor and at least one supervisor
8 would travel with, you know, an advance element.

9 Q. What international destinations have
10 you traveled with the Governor?

11 A. Israel, Poland. I don't know if you
12 consider Puerto Rico international, but --

13 Q. Fair.
14 Anyplace else?

15 A. No.

16 Q. On those types of trips, how are the
17 room assignments for the traveling party handled,
18 hotel room assignments?

19 A. For the PSU members?

20 Q. For the whole traveling party. The
21 Executive Chamber, Governor, all of it. Who is in
22 charge of arranging and allocating hotel rooms?

23 A. Typically, to the best of my
24 understanding, the Executive Chamber will set up
25 whatever rooms that they need for Executive

1 D. Dively

2 Chamber folks, including the Governor, and then
3 someone from our team or our members individually
4 would make those travel arrangements through a
5 travel agent, through the state travel agent.

6 Q. Are there any rules or procedures in
7 place for where PSU personnel stay in relation to
8 where the Governor stays within a hotel, for
9 example?

10 A. Ideally, we like to have someone in
11 as close proximity as possible. Sometimes with
12 travel arrangements and availability at hotels, we
13 do not always have that luxury.

14 Q. So there's situations when PSU is not
15 staying in an adjoining room to the Governor?

16 A. Correct.

17 Q. Has there been a situation where
18 staff had been in an adjoining room and PSU has
19 tried to switch so PSU could that have adjoining
20 room?

21 A. No, not to my knowledge.

22 Q. How would you generally describe the
23 Governor's interactions with members of PSU? How
24 would you describe his relationship with members
25 of PSU on a day-to-day basis?

1 D. Dively

2 A. Cordial.

3 Q. Anything else?

4 A. No, I don't think so.

5 Q. Have you ever witnessed the Governor
6 being verbally abusive to members of PSU?

7 A. I've seen him get upset with members
8 of PSU. Verbally abusive? You know, I'm not sure
9 where you draw that line.

10 Q. Have you ever seen the Governor yell
11 at members of PSU?

12 A. I've heard him raise his voice, yes.

13 Q. What's the difference between raising
14 your voice and yelling?

15 A. I don't know.

16 Q. Well, I said yelling and you said
17 raising your voice, so I'm sensing you have some
18 differential.

19 A. Again -- sorry, I cut you off again.
20 I'm sorry.

21 Where he's clearly agitated and more
22 emotional than a normal state.

23 Q. To be clear, you've seen him more
24 emotional than a normal state with members of PSU?

25 A. Yes.

1 D. Dively

2 Q. Have you ever witnessed him swearing
3 or cursing at members of PSU?

4 A. In the instance that I'm thinking of,
5 I'm sure he probably did.

6 Q. What is the instance that you're
7 thinking of?

8 A. I was in a car with the Governor and
9 at the time Captain [REDACTED] and I think it had to do
10 with -- I don't remember what it had to do with,
11 to be honest with you -- but he was upset with
12 Captain [REDACTED].

13 Q. About what?

14 A. It may have been an aviation thing,
15 something to do with the communication with
16 aviation. In my role at that time, I was driving
17 the truck and just trying to mind my business.

18 Q. Is that the only instance where
19 you've witnessed the Governor in an emotional
20 state with members of PSU?

21 A. Yeah, I believe so.

22 Q. In all of your time with the
23 Governor, that's the only instance?

24 A. Yes.

25 Q. Have you ever witnessed the Governor

1 D. Dively

2 in an emotional state with members of the
3 Executive Chamber staff?

4 A. Witness to the extent that I've
5 overheard things from inside an office where I
6 wasn't necessarily present in the room or, you
7 know, don't know who everything was directed to,
8 but yes.

9 Q. Is the Governor a regular yeller?

10 A. No. I don't think regular, no.

11 Q. Does the Governor yell more than just
12 occasionally?

13 A. I would say over ten years I've heard
14 him yell occasionally, yes.

15 Q. Only occasionally, however you define
16 that?

17 A. Yeah, I would say occasionally that I
18 have heard.

19 Q. Understood.

20 Have you traveled with the Governor
21 in helicopters or airplanes within the State of
22 New York?

23 A. Yes, sir.

24 Q. How regularly do you travel with the
25 Governor in those types of forms of

1 D. Dively

2 transportation?

3 A. Over the years since I've been a
4 supervisor, on and off, regularly.

5 Q. How many -- is there a standard set
6 up within the state airplanes that he uses, seat
7 configuration?

8 A. Like the total configuration or --

9 Q. Yes.

10 A. -- like where we would sit as a PSU
11 member?

12 Q. The total configuration.

13 Is it standard or are there
14 differences between the planes?

15 A. No, I think they're both set up the
16 same. If there's any discrepancies, they're very
17 small. They're basically the same.

