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IN THE MATTER OF INDEPENDENT
INVESTIGATION UNDER
EXECUTIVE LAW 63(8)
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REMOTE PROCEEDINGS
HOWARD ZEMSKY
TUESDAY, JULY 20, 2021
1:32 p.m.

Reference No. 4713377
Reported by: Michele Moskowitz

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A P P E A R A N C E S

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A P P E A R A N C E S

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ALSO PRESENT:

MARC FRIEDMAN, LEGAL VIDEOGRAPHER

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THE VIDEOGRAPHER: Good afternoon.
We are going on the record at 1:32 p.m.
Eastern Standard Time on Tuesday, July 20,
2021. Please silence your cell phones,
computer tone, or any other electronic
devices you have near you. Audio and video
recording will continue to take place unless
all parties agree to go off the record.

This is media unit number one of the
video recorded deposition of Howard Zemsky
in the matter of Independent Investigation
under New York State Executive Law 63(8).

My name is Marc Friedman, I'm the
certified video legal specialist, your court
reporter today is Michele Moskowitz, and we
are both from the firm of Veritext Legal
Solutions.

This deposition is being held via
remote videoconference. All counsel consent
to this remote video arrangement and waive
any objections to this matter of reporting.
If there are any objections to the court
reporter swearing in the witness remotely
and this remote video arrangement, please

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ZEMSKY

state them now.

(No response.)

THE VIDEOGRAPHER: Hearing no objections, counsel will now state on the record their appearances and affiliations beginning with the noticing attorney.

MS. MAINOO: Good morning. Abena Mainoo from the law firm of Cleary Gottlieb but acting as a Special Deputy to the First Deputy Attorney General for the New York State Attorney General's Office.

MR. GRANT: Good afternoon. Yannick Grant of the law firm Vladeck, Raskin & Clark, also here today in my capacity as a Special Deputy to the First Deputy of the New York State Attorney General.

MS. CLARK: Anne Clark, I'm with the law firm Vladeck, Raskin & Clark as well, and also here as a First -- a Special Deputy to the First Deputy Attorney General.

MR. KIM: Joon Kim from Cleary Gottlieb appearing in the same capacity,

MS. LEE: Soo Jue Lee from Cleary Gottlieb, also appearing as a Special

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ZEMSKY

Assistant to the First Deputy Attorney
General.

MR. JOHNSON: Boyd Johnson of
WilmerHale for the witness, Howard Zemsky.

MS. BUDIHAS: Alyssa Budihas, also of
WilmerHale on behalf of Howard Zemsky.

THE VIDEOGRAPHER: Will the court
reporter please swear in our witness and we
can proceed.

H O W A R D Z E M S K Y , after
having first been duly sworn/affirmed by a
Notary Public of the State of New York, was
examined and testified as follows:

EXAMINATION BY

MS. MAINOO:

Q. Please state your name for the
record.

A. Howard Zemsky.

Q. Good morning and thank you for
meeting with us, Mr. Zemsky. Before I start
asking questions, I'm going to give you some
background information and ground rules for your
testimony today.

As you know, the New York Attorney

1 ZEMSKY

2 General has appointed the law firms Cleary
3 Gottlieb and Vladeck, Raskin & Clark to do an
4 independent investigation under New York
5 Executive Law 63(8) into allegations of sexual
6 harassment brought against Governor Andrew Cuomo
7 as well as the surrounding circumstances.

8 You're here today pursuant to a
9 subpoena issued in connection with this
10 investigation. I'll note at the outset that
11 today's proceeding is being video recorded. You
12 are under oath, which means you must testify
13 fully and truthfully just as if you were in a
14 court of law sitting before a judge and a jury.
15 Your testimony is subject to a penalty of
16 perjury.

17 Do you understand that, Mr. Zemsky?

18 A. I do.

19 Q. If you'd like to make a brief sworn
20 statement, we ask that you do so at the end of
21 our examination today. Do you understand that?

22 A. I do.

23 Q. Although this is a civil
24 investigation, the New York Attorney General's
25 Office also has criminal enforcement powers. You

1 ZEMSKY

2 have the right to refuse to answer a question if
3 answering the question would incriminate you, but
4 any failure to answer can be used against you in
5 a court of law in a civil, noncriminal
6 proceeding. Asserting your Fifth Amendment
7 privilege does have evidentiary significance. If
8 you choose to assert your Fifth Amendment
9 privilege, that fact could be presented to a
10 judge or a jury in a civil proceeding, who would
11 be free to draw a conclusion from your assertion
12 of that privilege.

13 Do you understand that?

14 A. I do.

15 Q. You're appearing today with your
16 attorneys. You may consult with them if you have
17 any questions about the attorney-client
18 privilege. Do you understand?

19 A. I understand.

20 Q. And we have a court reporter present
21 with us virtually, and she needs to take down my
22 questions and your answers to create a
23 transcript. So that the reporter can create a
24 clean record, please provide a verbal response to
25 each question. So please do not shake or nod

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ZEMSKY

your head or give responses like "mm-hmm." Do you understand?

A. I do.

Q. If you do not know the answer to a question, please say you do not know. Please let me finish my question before you begin to answer and I'll try to do the same so we don't talk over each other. This is important to let our court reporter create a clean transcript.

You'll not be permitted to review a transcript of your testimony. If at any time today you want to clarify an answer you have given, please let me know. If you do not understand a question, please let me know and I'll try to ask the question differently.

I will be asking about names and dates and other specific information, even if you don't remember a specific name or date, I'd ask that you give me your best approximate answer while indicating that your answer may not be exact.

If you need a break at any point, just let me know, but if there is a question that you haven't answered yet, please answer the

1 ZEMSKY

2 question first and then we'll take a break.

3 Mr. Zemsky, please confirm who's in
4 the room with you.

5 A. Boyd Johnson from WilmerHale.

6 Q. And please confirm that you're not
7 using any technology to create a recording of the
8 proceeding on your end, including screen-
9 capturing tools.

10 A. I am not using any technology at all.

11 Q. And please confirm that you're not
12 letting anyone else listen in, including through
13 any devices.

14 A. I am not letting anyone listening in
15 in any way.

16 Q. And please confirm that you are not
17 and you will not communicate in real time or
18 during breaks with anyone else about the
19 substance of your testimony.

20 A. I will not communicate at any time in
21 any way the substance of the testimony.

22 MS. MAINOO: And Counsel, please
23 provide the same confirmations.

24 MR. JOHNSON: I provide the same
25 confirmations. Obviously I may need to

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consult with Howard himself about the testimony as his lawyer, but otherwise I agree.

MS. MAINOO: Thank you. And Ms. Budihas?

MS. BUDIHAS: Also agreed. And as Mr. Johnson said, we may need to consult with our -- with our client.

Q. Mr. Zemsky, Executive Law 63(8), the provision under which this investigation is being conducted, prohibits you and your counsel from revealing anything about what we ask or what you say during your testimony to anyone. If anyone asks you to disclose any such information, please let us know, including any reason they give for seeking such information, and we'll discuss with you whether any disclosure will be permitted.

Please note that you are protected from retaliation for participating in today's testimony. We ask that you let us know if you are concerned about any potential retaliation from anyone, including the Executive Chamber.

Mr. Zemsky, are you taking any medication or drugs that might make it difficult

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ZEMSKY

for you to understand my questions?