18 Q. How are the seats set up in the
19 airplane?

20 A. If you're getting on the plane from
21 the back door, as you're coming up the aisle on
22 the right, there's a seat that faces forward. One
23 of those planes I believe -- I don't think both --
24 there's another seat in front of that, facing that
25 seat. I think that seat has been removed in at

1 D. Dively

2 least in one of those planes.

3 On the left side, it's the same set
4 up: One seat facing the front of the plane, a
5 mirrored seat facing that behind that seat, more
6 towards the front of the seat that faces to the
7 rear and to the right side of that, there's a --
8 like a jump seat that faces the middle of the
9 plane and then you have the cockpit for the
10 pilots.

11 Q. When you travel on the plane, where
12 do you sit?

13 A. Typically in that jump seat in the
14 front.

15 Q. Near the cockpit?

16 A. Correct.

17 Q. Where does the Governor sit?

18 A. Typically, in the first seat as you
19 come in from the back of the plane on the right.

20 Q. So there's no table or four top in
21 the planes?

22 A. No.

23 Q. What is the seating arrangement in
24 the helicopters?

25 A. The helicopters are, again, similar

1 D. Dively

2 with bench seats facing forward and then another
3 mirrored seat facing backwards. Is that right?

4 Yeah, I think they're both similar. I have not
5 been in the Bell helicopter in a long time, but I
6 think that's the same set up as the Sadorski.

7 Q. Where do you sit when you travel with
8 the Governor in the helicopters?

9 A. It's really situationally dependent,
10 depending on how many other people are on the
11 plane.

12 Q. Got it.

13 When you're flying on the airplane,
14 can you hear conversations or is it -- or are you
15 not able to hear things because of the sound?

16 A. It's usually very muffled. If
17 someone want to communicate to me in that
18 position, they have to get my attention and speak
19 up and occasionally I would also put on the
20 headphones to communicate with the pilots and to
21 listen to the air traffic chatter.

22 Q. Okay.

23 Have you ever heard the Governor make
24 a joke of a sexual nature?

25 A. No.

1 D. Dively

2 Q. Have you ever heard the Governor make
3 any sexual innuendos?

4 A. No.

5 Q. Have you ever heard the Governor make
6 a comment that you felt was off color?

7 A. No.

8 Q. Have you ever witnessed the Governor
9 commenting on the appearance of any women?

10 A. No.

11 Q. Have you ever heard him comment on
12 the appearance of any men?

13 A. Only about our shoes not being
14 shined.

15 Q. Anything else?

16 A. No.

17 Q. Have you ever heard the Governor
18 describe a woman as attractive or beautiful or
19 pretty or the like?

20 A. Not that comes to mind, no.

21 Q. Have you ever seen the Governor kiss
22 a member of the Executive Chamber?

23 A. As in like a kiss hello or goodbye,
24 yes.

25 Q. What does a kiss hello or goodbye

1 D. Dively

2 mean?

3 A. A hug and a kiss type thing.

4 Q. On the cheek or --

5 A. Yes.

6 Q. Have you ever seen the Governor kiss
7 someone on the forehead?

8 A. Yes.

9 Q. Women?

10 A. Yes.

11 Q. Men?

12 A. Yes.

13 Q. Have you ever seen the Governor kiss
14 anyone on the lips?

15 A. Other than his significant other at
16 the time, no.

17 Q. I should have been clear.
18 Any members of Executive Chamber
19 staff.

20 A. No.

21 Q. Have you ever seen the Governor put
22 his hands on anyone's face?

23 A. Yes.

24 Q. In what context?

25 A. In the context of a greeting to go

1 D. Dively

2 along with a hug or a kiss on the cheek.

3 Q. Have you ever seen the Governor touch
4 a member of the Executive Chamber staff in a way
5 that you felt was inappropriate?

6 A. No.

7 Q. Have you ever heard about the
8 Governor touching a member of the Executive
9 Chamber in a way that was described as
10 inappropriate?

11 A. No.

12 Q. Have you ever heard of the Governor
13 kissing a member of the Executive Chamber staff in
14 a non-greeting manner?

15 A. No. With the exception, sir, of
16 what's public allegations, but no.

17 Q. Understood. I'm talking about things
18 you've heard in the ordinary course of your
19 duties.

20 A. No, sir.

21 Q. Have you ever heard of members of the
22 Executive Chamber being uncomfortable due to
23 attention from the Governor?

24 A. No.

25 Q. Have you ever heard -- have you ever

1 D. Dively

2 personally heard the Governor ask about
3 inappropriate topics, what you felt were
4 inappropriate topics with members of the Executive
5 Chamber staff?

6 A. No.

7 Q. Have you ever heard the Governor
8 asking inappropriate questions of Executive
9 Chamber staff?

10 A. No.

11 Q. Have you ever heard of any video that
12 exists of the Governor kissing members of the
13 Executive Chamber staff in a non-greeting way?

14 A. No.

15 Q. You never heard a rumor of there
16 being a video of the Governor kissing a member of
17 the Executive Chamber staff?

18 A. No.

19 Q. Are you aware of the Governor having
20 an intimate relationship with any members of the
21 Executive Chamber staff?

22 A. No, I'm not.

23 Q. Have you ever heard about the
24 Governor having an intimate relationship with
25 members of the Executive Chamber staff?

1 D. Dively

2 A. No.

3 Q. In all of your time working at PSU,
4 you've never heard a rumor of the Governor in a
5 relationship with members of the Executive Chamber
6 staff?

7 A. No.

8 Q. Have you ever heard the Governor use
9 nicknames for individuals?

10 A. Did you say nicknames?

11 Q. Nicknames.

12 A. Yes, kind of. Yes.

13 Q. What are you thinking about?

14 A. There was a former staffer, Annabel
15 Walsh, and I think he used to refer to her as Anna
16 May, but other than that, not that I could think
17 of.

18 Q. Did you ever hear him use the term
19 "sweetie" in talking to a woman?

20 A. Not that I could think of.

21 Q. Have you ever heard of him use the
22 term "honey"?

23 A. I believe I have, yes.

24 Q. And do you recall who he was talking
25 to when using the term "honey"?

1 D. Dively

2 A. I do not.

3 Q. Was it a woman member of the
4 Executive Chamber staff?

5 A. I believe so.

6 Q. What about "sweetheart," the term
7 "sweetheart"?

8 A. Not specifically that I cannot
9 remember.

10 Q. Have you ever heard the Governor use
11 nicknames for men?

12 A. Not that I could think of, no.

13 Q. Have you ever heard the term "Mean
14 Girls" in reference to the Executive Chamber?

15 A. It sounds familiar.

16 Q. What do you recall about the use of
17 the term "Mean Girls"?

18 A. I don't recall much. I just remember
19 somewhere hearing that phrase about apparently
20 specific, you know, a specific group of Executive
21 Chamber employees, but I don't remember where I
22 heard it or who exactly it was in reference to.

23 Q. Do you have any recollection at all
24 of who it may have been directed towards?

25 A. No. I think -- I think kind of upper

1 D. Dively

2 echelon level Executive Chamber employees, but
3 again, I don't even recall where or when I heard
4 that. It sounds familiar.

5 Q. Who are the upper echelon employees
6 of the Executive Chamber?

7 A. I would have to say Stephanie Benton,
8 Melissa DeRosa, Jill DesRosiers -- I may pronounce
9 the name wrong -- who I think is out currently,
10 and then Annabel Walsh would have been in that
11 level to some degree.

12 Q. Have you ever heard the Governor use
13 the term "Mean Girls"?

14 A. No, I don't believe so.

15 Q. Have you ever heard the Governor ask
16 someone if he can kiss them?

17 A. No.

18 Q. Have you ever seen the Governor throw
19 anything at a member of the Executive Chamber
20 staff?

21 A. No.

22 Q. Have you ever seen anyone -- any
23 member of the Executive Chamber staff sitting on
24 the Governor's lap?

25 A. No.

1 D. Dively

2 Q. Were you ever aware of any stories or
3 rumors about members of the Executive Chamber
4 staff leaving the Executive Mansion late at night
5 missing clothing?

6 A. No.

7 Q. You've never heard any rumors along
8 those lines?

9 A. No.

10 Q. Have you ever observed the
11 Governor -- in your view, from what you observed,
12 does the Governor treat men and women of his staff
13 the same?

14 A. I think so.

15 Q. When you say "I think so," what does
16 that mean?

17 A. Well, I don't see all the
18 interactions, but I think that he is pretty
19 consistent with both male and female members of
20 staff, as far as the way he treats them from what
21 I see.

22 Q. You described his interactions with
23 the PSU as cordial.

24 How would you describe his
25 interactions and treatment of his staff?

1 D. Dively

2 A. Again, I would say in general
3 cordial.

4 Q. Have you ever heard the Governor call
5 anyone a bitch?

6 A. No.

7 Q. Has the Governor ever discussed a
8 cigar box that was a gift from President Clinton?

9 A. I don't believe so, no.

10 MR. WEAVER: Do you guys need a
11 break?

12 MS. MORRIS: I'm just inquiring if he
13 needs one. That's all.

14 THE WITNESS: I'm okay.

15 Q. Have you ever seen the Governor flirt
16 with women members of PSU?

17 A. No.

18 Q. Have you ever heard any stories or
19 rumors of the Governor flirting with women members
20 of PSU?

21 A. No. No. Not rumors that he's
22 flirting, but just the insinuation that he's had
23 longer conversations potentially with certain
24 females rather than males.

25 Q. What do you mean by that?

1 D. Dively

2 A. We have one of our intel
3 investigators, [REDACTED], who has been --
4 came on the detail around the same time that I did
5 and when the Governor sees [REDACTED], he always is
6 drawn to [REDACTED], he always asks about her family,
7 always has a nice conversation, etc. whereas, you
8 know, he may not do that with me or certain other
9 men. But I don't know that it has anything to do
10 with her being a female or a male, you know, he
11 may just -- he refers back to their both Italians,
12 etc., family, etc.