A. No.

Q. Have you had any alcohol today?

A. No.

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

A. No.

Q. Please state your name, date of birth, and current home and business address for the record.

A. Howard Allen Zemsky, [REDACTED], and I reside at [REDACTED] [REDACTED].

Q. And what is your business address, Mr. Zemsky?

A. My business address is [REDACTED] [REDACTED].

Q. Have you ever given testimony before?

A. I have.

Q. When was that?

A. Some years ago as a matter of a car accident.

Q. And did you testify at a trial?

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ZEMSKY

A. No.

Q. Mr. Zemsky, did you do anything to prepare to testify today?

A. I tried to, you know, recall events of the past and review some documents.

Q. Other than any documents you may have reviewed with your counsel or anything you did with your counsel, did you review documents or do anything in preparation to testify today?

A. No.

Q. How many times did you meet with your counsel?

A. Over the past -- a few times.

Q. Which counsel did you meet with?

A. I met with -- I met with counsel who is present today.

Q. Did you speak with anyone else in preparation for your testimony other than your counsel?

A. No.

Q. And besides counsel, have you spoken with anyone about the fact that you are speaking with our investigative team?

A. No. No one outside my family.

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Q. Have you spoken with anyone about testimony that she or he has given to the investigative team or in a meeting with the investigative team?

A. No.

Q. We're going to turn to tab E in the electronic binder that we gave you and we're going to put it up on the screen. We'll mark it as an exhibit.

(Testimony subpoena was marked Exhibit 1 for identification, as of this date.)

Q. Mr. Zemsky, is this the testimony subpoena you received from our office?

A. Yeah.

Q. Did you read the subpoena?

A. Yeah.

Q. You understand that this testimony is being taken pursuant to this subpoena?

A. Yes.

Q. We'll put that down and we'll put up tab D. Thanks.

Mr. Zemsky, is --

MS. MAINOO: And we'll mark this as

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ZEMSKY

an exhibit.

(Document subpoena was marked Exhibit 2 for identification, as of this date.)

Q. Mr. Zemsky, is this the document subpoena you received from our office?

A. Yeah. Yes.

Q. Did you read the subpoena?

A. Yes.

Q. What did you do to collect documents in response to this subpoena?

A. I worked with a lawyer and -- from WilmerHale and went through, you know, a process that they led to make sure we retained all documents and searched all relevant documents.

Q. Mr. Zemsky, I'm going to turn now to any observations you made of the Governor's interactions with Lindsey Boylan.

Mr. Zemsky, when you were at ESD, at Empire State Development, did you ever observe interactions between Lindsey Boylan and the Governor?

A. Yes.

Q. What did you observe about those interactions?

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ZEMSKY

A. Well, I observed, you know, a wide -- mostly I observed what you would describe as normal, professional interactions and I did observe some, you know, other interactions.

Q. Can you speak about what you just described as "other interactions" that you observed other than the normal professional interactions you first mentioned?

A. There was times when the Governor would comment on her appearance or her wardrobe, things of that nature.

Q. What do you remember about the Governor commenting on Ms. Boylan's appearance?

A. There was an instance in particular where I recall him commenting on her appearance relative to Hollywood actresses of the past, I think there were three, although I can't recall who they were, commenting that she was, you know, even better looking than they were, things -- something to that effect.

Q. Was one of those actresses Sofia Loren?

A. Quite possibly.

Q. What do you remember the Governor

1 ZEMSKY

2 saying when he was commenting on Ms. Boylan's
3 appearance relative to that of Hollywood
4 actresses?

5 A. I -- you know, I remember him saying
6 that she was, you know -- I don't recall the
7 exact words, but these -- the -- the essence of
8 it was that she was, you know, even more
9 attractive than these actresses, you know, even,
10 you know, better looking or -- I don't remember
11 the words, but, you know, that's the essence of
12 it.

13 Q. And -- sorry. Please go on.

14 A. I think that says it.

15 Q. And how did Ms. Boylan react?

16 A. I don't recall any -- a reaction.

17 Q. How did you react?

18 A. I thought it was, you know,
19 inappropriate. I was, you know, uncomfortable.
20 I thought it was, you know, kind of inappropriate
21 to say that.

22 Q. And what did you think was
23 inappropriate about saying that?

24 A. Well, that you would, you know, be
25 speaking to, you know, a woman, you know, who

1 ZEMSKY

2 worked for you about, you know, how attractive
3 they are. You know, you'd be putting them in
4 that, you know, uncomfortable, awkward position.

5 Q. Do you remember if anyone else was
6 there when the Governor made the comments about
7 Ms. Boylan's attractiveness?

8 A. There were other people there. You
9 know, I would be speculating on exactly who was
10 there, but I could do that. I'm not sure exactly
11 who was there, but there were always some other
12 people on the plane other than myself, Lindsey,
13 and the Governor, so in -- I can tell you who I
14 think it may have been.

15 Q. Who do you think it may have been?

16 A. It may have been John Maggiore, but
17 I'm not sure. It -- there may have been --
18 almost certainly would have been a press person,
19 but I don't recall which press person. There may
20 have been a -- you know, we almost always
21 traveled with a state trooper, I don't know who.
22 But that was generally the, you know, complement
23 of people.

24 There might be myself, and if Lindsey
25 was there, there might be, you know, another

1 ZEMSKY

2 support staff who worked for the Governor, there
3 might -- there almost certainly would be a press
4 person, there almost certainly would be a
5 trooper, and then of course there would be, you
6 know, pilots.

7 Q. I was going to ask you if you
8 remembered where you were when the Governor made
9 the comments. Based on your testimony, it sounds
10 like you're saying it was on a plane?

11 A. Yes. I'm sorry. Yeah, it was on the
12 plane.

13 Q. And how is it that you remember that
14 you were on a plane when you heard these comments
15 from the Governor?

16 A. I just do. I remember being on the
17 plane.

18 MR. KIM: Can I ask a question?

19 MS. MAINOO: Of course.

20 MR. KIM: Mr. Zemsky, how often did
21 the Governor make comments about
22 Ms. Boylan's appearance?

23 THE WITNESS: Like, that was I think,
24 you know, memorable to me. It was not that
25 often. It was, you know, she -- he might

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ZEMSKY

make a comment about an accessory or something, a handbag or glasses or something like that, you know, the kind of comment that I described just a short while ago was unusual.

MR. KIM: The Hollywood actresses type comment, was -- you just recall once?

THE WITNESS: That I recall -- I'm sorry.

MR. KIM: Do you recall that being once or more than once, the Hollywood actresses comparison?

THE WITNESS: I recall that one time.

MR. KIM: Okay. But other instances are of just accessories, clothing, or things of that nature?

THE WITNESS: Yeah. Or -- and I'm not 100 percent -- it might be, you know, something like -- yeah, that -- that's what I recall. But there may -- may have -- I'm speculating. Those -- that's what -- those are the instances that I -- I do recall.

MR. KIM: Okay. Thank you. Sorry, Abena.

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ZEMSKY

MS. MAINOO: Thank you.

BY MS. MAINOO:

Q. And just to cover the second type of comment that you mentioned, Mr. Zemsky, you testified that the Governor would comment on Ms. Boylan's wardrobe, what do you remember about the Governor commenting on Ms. Boylan's wardrobe?

A. And you know, it may have something like a handbag or "nice handbag" or he might have known the designer handbag if it was -- it may not have been a designer handbag, but he might comment on it. Or maybe glasses or something of that nature, a jacket. I'm not -- I'm not 100 percent positive. You know, some article of clothing or accessory.