13 Again, I don't know if it's because
14 she's female, but jokingly, at times, people have
15 made that insinuation that he gives her more
16 attention or has given her more attention.

17 Q. When you say jokingly people have
18 made that insinuation, have you ever made that
19 insinuation?

20 A. No, I think -- I don't think that I
21 ever interpreted that as anything other than just
22 friendly interaction and genuine concern for her
23 and her family, so no.

24 Q. But you've heard others make joking
25 insinuations?

1 D. Dively

2 A. Yes.

3 Q. Have those insinuations been made to
4 [REDACTED] ?

5 A. Yes. We were all on the same team
6 and -- yes, they were made with her, to her and
7 with her.

8 Q. How did she react to those
9 insinuations?

10 A. She laughed. She rolled with the
11 punches.

12 Q. Siting here today, as acting detail
13 commander, do you think it's appropriate for PSU
14 members to make such jokes or insinuations to
15 another member of PSU?

16 A. No, but I also don't think that --
17 the jokes weren't offensive. They were just kind
18 of implying to her that, you know, the attention
19 that he pays to her. Should they be making them,
20 no.

21 Q. Did you ever ask [REDACTED] how she
22 felt about those jokes?

23 A. Specifically about the jokes, no.

24 Q. Did you ever ask her how she felt
25 about the attention from the Governor?

1 D. Dively

2 A. We've had conversations. Like I
3 didn't specifically ask her how she felt about it,
4 but we've had conversations about their
5 interactions and she didn't appear to be, you
6 know, concerned with anything that was happening.

7 Q. Did you ever ask her if she was
8 concerned by anything that was happening to her?

9 A. No.

10 Q. So when you say didn't appear to be,
11 you mean she didn't tell you specifically?

12 A. Correct.

13 Q. Have you ever discussed the
14 Governor's attention to [REDACTED] with the
15 Governor himself?

16 A. No.

17 Q. Have you ever discussed it with any
18 members of the Executive Chamber?

19 A. No.

20 Q. You noted before that these longer
21 conversations, you said he may not have them with
22 you or male troopers.

23 Does he have those types of
24 conversations with you?

25 A. He has in the past, absolutely.

1 D. Dively

2 Q. You implied that every time he saw
3 [REDACTED] he would have those types of
4 conversations; is that right?

5 A. I think regularly, yes.

6 Q. Does he regularly have those types of
7 conversations with you?

8 A. Fairly regularly, yes.

9 Q. Earlier, you seemed at least to imply
10 that those such discussions with unusual compared
11 to his interactions with male troopers.

12 Are you now saying that you've had
13 the same type of attention from the Governor?

14 A. I have had similar attention, yes.

15 Q. Sitting here today, do you feel it's
16 the same type of attention?

17 A. I do.

18 Q. What about other male troopers? Have
19 you witnessed the Governor providing the same
20 level of attention to male troopers?

21 A. Yes.

22 Q. Sitting here today, do you feel
23 there's any treatment that the Governor has given
24 to [REDACTED] and male troopers?

25 A. No. But again, you asked me about,

1 D. Dively

2 you know, the rumor, etc., and that's where I drew
3 that parallel to, the potential of, like, the
4 joking and kidding around like "Boy, he shows you
5 a lot of attention."

6 But no, I think it's all
7 situationally dependent and depending on what his
8 comfort level is with the individual, whether
9 they're male or female.

10 Q. The jokes themselves were not really
11 based on any type of true experience of
12 exceptional or special attention?

13 A. Just repeat that for me --

14 Q. Sure.

15 A. -- please.

16 Q. Fair.

17 The jokes are based on the assumption
18 that [REDACTED] was receiving special attention
19 from the Governor, correct?

20 A. That was the joke, yes.

21 Q. You're sitting here today, though,
22 and in your view she's not received special
23 attention from the Governor, correct?

24 A. I don't think she receives special
25 attention. I think she had [REDACTED]

1 D. Dively

2 [REDACTED] and he was showing concern for
3 her in that situation, you know, and there was a
4 continuation as that situation progressed, but no,
5 I don't think she received special attention. No.

6 Q. What about any other women troopers?
7 Anything come to your mind of the Governor paying
8 particular attention to women troopers?

9 A. No.

10 Q. Have you ever heard any stories or
11 rumors about the Governor touching women troopers?

12 A. No.

13 Q. Have you heard any stories or rumors
14 of the Governor making women troopers feel
15 uncomfortable?

16 A. No.

17 Q. How many women troopers are there
18 currently in PSU, ballpark, if you have a sense?

19 A. I believe 13.

20 Q. Out of 70?

21 A. Correct.

22 Q. So that we're clear, your testimony
23 today is that you do not believe the Governor
24 treats women PSU members differently than male PSU
25 members, correct?

1 D. Dively

2 A. Correct.

3 Q. You have not heard any stories or
4 rumors about the Governor treating women PSU
5 members differently than men PSU members, correct?

6 A. Correct.

7 Q. Have you ever heard the Governor
8 comment on PSU members' attire?

9 A. No.

10 Q. Have you ever heard about the
11 Governor offering PSU members a tour of the
12 Executive Mansion?

13 A. I have heard him say to members and
14 their families "You should come and -- if you
15 haven't been to the mansion, you should come and
16 take a tour of the mansion. It's beautiful."

17 Same goes for the Capitol.

18 Q. Have you ever heard the Governor
19 offer to personally give members of PSU a tour of
20 the Executive Mansion?

21 A. No.

22 Q. Have you ever heard the Governor ask
23 members of the PSU about the status of their
24 relationships?

25 A. No.

1 D. Dively

2 Q. Are you aware of any situations where
3 women members of PSU's roles have been changed to
4 keep them away from the Governor?

5 A. No.

6 Q. Have you ever heard the Governor
7 comment to anyone on the topic of sex drive?

8 A. No.

9 Q. I know I've asked you generally if
10 you ever heard the Governor say "Can I kiss you?"
11 but are you aware of any situation where the
12 Governor has asked a member of PSU if he could
13 kiss her?

14 A. No.

15 Q. Have you ever seen the Governor kiss
16 a member of PSU?

17 A. Yes.

18 Q. Who have you seen him kiss?

19 A. Well, he's kissed me. I've seen him
20 kiss hello in the context of a hug and kiss hello,
21 I've seen him kiss Investigator [REDACTED]. Could
22 be others that I'm just not thinking of
23 specifically now.

24 Q. In any situation have you ever seen
25 the Governor kiss a member of PSU in a way you

1 D. Dively

2 felt was inappropriate?

3 A. No.

4 MR. WEAVER: Can we go off the record
5 for a minute?

6 MS. MORRIS: Yes.

7 THE VIDEOGRAPHER: We are going off
8 the record.

9 The time is 1:58 p.m.

10 (Recess taken)

11 THE VIDEOGRAPHER: We are back on the
12 record.

13 The time is 2:10 p.m.

14 Q. Technical Lieutenant Dively, prior to
15 Lindsay Boylan tweeting in December 2020 about
16 experiencing sexual harassment with the Governor,
17 were you aware of any potential or actual
18 allegations of sexual harassment against the
19 Governor?

20 A. No, I was not.

21 Q. In order to make sure we're in the
22 same place, what is your understanding of what
23 constitutes sexual harassment?

24 A. I think any type of behavior, whether
25 it is verbal communication or physical conduct of

1 D. Dively

2 some kind that makes a person feel uncomfortable
3 or threatened in any way.

4 Q. Have you witnessed anything that
5 would meet that definition while working for PSU?

6 A. Have I witnessed that from the
7 Governor?

8 Q. From anyone.

9 A. No.

10 Q. Okay.

11 Just to be clear, have you witnessed
12 the Governor's behavior in any way that would meet
13 that definition of sexual harassment?

14 A. No.

15 Q. Have you ever seen the Governor do
16 something that you thought was inappropriate, even
17 if not of a sexual nature, as it relates to his
18 staff?

19 A. No.

20 Q. Did you know Lindsay Boylan?

21 A. I knew who she was.

22 Q. Did you have any interactions with
23 her when she was in the Executive Chamber?

24 A. No, other than I think a couple of
25 times she may have been in a vehicle that I was

1 D. Dively

2 in, but as far as conversation or other
3 interaction, no.

4 Q. Did you have an opportunity to
5 observe her interactions with the Governor?

6 A. On occasion, yes.

7 Q. Did anything stand out from those
8 interactions?

9 A. No, sir.

10 Q. Are you aware that Ms. Boylan put out
11 an article in Medium in February 2021, detailing
12 her allegations of the sexual harassment?

13 A. Yes, sir.

14 Q. Did you read that article?

15 A. I read an article. I believe it's
16 the one you're referring to.

17 Q. Prior to reading that article, did
18 you have any knowledge about the facts and
19 circumstances that she described in that article?

20 A. No, sir.

21 Q. Were you ever on a plane with the
22 Governor and Ms. Boylan at the same time?

23 A. Not that I recall.

24 Q. Have you ever heard the Governor make
25 a reference to strip poker?

1 D. Dively

2 A. No.

3 Q. Did you have any understanding as to
4 how Ms. Boylan joined the Executive Chamber?

5 A. No.

6 Q. Have you discussed Ms. Boylan's
7 allegations with anyone within the PSU?

8 A. No.

9 Q. Have you discussed Ms. Boylan's
10 allegations with anyone within the Executive
11 Chamber?

12 A. No.

13 Q. Have you ever discussed her
14 allegations with the Governor?

15 A. No.

16 Q. So just to be clear, after the
17 allegations first came out, you did not have any
18 discussion with anyone within PSU about the
19 allegations?