Q. How often do you remember the Governor commenting on an article of clothing that Ms. Boylan wore?

A. From time to time. Not generally. I'm not going to be able to put a number on that. A few times maybe. A few times.

Q. Do you remember where you were when you heard those comments from the Governor?

A. Oh, on the plane.

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ZEMSKY

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Q. And were there other people on the plane too?

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A. Yeah. I would answer that the same way I -- I answered your last inquiry about people on the plane. I -- I'm not always sure if it's the same trip or different -- you know, sometimes it's different trips, but oftentimes there'd be the same or similar people on -- on the plane. You know, various positions changed in the Chamber.

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Q. And how did you react to the Governor's comments about Ms. Boylan's wardrobe?

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A. You know, I didn't -- I didn't react strongly as I -- in the way that I -- you know, it was inappropriate, but it didn't -- I didn't react in -- kind of in the way I did relative to, you know, the actresses. So I thought, you know, it's unusual, better left unsaid, but, you know, it didn't strike me in the way that, you know, you're more beautiful than all these people.

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Q. Do you remember when the Governor made these comments about Ms. Boylan's -- let's start with her appearance, her attractiveness?

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A. You know, it would have been sometime

1 ZEMSKY

2 after -- of course after she started, you know,
3 joining some of these trips on the plane. So I
4 don't know exactly when that was. It would
5 have -- I believe it would have been sometime in
6 2017, but I'm not -- I'm really not quite sure.
7 It would have almost certainly been in 2017 or
8 2018.

9 Q. Same question about the Governor's
10 comments about Ms. Boylan's wardrobe, do you
11 remember when he made those comments?

12 A. No. I wouldn't -- I'd give you the
13 same answer again. I don't -- not -- I'm really
14 not sure.

15 Q. And how often would you be on plane
16 rides with Ms. Boylan and the Governor in 2017?

17 MR. JOHNSON: I'm just trying to
18 confirm the time frame of that question. I
19 just -- you dropped out a bit at the end.

20 MS. MAINOO: Okay.

21 Q. So the question was Mr. Zemsky, how
22 often -- I'll break it down.

23 How often were you on plane rides
24 with the Governor and Ms. Boylan in 2017?

25 A. You know, it -- it varied. There

1 ZEMSKY

2 were weeks when, you know, we might be doing
3 multiple -- you know, in one day you might do
4 three legs of a trip. It might start in Albany
5 and go to Utica, go to Syracuse, go to Buffalo.
6 There might be weeks and weeks where there were
7 no -- no trips at all. So it did vary quite a
8 bit. It was somewhat unpredictable but -- and
9 I'm not sure how to put exact number on it.

10 I'm sure we could find out what the
11 exact -- you know, when we were all on the plane
12 trips, but it -- it was -- it was variable. It
13 wasn't terribly predictable. Sometimes it would
14 be scheduled. It might get unscheduled, it might
15 get postponed, and I wouldn't -- I wouldn't know
16 how to put a number on how many trips we were on
17 in 2017 because I -- and I know we can find out.

18 Q. Sure. And how about in 2018?

19 A. Same. Same answer. I'm not sure.

20 Q. Okay. And did any of the other
21 people who were on the plane react to the
22 Governor's comments about Ms. Boylan's
23 attractiveness?

24 A. I don't -- you know, not to me.

25 Q. Did any of the other people on the

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ZEMSKY

plane react to the Governor's comments about Ms. Boylan's wardrobe?

A. No, not to me.

Q. And other than hearing the Governor comment on Ms. Boylan's appearance or wardrobe, are there any other interactions between Ms. Boylan and the Governor that stand out to you or stood out to you?

A. Those were -- those were the main -- those were really the primary ones. I can't -- you know, unaided those are the ones that really stood out, you know, stood out to me, one in particular.

Q. Did you ever hear the Governor comment generally on Ms. Boylan's physical appearance?

A. Not beyond what I've described.

Q. Did you ever hear the Governor make comments along the lines of, "You look lovely today" to Ms. Boylan?

A. Yeah. I think he -- I think on occasion.

Q. Did you ever hear Ms. Boylan comment on the Governor's physical appearance?

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ZEMSKY

A. No.

Q. Did you ever hear Ms. Boylan comment on the Governor's clothes?

A. No.

Q. Did the Governor ever comment on your physical appearance?

A. Yes.

Q. And what's the reason you're laughing, Mr. Zemsky?

A. Sorry. You know, sometimes I'd look a little disheveled or tired or he'd fix my tie or he'd straighten something on my -- you know, the way I was looking.

Q. Did the Governor ever comment on your attractiveness?

A. No.

Q. Did you observe any touching between the Governor and Ms. Boylan?

A. You know, not -- not on the plane. It may be, you know, putting his hand on her shoulder or something like that, which he did to a lot -- a lot of people, but that's what I -- that's all I observed.

Q. Did you ever see the Governor kiss

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ZEMSKY

Ms. Boylan?

A. I have not. I don't recall seeing her -- him kiss Ms. Boylan.

Q. Did you ever speak to Ms. Boylan about her interactions with the Governor?

A. I did. I asked her if -- if she wanted me to intervene potentially to try to change that dynamic, you know, stem those comments.

Q. Do you remember what you said?

A. I said something to the effect of, "Look, you know, the Governor has" -- you know, "Seems to me the Governor has a crush on you, he's making these comments on the airplane, is there something you'd like me to do to try and change that dynamic or stop the comments or anything of" -- you know, "Would you like me to get involved, try to get involved or try to make a change?"

Q. How did she respond?

A. She responded that, you know, she didn't want me to. She said she was -- you know, kind of gestured with her hand, like, you know, and said something like, "I'm okay. I've got

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ZEMSKY

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this" or "I'll handle it," some -- I can't recall

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exactly, but it was -- that was the essence of

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it.

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Q. Did you continue the conversation

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after Ms. Boylan said something along those lines

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of she was okay, she had it, and would handle it?

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A. I said if you -- I did say if you --

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you know, let me know if you change your mind.

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Q. Do you remember when you had this

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conversation with Ms. Boylan?

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A. I don't remember when I had the

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conversation. Sometime after -- sometime I think

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pretty shortly after a plane trip. I don't

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remember which plane trip. And I don't remember

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the -- the date or even the approximate date.

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Q. Do you remember if it was before or

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after Ms. Boylan joined the Chamber as deputy

19

secretary?

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A. I believe it was before.

21

Q. What's the reason you had that

22

conversation with Ms. Boylan?

23

A. Because I wanted to -- you know, I

24

didn't know exactly -- I really didn't know how

25

she was feeling and I thought -- you know, she

1 ZEMSKY

2 didn't give me an indication. I thought it was
3 appropriate for me to intervene, you know, if
4 that was something that was on her mind that
5 wasn't apparently on her mind, if there was
6 something I could do to, you know -- if it was a
7 change she was looking for, how I might be
8 helpful and so I asked.

9 Q. After your discussion with
10 Ms. Boylan, did you get a sense of how she was
11 feeling about her interactions with the Governor?

12 A. I -- you know, I didn't. Because she
13 was -- you know, she didn't express
14 consternation, she didn't express satisfaction,
15 she just, you know, sort of said I should leave
16 it alone.

17 Q. Did you speak with anyone else about
18 the Governor's -- let me start again.

19 Did you speak with anyone about your
20 observations of the Governor's interactions with
21 Ms. Boylan?

22 A. No. I don't recall. I don't recall
23 speaking to anyone else about it.

24 Q. And other than having the
25 conversation with Ms. Boylan, did you consider

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ZEMSKY

taking any steps to intervene?

A. Not -- not really. I -- I wanted to check with her is -- really was my -- the most important thing from my standpoint.

Q. Did you speak with the Governor about what you'd observed about his interactions with Ms. Boylan?

A. I didn't.

Q. Did you think about discussing that with the Governor?

A. No. Not after my conversation with -- with Lindsey I didn't.

Q. What's the reason that you said you wanted to check with Lindsey and that was the most important thing from your standpoint?

A. Because it just -- that's how I thought of it. I thought of it like -- you know, I wasn't able to determine one way or the other how she was feeling about it and I thought it was appropriate to ask her and not just start taking -- you know, I didn't know what she would have wanted, whether she did or didn't. I thought, you know, she could have -- I just -- it's just what I thought.

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ZEMSKY

Q. Did you consult any policies or guidance about how to handle a situation like that?

A. No.

Q. At the time were you familiar with ESD's policy on sexual harassment?

A. Yeah. I had taken some of the, you know, videos and/or, you know, group discussions how we did it.

Q. Did you think about the Governor's interactions with Ms. Boylan with reference to ESD's sexual harassment policies?

A. I -- I mostly thought about it as, you know, my sensibility about what this might be in terms of appropriateness and what -- if there were next steps, if there was something I could do. I was mostly interested in, you know, how she felt about it and that's where I started and stopped.

Q. And did you have any other discussions with Ms. Boylan other than the one you've just described about her interactions with the Governor?

A. Did I have -- can you just say that

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ZEMSKY

one more time?

Q. Other than the conversation you've just described, did you have any other conversations with Ms. Boylan about her interactions with the Governor?

A. Did I have any other conversations with Lindsey about her interactions with the Governor... Of any kind? Of this nature?

Q. Of this nature. For example, did you have a follow-up discussion with Ms. Boylan?

A. Oh, that's -- I don't -- I don't recall honestly. I don't recall.

Q. Okay. Mr. Zemsky, did you ever hear the Governor make a comment to Ms. Boylan about playing strip poker?

A. Yes.

Q. What did you hear the Governor say?

A. He said something like, "Hey, want to play strip poker?"

Q. Who was that statement directed at?

A. I think it was directed at Ms. Boylan.

Q. And what's the reason you think it was directed at Ms. Boylan?

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ZEMSKY

A. Because she was sitting across from him and...

Q. How did Ms. Boylan -- sorry. Please go ahead.

A. No, that -- that's it.

Q. How did Ms. Boylan respond?

A. She responded, you know, facetiously, "Yeah, that's what I was thinking." I mean, I think he asked the question, in my opinion, facetiously, she responded facetiously. It was a pretty quick exchange. That's my full recollection of -- that's as long as the conversation was.

Q. Do you remember what happened in the conversation next after that quick exchange?

A. I think nothing.

MR. KIM: Can I ask a question? What about before, what led to that question?

THE WITNESS: I think it was just an impulse. I don't know. Just a complete random, like -- I'm pretty sure we had just gotten back on the plane after an event, it was just a...

MR. KIM: You don't remember any

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ZEMSKY

discussion immediately prior? It came out of the blue a little bit?

THE WITNESS: Yes. That's what I would say, it came out of the blue. It wasn't -- it wasn't some conclusion from a conversation or -- it was just random. That's my recollection.

BY MS. MAINOO:

Q. And I think you just mentioned that the Governor made the comment about strip poker on the plane?

A. On the plane.

Q. Who else -- who else was there when he made the comment?

A. If I can just refer to the last answers about who was on the plane, because I'm not sure, but I -- I know we can look in a -- I don't know. We -- we can't look in a manifest, but I think the same -- I think it was the same or similar people that were in my earlier answers.

Q. Okay. Do you have a specific recollection of anyone who was on the plane other than the Governor and Lindsey?

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ZEMSKY

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A. John, John Maggiore. You know, some of it is what I remember, some of it is what I've learned because I was on a call and they were on it so, you know, I'm not 100 percent sure, but I conclude, you know, that John, maybe Dani Lever, myself, Lindsey, and the Governor.

3

Q. Can you describe where everyone was sitting on the plane?

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A. So yes, I can. The Governor was sitting -- the Governor -- there's four seats that are two and two facing each other with a small aisle in between. The Governor and Lindsey were facing one another, John and I were facing one another, and then behind that would have been I believe Dani Lever and then maybe a -- probably a state trooper. And I might miss -- be missing one person there, but that's what I recall.

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Q. As to the four people who are sitting facing each other, can you describe how they were sitting in terms of who was next to each other?

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A. I was next to the Governor, John was next to Lindsey, the seat in the back is -- I think is kind of more like solo in a way, it's sort of back there, and then there's maybe a jump

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ZEMSKY

seat, I'm not sure, for looking...

Q. Did you say anything in response to the exchange between the Governor and Lindsey?

A. I don't believe so.

Q. And do you remember if anyone said anything in response to either the Governor or Lindsey?

A. I don't believe so.

Q. And do you remember whether it's in terms of years or months when this exchange took place?

A. It was, you know, sometime in '17 or '18, but I don't recall when in months or...

Q. Mr. Zemsky, earlier this year you signed onto a statement saying a conversation between the Governor and Lindsey Boylan about strip poker did not happen, correct?

A. Right, correct.

Q. How did you come to sign on to that statement?

A. I was on a -- I was brought into a conference call by Melissa DeRosa's office. I was asked to join a call. I had been working -- I had been doing something entirely different up

1 ZEMSKY

2 until that point. I got on the call. I think
3 Melissa's assistant said, you know, "Please hold
4 for Melissa." There were some other people on
5 the call, Melissa came on and said something to
6 the effect of -- do you want me to just keep
7 rolling?

8 Q. Yes, please.

9 A. Okay. Melissa said something to the
10 effect of, "Did the Governor want to play
11 strip" -- you know, I'm not going to be able to
12 get this verbatim -- "Did the Governor want to
13 play strip poker on a plane? Lindsey Boylan said
14 the Governor," -- you know, I don't remember.
15 "Lindsey Boylan said the Governor wanted to play
16 strip poker" or "Lindsey Boylan said the Governor
17 invited her to play strip poker."

18 And then she -- you know, she -- I
19 think she read a quote from Lindsey saying the
20 Governor invited her to play strip poker and did
21 this happen. And you know, it was just very odd
22 conversation and she said, you know, "Is everyone
23 good with signing on to this, you know,
24 statement?" I was like -- it was -- I said, "I
25 got to go" -- you know, "go back and read, you

1 ZEMSKY

2 know, what you're talking about."

3 It was a very sudden change in my
4 moment in time. And I called -- you know, I
5 called John and I said, "Okay. This is something
6 like" -- "Okay. This is about as odd as it
7 gets." You know, I trust John tremendously. I'm
8 like, "Am I" -- "What am I missing?" You know,
9 like, "Have you ever heard the Governor say
10 anything like this?" Like, "Give me" -- "Give me
11 something here, I'm not following this." And he
12 was like, "I've never heard the Governor say
13 anything like that in 20 years working with him."
14 It's like okay. I sort of -- the whole thing was
15 very odd, you know.