20 A. I did have a brief conversation about
21 the article and its existence with -- I think it
22 was at the time Major Straface. Again, just that
23 it existed and that neither one of us had any idea
24 of anything that this allegation involved.

25 Q. Were you surprised by the

1 D. Dively

2 allegations?

3 A. To some degree, yes, but based on
4 just what we see in the media every day about
5 public officials and various people. You know,
6 shockingly, no. I was surprised though, yes.

7 Q. What do you mean, what you see about
8 public officials and people?

9 A. In other words, everything is --
10 every day you open up the paper, someone has some
11 kind of allegations. I just mean, like, shock
12 factor. I wasn't, you know, shocked. I was
13 certainly surprised at the allegations and what
14 they were.

15 Q. Did you know -- do you know Charlotte
16 Bennett?

17 A. I know of Charlotte Bennett, yes.

18 Q. How do you know of Charlotte Bennett?

19 A. I know that she was a Chamber
20 employee.

21 Q. Do you know what her role was?

22 A. Exact title, it was some type of
23 administrative assistant.

24 Q. Where did she work physically?

25 A. If I recall, there was a time she was

1 D. Dively

2 in New York City and then she may have been here
3 in Albany, but I recall her being in New York City
4 at some point.

5 Q. Did you ever really have any regular
6 communications or discussions with her?

7 A. Not anything beyond a greeting.

8 Q. Do you have any knowledge of
9 Ms. Bennett's allegations against the Governor?

10 A. I do not.

11 Q. Did you ever witness any interactions
12 between Ms. Bennett and the Governor?

13 A. No, sir.

14 Q. Do you know Ana Liss?

15 A. I do not.

16 Q. Do you know Alyssa McGrath?

17 A. I do not.

18 Q. Are you aware there have been
19 anonymous allegations about an incident of a
20 staffer being groped in the Executive Mansion?
21 Are you aware of those allegations?

22 A. I am.

23 Q. It's my understanding that it's
24 common knowledge who has made those allegations.

25 Do you have an understanding of who

1 D. Dively

2 has made those allegations?

3 A. I don't know about common
4 understanding. Again, just speculation.

5 Q. Is that speculation from
6 conversations you've had with folks?

7 A. Yes.

8 Q. Who have you had those conversations
9 with?

10 A. Again, I think I've had conversations
11 with the former major about that.

12 Q. Anyone else?

13 A. Not that I'm aware of, no.

14 Q. Do you know the individual?

15 A. If it's one of two individuals that
16 potentially I believe it could be, yes.

17 Q. What type of interactions did you
18 have with those individuals?

19 A. Again, just common day-to-day
20 greetings. You know, that was the extent of it.

21 Q. Can you summarize for me the
22 conversation you had with Mr. Straface?

23 A. Yeah. Again, I think it was just
24 more of a who could this be, who would have had
25 that access and been involved there at that level.

1 D. Dively

2 That was the extent of it.

3 Q. Did you discuss Charlotte Bennett's
4 allegations with Mr. Straface?

5 A. Other than the fact that the
6 allegation was made, I don't think so.

7 Q. Did you discuss the allegations with
8 anyone else at PSU?

9 A. No.

10 Q. Did you discuss the allegations with
11 anyone at the Executive Chamber?

12 A. No.

13 Q. One of the allegations -- one of the
14 individuals who made the allegation is known as
15 Kaitlin by first name only.

16 Are you aware of those allegations?

17 A. I don't know. Which allegations are
18 we --

19 Q. It's an individual who's alleged
20 treatment by the Governor -- the only name that's
21 been publically stated is Kaitlin.

22 Are you aware of that allegation?

23 A. If it's been public, then I would say
24 yes. I guess I'm just not clear on exactly
25 which --

1 D. Dively

2 Q. Which one?

3 A. -- which accusation.

4 Q. Just a second then. Just one second
5 here.

6 I don't think I have -- well, in
7 general, the allegation is that the Governor met
8 an individual at an event and then hired her soon
9 thereafter for a role near the Governor without
10 having really much responsibility within the
11 Executive Chamber and she's been identified as
12 Kaitlin only by first name.

13 Are you aware of that allegation?

14 A. I believe that I read something about
15 that, yes.

16 Q. Do you have an understanding of who
17 Kaitlin is?

18 A. I would make an assumption.

19 Q. What's your assumption?

20 A. Kaitlin -- are you asking me for the
21 individual's name?

22 Q. Yes.

23 Who do you think it is?

24 A. I believe her last name is [REDACTED]. I
25 believe she was assigned to the Executive Chamber

1 D. Dively

2 on the New York City side most of the time.

3 Q. Did you know Kaitlin [REDACTED]?

4 A. Again, just on the level of friendly
5 greetings, etc.

6 Q. Do you recall having regular
7 conversations with Kaitlin [REDACTED] at all?

8 A. Did I have regular conversations with
9 her? No, again, other than the good morning, how
10 you doing, how's your day.