16 Q. And then what happened?

17 A. I was trying to imagine, you know,
18 what it would be like, you know, how might this
19 happen, you know, how -- how might a game of
20 strip poker happen on this plane or how unusual
21 that is. And then Melissa called back and -- you
22 know, I can't recall. We talked -- I agreed to
23 sign, you know, to the statement. I hadn't --
24 really I just was going through my memory of
25 playing strip poker on the plane, talking about

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ZEMSKY

playing strip poker, anything like that, you know, any -- in the context of, you know, really, I mean, playing strip poker on the plane, it was -- I just couldn't -- I didn't have the slightest inkling of that and I agreed.

MR. GRANT: Was it your -- sorry, Abena.

MS. MAINOO: Go ahead.

MR. GRANT: Was it your understanding that Ms. DeRosa was asking whether the Governor had expressed that he actually wanted to play strip poker in fact and not just in jest?

THE WITNESS: You know, yeah, I -- I didn't see anything either in their conversation or in the article itself that referenced anything about in jest.

MR. GRANT: And my question was a little bit more directed as to what Ms. DeRosa was asking for. Was Ms. DeRosa asking whether the Governor actually expressed his desire in fact and not just in jest?

THE WITNESS: Yes. I interpreted it

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ZEMSKY

as not in jest.

MR. GRANT: Thank you.

BY MS. MAINOO:

Q. Just backing up to this conference call that you said you were brought into, how did you join this conference call?

A. I believe I received a cell phone call from Melissa DeRosa's office. It's -- there's a -- that's my best recollection. You know, it's possible they left a message or -- but I believe I received a phone call, "Please hold for" -- "Mr. Zemsky, Melissa, you know, wants to speak with you. Please hold for Melissa." And I was -- then I was on a call. I didn't know what the topic was. There were people on it, I was the last to join, and then she joined and that's how I ended up on the call.

Q. Who else was on the call, as far as you can remember?

A. I believe that John Maggiore was on the call and Rich Azzopardi was on the call, I believe Dani Lever was on the call, I believe Melissa was on the call, I -- there might have been one more person on the call. I don't -- I'm

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ZEMSKY

not 100 percent sure. Those are the people I remember.

Q. Do you remember when this was?

A. I believe it was the same day that the article appeared about strip poker. I don't remember -- The New York Times article.

MR. GRANT: Going back to the plane, when you flew with the Governor and Ms. Boylan, where did Ms. Boylan typically sit?

THE WITNESS: She typically sat across from him.

MR. GRANT: And do you know any reason for why Lindsey typically sat across from the Governor on these flights?

THE WITNESS: I don't. I wasn't involved in, like, the seating arrangement.

MR. GRANT: Thank you.

BY MR. MAINOO:

Q. Just now when we were talking about the date, you said you think that the conference call took place on the same day as an article, had you read that article when you joined the conference call?

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ZEMSKY

A. I don't believe so.

Q. Did you read that article at any point?

A. Yeah. I read -- well, Melissa read, you know, the -- Melissa read the -- what Lindsey had said in one of the -- one of the calls -- on the call, in the conference. Lindsey said this and this and the Governor -- you know, Lindsey said the Governor said this and she said this.

Q. And you said earlier that Melissa had also said on the conference call, "Is everyone good with signing the statement," when you were on the conference call, was there any discussion about a statement?

A. You know, it was more like -- I think she kind of went around, "Are you okay with this?" Name a person, "Are you okay with this? Are you okay with this? Are you okay with this?" Name a person, "Are you okay with this?"

Q. And so did she read what the statement would say?

A. I believe so. Yes, I believe so.

Q. What do you remember about what Melissa said during the conference call about the

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ZEMSKY

statement?

A. I just remember something of the statement, you know, that the conversation didn't happen. We were all on the flight, the conversation didn't happen.

Q. Did you remember Rich Azzopardi saying anything during that conference call?

A. I don't. I don't remember Rich Azzopardi saying anything during the conference call.

Q. So you mentioned that there was a conference call, you spoke with John Maggiore and then Melissa DeRosa called back, did anything happen in between the conference call and the second call with Melissa other than you calling John?

A. I don't believe so.

Q. Did you read the article that Melissa was quoting from before you spoke with Melissa the second time?

A. You know, I started pulling it up. I was talking to John. Melissa called back. I don't remember what, you know, the -- I don't recall the -- the exchange was a very short

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ZEMSKY

exchange, so I think that's what I was focused on. I didn't read the article in that time. It was a -- these events happened pretty close in sequence to one another.

Q. Do you know how much time passed between the conference call and the second call with Melissa?

A. Not much time.

Q. Was it an hour or less than an hour?

A. Less than an hour.

Q. Was it less than 15 minutes?

A. Yes. I would say yes.

Q. Was anyone else on the call the second time you spoke with Melissa?

A. I think she said there was like a Governor's attorney on the call.

Q. Did she say who that was?

A. I don't recall. I don't think so. I don't know. I just don't remember.

Q. What did Melissa say during that second call?

A. She said, you know, "Are you okay with this?" I don't know. "Are you okay with this? Here's the statement." "Here's the

1 ZEMSKY

2 statement. Here's what" -- that's my best
3 memory.

4 Q. What did you say?

5 A. I said, "Okay."

6 Q. Did you consider saying that you
7 would not join in the statement?

8 A. I -- you know, I -- I thought about
9 it.

10 Q. Did you ever say to -- did you ever
11 say anything to Melissa about not joining the
12 statement?

13 A. I said, "I want to" -- you know, "I
14 need more time to see what it said, what was
15 said" and, you know, that type of thing.

16 Q. Did she say anything in response?

17 A. "I'll call you back."

18 Q. Did she say anything to encourage you
19 to join the statement?

20 A. Yeah. I think she said, you know,
21 "Other people are joining the statement,"
22 something to that effect.

23 Q. Do you know if the Governor was
24 involved in any discussions about the statement?

25 A. I don't.

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ZEMSKY

Q. Did anyone say whether the Governor denied making the statement?

A. I mean, either it was in -- either it was in the article I think or -- I don't know -- I'm aware that he denied making the statement.

Q. At the time you agreed to join -- sorry, I'll be more specific.

At the time you agreed to join the statement saying this conversation didn't happen, did you know if the Governor had denied making the strip poker comment?

A. I -- I don't recall.

Q. Did you review the statement that was issued saying that the conversation never happened? Did you ever read it before it was issued?

A. I read it or it was read to me.

Q. And what's the reason you agreed to join the statement?

A. I had -- I had 0.0 recollection of any conversation about strip poker.

Q. At the time you agreed to join the statement, did you think about the Governor's previous comments about Ms. Boylan's

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ZEMSKY

attractiveness?

A. No.

Q. Did you have any concerns about agreeing to join the statement at the time?

A. You know, I had some hesitancy just to get in -- you know, into something, but I was so certain about that there was no discussion of strip poker on the plane I agreed to the statement.

Q. And what did you mean when you said you had some hesitancy to get into something?

A. I mean, just, you know, it -- it -- you know, that it really didn't involve me.

Q. And what's the reason you still agreed to join the statement despite your hesitancy?

A. I think it was -- you know, it was -- it was -- to my mind it was a -- it was a true statement.

MR. GRANT: Did you feel pressured in any way to join onto the statement?

THE WITNESS: You know, I feel there's some -- I think there's some degree of pressure in that situation when you're,

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ZEMSKY

you know, on a conference call and, you know, not given much time, things of that nature. I mean, I think that's just sort of a natural feeling.

MR. GRANT: Gotcha. And just so we're clear, Ms. DeRosa never shared the written statement with you before it was released, correct?