11 Q. Did you ever talk to Kaitlin [REDACTED] about
12 how she came to work at the Executive Chamber?

13 A. No.

14 (Whereupon, Exhibit 12 was marked for
15 identification.)

16 Q. If you could look at tab three in
17 your binder, the email chain to an individual with
18 the email address [REDACTED]@gmail.com.

19 Is your email address?

20 A. It is.

21 Q. It's between you and
22 [REDACTED]@gmail.com.

23 Do you see that?

24 A. Correct.

25 Q. Do you understand this is the Kaitlin

1 D. Dively

2 [REDACTED] that we were just discussing?

3 A. Yes.

4 Q. At the bottom of the chain, it's an
5 email from you noting that you were sad to see her
6 leave, but glad she had a plan for escape and that
7 you hadn't seen her in a while and wanted to know
8 if her endeavor was a secret.

9 Do you recall having personal email
10 communications with Kaitlin [REDACTED] ?

11 A. Not until now.

12 Q. She responds, noting that she left a
13 few months ago, going to [REDACTED] and then talks
14 about maybe you doing a tri with us. I assume a
15 triathlon. I assume that's what that means.

16 Do you recall discussing competitive
17 races or exercising with Kaitlin [REDACTED] ?

18 A. There were brief parts of those
19 conversations with the daily greetings, etc., yes,
20 about me having run a marathon and that she had
21 done some type of a marathon or something. I
22 don't recall how it came up.

23 Q. Do you recall why you reached out to
24 Kaitlin [REDACTED] ?

25 A. Because I had found out that she left

1 D. Dively

2 the Chamber and if I'm not mistaken, I believe
3 that we are linked -- I don't know how you say it.
4 Like LinkedIn connected. Whatever. I don't know
5 what the right terminology is for that.

6 So I heard that she left, so I
7 reached out to her.

8 Q. Do you often reach out to folks after
9 they've left the Executive Chamber?

10 A. No.

11 Q. Why was Kaitlin different than
12 usual?

13 A. I don't know.

14 Q. Did you ever have a discussion with
15 her why she left the Executive Chamber?

16 A. No.

17 Q. You make presumably a joke because of
18 the LOL, but you said you're glad she has a plan
19 for escape.

20 Do you know really what you meant by
21 that?

22 A. I think just the stresses of working
23 in the Chamber.

24 Q. The email chain ends with her saying
25 she'll definitely take you up on the coffee.

1 D. Dively

2 Did you ever end up getting coffee
3 with Kaitlin ?

4 A. No.

5 Q. Did you ever have any discussions
6 with Kaitlin after she left the Executive
7 Chamber after this email exchange?

8 A. No.

9 Q. Prior to her allegations becoming
10 public, did you have any knowledge of the facts
11 and circumstances that she's alleged?

12 A. No.

13 Q. Did you ever witness any interactions
14 between Kaitlin and the Governor?

15 A. Outside of, like, day-to-day
16 interactions?

17 Q. Even day-to-day interactions, did you
18 observe them interacting together?

19 A. Yes.

20 Q. Did anything stand out as unusual?

21 A. No.

22 Q. You noted that you were surprised
23 when Ms. Boylan's allegations first were made
24 public in December 2020. Not shocked you said,
25 but you were still surprised.

1 D. Dively

2 After the additional allegations
3 became public, what was your reaction to seeing
4 all these different allegations?

5 A. On a whole?

6 Q. On a whole.

7 A. I think that I became shocked at the
8 volume.

9 Q. What do you mean by shocked?

10 A. That is a large scale of accusations.
11 That's a lot.

12 Q. Did you talk to anyone within the PSU
13 or even former PSU folks about the volume?

14 A. No.

15 Q. Not even Mr. Straface?

16 A. No.

17 Q. Have you talked to anyone in the
18 Executive Chamber about these various allegations?

19 A. No.

20 Q. Has anyone in the Executive Chamber
21 reached out to you? Even if you haven't spoken to
22 them, have they reached out to talk to you about
23 the allegations?

24 A. No.

25 Q. Has there ever been a situation where

1 D. Dively

2 you felt that the Executive Chamber in any way
3 misused PSU resources?

4 A. No.

5 Q. It took you some time there to think.
6 Were you thinking about specific
7 issues and deciding whether or not you felt they
8 were a misuse of resources?

9 A. I'm trying to think through my time.
10 We're talking about ten or so years that I've been
11 involved with this, so I'm trying to think back to
12 any instances that I feel -- the word was misuse,
13 right? No.

14 Q. Are you aware of any instance where
15 the Governor or the Executive Chamber tried to use
16 State Trooper resources to retaliate against
17 anyone?

18 A. No.

19 Q. Forgive me for not understanding all
20 of the rank issues. I have a couple quick
21 questions to follow up on rank within the PSU.

22 As a technical lieutenant, is that
23 meant to differentiate from the rank of
24 lieutenant?

25 A. It's a position of appointment rather

1 D. Dively

2 than the testing process for the permanent rank of
3 lieutenant.

4 Q. I see.

5 So it's not a permanent rank?

6 A. Correct.

7 Q. And you have to pass tests or other
8 qualifications to obtain a permanent rank; is that
9 correct?

10 A. Correct.

11 Q. You have a permanent rank of
12 sergeant; is that right?

13 A. That is correct.

14 Q. Okay.

15 So therefore there is testing for the
16 rank of lieutenant; is that correct?

17 A. Correct.

18 Q. And so you've not taken those tests?

19 A. I have not.

20 Q. Is there a reason why you've not
21 pursued the permanent rank of lieutenant?

22 A. Primarily timing. In my opinion, I'm
23 coming to the end of my career and that's a very
24 long process from the time you, first of all,
25 invest six to eight months of studying and then go

1 D. Dively

2 through the written test portion. If you score
3 high enough on the written portion, then there's
4 an oral exam board, then a cumulative score and by
5 the time that could be -- at the end of that, that
6 could be another year, year and a half or so down
7 the road before promotion and I -- with my
8 personal life, I don't really see myself being
9 around in, you know, three or four years.

10 Q. Does the technical title apply to
11 other ranks? For example, is there technical
12 sergeants or technical senior investigators?

13 A. There are technical sergeants and
14 other technical lieutenants as well, yes.

15 Q. And all of those are appointments
16 without needing to test?

17 A. Correct.

18 Q. Let me flip through my notes here
19 real quick.

20 Technical Lieutenant Dively, are you
21 aware of anyone in the Executive Chamber who knows
22 that you're testifying today?

23 A. No.

24 Q. Other than your attorney, who did you
25 tell that you were testifying today?

1 D. Dively

2 A. I told my duty senior because I have
3 no other supervisor working today, no other
4 commissioned officer, so I told him that I would
5 be involved in this interview process, off the
6 phone and that if an emergency arises, he can send
7 somebody to interrupt, but otherwise, I'd be out
8 of service.

9 Q. Anyone else that you told?

10 A. No, that's it.

11 Q. During your time as member of PSU,
12 have you witnessed any behavior that you would
13 consider from the Governor to be inappropriate?

14 A. No.

15 Q. Are you aware of any disputes that
16 have arisen between the Governor and the Aviation
17 Unit of the State Police?

18 A. Yes.

19 Q. What disputes are you aware of?

20 A. I know that at times he was upset
21 about or questioning the validity of whether or
22 not the Aviation Unit could make certain flights
23 in certain conditions with certain aircrafts.
24 That's kind of the extent of my knowledge of that
25 dispute.

1 D. Dively

2 Q. What is your understanding of who had
3 final say on whether or not the Aviation Units
4 could make those flights?

5 A. To the best of my knowledge,
6 everything that was set forth as far as safety
7 protocols, FAA standards was adhered to by the
8 Aviation Unit.

9 Q. In any of these disagreements are
10 these situations that you've heard with Governor
11 being more emotional, as you described earlier?

12 A. I don't know if I was actually
13 witness to any of those events. But if we could
14 circle back from it, now that you brought up the
15 aviation piece, that could have been when I
16 brought up Captain [REDACTED]. There could have been
17 an aviation element to that as well.

18 Q. Technical Lieutenant Dively, is there
19 anything that you'd like to add or clarify from
20 what we've talked about today?

21 A. No, sir.

22 Q. Is there anything else that you could
23 think of that would be relevant to the scope of
24 our investigation that we haven't talked about
25 today?

1 D. Dively

2 A. No, sir.

3 Q. If you'd like to make any brief sworn
4 statement, now would be an opportunity to do so.

5 Would you like to do so?

6 A. No, thank you.

7 MR. WEAVER: Before concluding, I do
8 want to take this opportunity to remind you
9 that you have a continuing obligation under
10 the subpoena. If we need to come back to
11 answer additional questions, we will of
12 course contact you through your attorney.

13 I also remind you of the fact, again,
14 under the provision of state law with which
15 we're operating that you and your counsel are
16 not to disclose what we've asked you, what
17 you testified to today with anyone.

18 At this point, I think we are
19 prepared to conclude the examination and go
20 off the record.

21 THE VIDEOGRAPHER: We are off the
22 record.

23 The time is 2:35 p.m. and this
24 concludes today's interview. The total
25 number of media units used was three and

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D. Dively
they'll be retained by Veritext New York.
Thank you all and have a great day.
(Time noted: 2:35 p.m.)

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CERTIFICATION

I, SARA K. KILLIAN, RPR, CCR
and Notary Public of the State of New York,
do hereby certify that DAVID DIVELY,
the witness whose examination under oath
is hereinbefore set forth, was duly sworn,
and that such deposition is a true record
of the testimony given by such witness.

I FURTHER CERTIFY that I am not
related to any of the parties to this
action by blood or marriage, and that I
am in no way interested in the outcome of
this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 11th day of June, 2021.



SARA K. KILLIAN, RPR, CCR

Notary Public of the State of New York