THE WITNESS: I think she did. I think she read it and/or -- I think she read it. Read it. I think she read it.

MR. GRANT: She read it, but she never sent you here's the final -- you know, here's the press release, this is what's going to the AP?

THE WITNESS: I -- I don't recall receiving -- receiving that. It's possible, but I just don't recall.

MR. GRANT: Gotcha.

BY MR. MAINOO:

Q. Did you feel any pressure to agree to join the statement due to the fact that the request was coming from the Executive Chamber?

A. I think there's some feeling of that.

1 ZEMSKY

2 Q. Can you speak more to that?

3 A. Just, you know, Melissa works for the
4 Governor, it's just, you know, there's just a
5 natural feeling that it's of, you know, she's
6 asking about this statement, you know, I think
7 there's a certain feeling of importance.

8 Q. How does that certain -- how does
9 that certain feeling of importance influence
10 whether or not you'll agree to a request coming
11 from the Executive Chamber?

12 A. Well, it -- if I didn't -- if I
13 wasn't -- it wouldn't if I was sure of the
14 statement. So it in no way would of have
15 influenced my decision.

16 Q. But you're saying because at the time
17 you had no recollection of hearing the Governor
18 make the comment about strip poker and then the
19 request came from the Executive Chamber, so you
20 were more willing to agree to join the statement?

21 A. Yeah. But first and foremost, it's a
22 statement that was so incredibly unplausible and
23 I was just -- there was no doubt in my mind about
24 that we never had a discussion on the plane, nor
25 could you play strip poker.

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Q. So we're going to put up tab C and mark it as an exhibit.

MR. GRANT: Sorry. Before we ask any questions about the tab, following up on what you just said now about nor could you play strip poker, was that important to you because you understood the request being -- from Ms. DeRosa to agree that there was not talk in fact of playing strip poker on the plane?

THE WITNESS: Yeah. That there was never a conversation -- my -- my understanding is there was never a conversation to play strip poker on the plane.

MR. GRANT: Because in part it would be in your understanding impossible to do so on the plane given the space limitations and other limitations?

THE WITNESS: No. In part. I mean, largely because it was just so -- it would have been so memorable and so absurd it's just unimaginable that, you know, the Governor would have in any seriousness

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ZEMSKY

wanted to play strip poker on the plane.

MR. GRANT: Gotcha.

(Statement was marked Exhibit 3 for identification, as of this date.)

BY MR. MAINOO:

Q. So looking at Exhibit -- tab C, which is an exhibit, do you recognize it, Mr. Zemsky?

A. Yes.

Q. What is it?

A. It's a statement from the Governor's office, issued by the Governor's office, attributed to several people: John, myself, Dani, Abbey, saying we were -- on each of those October flights and this conversation did not happen, referring to strip poker.

Q. Do you remember any discussions with Abbey Fashouer Collins about the strip poker comment?

A. I don't.

Q. And do you remember if Abbey Collins was on the plane when the Governor made the comment about strip poker?

A. I'm assuming she was, but I don't remember that she was.

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Q. What's the reason you're assuming that she was?

A. I don't know. Because she's on this -- on this statement.

Q. So you mentioned earlier -- you testified, Mr. Zemsky, that at the time you agreed to join the statement you had -- I think you said 0.0 recollection of the Governor making the comment about strip poker, how did you come to remember the Governor's comment about strip poker?

A. Well, later that evening Lindsey sent me a message that was, you know, jarring, threatening that, you know, made me kind of, you know -- which I assumed was connected to this matter because it appeared in the paper and it was so utterly different from any communication we ever had, I thought I've got to just kind of think about this, rethink it. Think about it differently, you know.

Q. What did Lindsey's communication say?

A. It said, "I can't wait to destroy your life, you shit follower."

Q. How is it that you remember Lindsey's

1 ZEMSKY

2 communication so clearly?

3 A. I'm sorry?

4 Q. How is it that you remember Lindsey's
5 communication?

6 A. How is it -- because it was just so
7 shockingly jarringly threatening and different
8 from any communication we ever had.

9 Q. Did you respond to it?

10 A. I didn't.

11 Q. And how did she communicate that
12 message to you?

13 A. She sent it in a -- what's known as
14 an encrypted Confide message, Confide message
15 application.

16 Q. Did you tell anyone about Lindsey's
17 message?

18 A. I told some people in my family.

19 Q. And what did you do after you
20 received Lindsey's message?

21 A. I told some people in my family.

22 Q. And what led you to remembering the
23 Governor's strip poker comment?

24 A. I just -- I went back and I reread
25 the -- you know, the article, I -- I reread her,

1 ZEMSKY

2 you know, description of the events and her
3 description of her physical -- the way she kind
4 of responded to the comment, you know, and that,
5 you know, kind of struck a note of familiarity.
6 You know, she talked about how she reacted to it
7 physically, you know, she like leaned back or --
8 I can't remember exactly what it was.

9 And then in that instance I started
10 to recall, you know, a very different type of
11 exchange from the one that I had been thinking
12 about which was a, you know, serious, maybe even
13 threatening or, you know, sincere game of strip
14 poker to be -- could break out on the airplane
15 and that's what I was searching for. This was --
16 what I started to piece together was it wasn't --
17 it wasn't that, it was, you know, what I describe
18 as a facetious comment in jest, if you will,
19 responded to what I perceived to be similarly
20 facetiously made and searching my recollection of
21 those two very different things was -- you know,
22 was -- brought me to very different conclusions.

23 Q. And did you ever tell anyone about
24 the different conclusions you reached about the
25 Governor's comment about playing strip poker?

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A. I didn't. I just -- I didn't.

Q. Is there a reason you did not?

A. I -- I just -- I just -- I just left it at that. I answered the question and signed onto a statement that I believed was 100 percent accurate and I just left it there.

Q. Other than with your lawyers and with us, have you communicated with anyone since the day of the conference call about the strip poker comment?

A. No.

MS. MAINOO: Let's put up tab B.
Thanks. And we'll mark it as an exhibit.
(Article was marked Exhibit 4 for identification, as of this date.)

Q. Mr. Zemsky, is this the document you've been referring to as the article in which Lindsey reported the Governor's comment about playing strip poker?

A. Yes.

Q. And does this jog your memory that the conference call was on February 24, 2021?

A. Yes.

Q. And based on your memory, after you

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ZEMSKY

initially -- well, let's start again.

Do you agree Mr. Zemsky, that the press release from the Governor's office in which you said the conversation never happened is incorrect based on your recollection that the Governor did make a comment to Ms. Boylan about playing strip poker?

A. Yes.

Q. Did the Governor's senior staff ever ask you about Lindsey Boylan's whereabouts?

A. Well, there was one e-mail that I wouldn't have recalled but I read and -- but generally speaking, no.

MS. MAINOO: Let's put up that e-mail. That's the first attachment to tab B. Thanks. And we'll mark it as an exhibit.

(E-mail was marked Exhibit 5 for identification, as of this date.)

Q. So this is an e-mail from Jill DesRosiers to you on November 1, 2016, she says, "Hey Howard - is your chief of staff going tomorrow? Just got that question." You responded, "Ha! She's going to be at the stats

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ZEMSKY

in Albany... but it will be hard for her to concentrate on the presentations while worrying how the Gov's day is going in Rochester."

Do you remember this e-mail chain, Mr. Zemsky?

A. I don't remember it. I -- I see it, but I just -- it wasn't -- you know, not anything I could have -- would have recalled.

Q. And what's your understanding sitting here today of what Ms. DesRosiers was asking you?

A. Is Lindsey going to an event.

Q. And what do you understand by her statement, "Just got that question"?

A. I'm sorry, can you say that again?

Q. What do you understand by her statement, "Just got that question"?

A. You know, that somebody in the Governor's office had wanted to know.

Q. Do you have any sense of who in the Governor's office wanted to know if Ms. Boylan was attending the event?

A. You know, I don't know.

Q. And I understand you don't know, but do you have a sense of who would have been

ZEMSKY

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asking?

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A. You know, it could have been -- you know, it could be any of a couple people, you know. I'd be guessing.

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Q. And who are the couple people who you would guess?

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A. It could have been -- it could have been Stephanie, it could have been Melissa, it could have been -- it could have been, you know -- could have been the Governor, could have been -- could have been others, but that would be my guess.

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Q. How did you interpret your statement, "It will be hard for her to concentrate while worrying about how the Gov's day is going"?

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A. I don't -- I'm not even sure, you know, what I'm referring to here. I was, you know, I think being sarcastic or, you know, I think I was...

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Q. Is it possible that your response was alluding to the Governor's so-called crush on Lindsey?

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A. I don't think so. "She is going to be at the presentations in Albany, hard for her

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ZEMSKY

to concentrate on the presentation while worrying about how the Gov's day is going in Rochester." I don't think it relates to that at all.

Q. Did the Governor ever ask you about Ms. Boylan's whereabouts?

A. No. Not that I can recall.

Q. Did you ever hear the Governor say that the reasons that men get women were money and power?

A. Yes.

Q. And what do you remember about hearing the Governor say that?

A. I don't remember -- I remember him saying that.

Q. Do you remember where that was?

A. On the plane.

Q. Do you remember who else was there?

A. I would again kind of give the same answer.

Q. Do you remember the context?

A. Do I remember context... It was, you know, in the same -- do I remember the context... You know, he would have been -- I think he would have been directing it at Lindsey, if that's what

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ZEMSKY

you mean.

Q. And what's the reason you think he would have been directing it at Lindsey?

A. Because I think that's -- I think that's -- that's my best recollection of the statement is that it was directed at Lindsey talking about, you know, maybe her, you know, talking about her, talking about her husband or talking about that kind of thing.

Q. Did you ever hear the Governor talk about Lindsey Boylan's husband?

A. I think in, like, that context I think.

Q. And what do you mean when you say in that context?

A. I mean, I don't know. I mean, I think that's my memory of the context of that comment.

Q. And other than the comment about men getting women because of money and power, do you remember hearing the Governor say anything about Lindsey's husband or her marital status?

A. Not her marital status, but, you know -- and I don't remember the specifics, but

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ZEMSKY

he brought the -- he brought her husband up, he brought -- and I think it was in the context of this context, but I don't recall what -- what else might have been said.

Q. And do you remember if the Governor brought Lindsey's husband up more than once?

A. I don't. I remember this -- this incident is connected I think to that.

MR. JOHNSON: Is this a good time to take a quick break?

MS. MAINOO: Sure.

MR. JOHNSON: I'm not sure how much more you have, but to take a quick break?

MS. MAINOO: Yeah, let's take a break.

MR. JOHNSON: How should we do that? I mean, I know how to take a break, but --

THE VIDEOGRAPHER: Let me go off the record first, please.

MR. JOHNSON: Okay.

THE VIDEOGRAPHER: Time is 2:53 p.m. We're going off the record. This will end media unit number one.

(A brief recess was taken.)

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THE VIDEOGRAPHER: The time is 2:57 p.m. We are back on the record and this will be the start of media unit number 2. Counsel.

MS. MAINOO: Thank you.

Q. Mr. Zemsky, going back to Lindsey Boylan's Medium post, this is tab B, the document we looked at earlier, and we can put it back up, do you have personal knowledge of any of the other allegations in Ms. Boylan's Medium post?

A. I don't -- I don't. Can I just -- you know, can we just go through it --

Q. Sure.

A. -- together here?

Q. Okay.

A. I'm not familiar with the confidential -- you know, things I have read about since. I mean, I don't know if that's what you're referring to or things I saw or were part of.

Q. We can start with this article and then if there's anything you've read about since that you have personal knowledge of in the sense of you observed it or you heard about it other

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ZEMSKY

than through the press, then we'd want to talk about that.

A. Okay. Well, I had no -- no knowledge of the personnel file. I don't recall the encounter with the Governor at Madison Square Garden.

Q. Okay.

A. My recollection of "crush on her" was in context of what had -- you know, exchange that had taken on the plane.

Q. And just going back to the conversation you had with Lindsey in which you said it seemed the Governor had a crush on her, what did you mean when you said the Governor had a crush on her, that is seemed the Governor had a crush on her?

A. You know, based on my observation that he had a -- you know, some attraction to her.

Q. Okay.

A. You know, that was my -- it was not anything, you know, he related to me. It was just my observation.

Q. Okay.

1 ZEMSKY

2 A. I'm not aware of the sister -- any
3 comment regarding sisters or Lisa or anything of
4 that nature.

5 Q. Okay.

6 A. You know, I'm not familiar with, you
7 know, this "out of his way to touch her on her
8 back, arms, and legs," that was just not my -- I
9 don't have recollection of that.

10 Q. Okay. Did you ever see the Governor
11 kiss Ms. Boylan on the cheek?

12 A. That's a tough one. He kissed a lot
13 of people on the cheek. I don't have any
14 specific recollection, but I wouldn't be
15 surprised.

16 Q. Did you ever see the Governor kiss
17 Ms. Boylan on the forehead?

18 A. I don't recall that. I don't recall
19 celebrating the holidays. "The Governor spotted
20 me in a room filled with hundreds of people," I
21 don't -- I don't recall that.

22 Q. Okay.

23 A. "I excused myself from co-workers,"
24 I'm not -- not familiar with that. I'm not
25 familiar with a call from the bodyguard in the

1 ZEMSKY

2 next paragraph. I'm not -- I'm not familiar with
3 the paragraph after that, "underground connection
4 that linked the Plaza to the Capitol." I'm not
5 familiar with the body person waiting for her.
6 I'm not familiar with the next paragraph. I'm
7 not familiar with the next paragraph regarding
8 cigar boxes or, you know, beyond having read it.

9 Q. Okay.

10 A. I'm not familiar to -- with the
11 Valentine's Day arrangements. Do you want me to
12 keep going? In 20 -- "in 2018 I was promoted to
13 deputy secretary" --

14 Q. Yes, please.

15 A. -- I don't recall that. I don't
16 recall unflattering comments about weight. I
17 don't know anything about -- other than what I've
18 read about the next paragraph.

19 Q. Okay.

20 A. I don't -- you know, I don't -- or
21 the next paragraph, you know, I'm not -- I'm just
22 not familiar with -- with any of that.

23 Q. Okay.

24 A. I don't know how to comment on page
25 8, it's -- I don't know who reached out to her

1 ZEMSKY

2 or --

3 Q. Okay. Mr. Zemsky, when we've spoken
4 about Lindsey Boylan's interactions with the
5 Governor, you mentioned some different
6 interactions that happened on the plane and I
7 just wanted in the interest of being complete to
8 confirm if you observed any interactions between
9 Lindsey Boylan and the Governor that stood out to
10 you that took place anywhere else other than on a
11 plane.

12 A. I only recall interactions that stood
13 out to me that happened on the plane.

14 Q. And did you have any meetings or were
15 you ever with Lindsey Boylan and the Governor
16 when you were not on the plane?

17 A. I'm sure there were some instances,
18 but few. And I -- I -- you know, we were
19 generally either on the plane or at an event, in
20 route to an event, coming back from an event,
21 back on a plane. That's the overwhelming
22 majority and what I remember.

23 Q. Okay. Did you ever observe the
24 Governor comment on the attractiveness of a male
25 employee?

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ZEMSKY

A. No.

Q. Did you ever hear the Governor compare the attractiveness of male employees to Hollywood actors?

A. No.

Q. All right. So I'd like to shift gears to the time when Ms. Boylan moved to the Executive Chamber, at least became the deputy secretary for Economic Development and a special advisor to the Governor.

So my first question is after Ms. Boylan became the deputy secretary for Economic Development and a special advisor to the Governor, did she continue to work as your chief of staff for any period of time?

A. You know, I honestly don't recall. There may have been a short overlap, but I don't recall.

Q. We're going to put up tab A and mark it as an exhibit.

(September 18, 2018, e-mail was marked Exhibit 6 for identification, as of this date.)

Q. And this is a September 18, 2018,

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ZEMSKY

e-mail announcing -- or it's a draft announcement that [REDACTED] had agreed to become the chief of staff at Empire State Development, do you see that?

A. Mm-hmm.

Q. Let me know if you need a minute just to look it over.

A. Yeah, I'm familiar -- I've read it.

Q. Okay. Does this jog your memory about whether there was some overlap between the -- between Lindsey's role as deputy secretary for Economic Development and special advisor to the Governor on the one hand and her role as chief of staff at ESD?

A. I'm assuming this refers to there may have been some overlap, but there also may have been some period of time where we just didn't have a chief of staff as such.

Q. Okay. Do you know if Lindsey Boylan continued to serve in any role at Empire State Development after she became the deputy secretary for Economic Development?

A. She wouldn't have had any role over, you know, chief of staff or, you know, maybe

1 ZEMSKY

2 continuing her communication primarily with
3 regional directors and, you know, with a
4 different title, you know, not an ESD title.

5 Q. And before Lindsey Boylan stopped
6 working in the Executive Chamber, did you ever
7 hear about Lindsey Boylan planning or threatening
8 to leave the Chamber?

9 A. You know, I had received a call from
10 Linda Lacewell asking if I would -- you know,
11 might be willing to talk with Lindsey about kind
12 of unresigning, if you will, that she had
13 resigned and would I, you know, talk with her
14 about unresigning. That's probably not a word,
15 but you get the point.

16 Q. Do you remember when you had that
17 discussion with Ms. Lacewell?

18 A. After -- I don't remember when.
19 Sometime after Lindsey resigned. There was I
20 think a couple of resignations and
21 unresignations.

22 Q. What did you say in response to
23 Ms. Lacewell?

24 A. I said, you know, I don't know why
25 she resigned and I don't know what the issues are

1 ZEMSKY

2 and I can't address whatever those issues are,
3 I'm not in a position to do that so I can't
4 really -- I'm really not the right person. She
5 doesn't work at ESD anymore, she doesn't work for
6 me in any way, it's not my place, something of
7 that nature.

8 Q. And what did Miss Lacewell say?

9 A. She said, "Yeah," you know, "I
10 understand," something like that.

11 Q. And how did you hear about the couple
12 of resignations and withdrawals of the
13 resignation?

14 A. Honestly I don't recall how I -- it
15 was just kind of common knowledge. I'm not sure
16 how I heard about it.

17 Q. And when did you learn that
18 Ms. Boylan had left the Chamber for good?

19 A. I don't recall.

20 Q. Do you remember what you heard?

21 A. I heard -- I heard that she had left.
22 I had heard that there was a -- kind of a, you
23 know, tumultuous incident with an administrative
24 assistant. You know, a firing that maybe was
25 inappropriate or, you know, maybe arbitrary and

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ZEMSKY

that's what -- that's what I recall.

Q. And did you hear anything about the link between the issue with an administrative assistant and Lindsey's departure from the Chamber?

A. I don't.

Q. Did you understand if the Chamber or Empire State Development at any time took disciplinary action against Lindsey?

A. I -- I think I maybe read something about it, but I don't recall it in that moment or in that period.

Q. Were you involved in any discussions relating to Lindsey Boylan's departure from the Chamber?

A. No.

Q. Did you authorize the removal of Lindsey Boylan from Empire State Development's payroll?

A. I honestly don't recall. It's possible. I had to sign off on a lot of things. But I don't recall signing off one way or the other. I don't remember the administrative process by which somebody exactly enters or

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leaves the payroll, but I'm sure -- I would imagine it would be whatever our protocol is.

Q. And do you remember if you signed off on removing Lindsey Boylan from ESD's office space?

A. I don't recall. I don't recall signing off or on to people's office spaces.

Q. Do you understand if Lindsey Boylan's employment at the Chamber or Empire State Development was terminated?

A. I don't know if it was terminated or she quit. I'm not sure. You know, I got -- I'm not positive.

Q. Did you ever authorize terminating Lindsey Boylan's employment?

A. I don't recall that. I mean, maybe as part of her going to the Chamber. Well, if -- if she went to the Chamber, I'm assuming she wasn't working at Empire State Development, but I don't recall exactly how that worked.

Q. Okay. But --

A. She was never terminated for performance or for any reason from Empire State Development. I just want to make sure that's

ZEMSKY

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2 clear.

3 Q. And that's what I was getting at.

4 A. Okay. Yeah, no, we never terminated
5 her. She -- you know, she left for, you know, an
6 opportunity at the Chamber.

7 Q. And as far as you know, in connection
8 with her departure from the Chamber, did Empire
9 State Development ever terminate her employment?

10 A. Ever terminated her employment...
11 Well, if she was going to -- I just assume if she
12 was going to work at the Chamber, she was not
13 working at Empire State Development.

14 Q. I'll try to be clearer.

15 In relation to the administrative
16 issue you mentioned before, the issue with the
17 administrative assistant, do you know if anyone
18 took action to terminate Lindsey Boylan's
19 employment?

20 A. I don't.

21 Q. All right. So we'll move -- we'll go
22 back to Lindsey Boylan's allegations about the
23 Governor.

24 When did you first learn about
25 Lindsey Boylan's allegations about her experience

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ZEMSKY

working in the Executive Chamber?

A. Maybe in the news or Melissa calling, something of that effect.

Q. Did Melissa call you about Lindsey Boylan's allegations?

A. Yeah.

Q. When did Ms. DeRosa call you about Lindsey Boylan's allegations?

A. I think whenever they were made.

Q. What did Melissa say she said?

A. She said, "Hey, are you still" -- "Have you seen, you know, Lindsey, this toxic work environment" and "Are you still, you know, in touch with her" and, you know, I said, "No, I haven't talked" -- "I haven't really been in touch with her for a while." I said, "I wouldn't be" -- I said, "I wouldn't be comfortable reaching out to her."

Q. And then what did Melissa say?

A. I don't remember. She might have asked like who else might -- like, "Do you know anyone else who still has a relationship with her?"

Q. And what did you say?

1 ZEMSKY

2 A. I said, "I think [REDACTED] might
3 still be in touch with her." I wasn't sure.

4 Q. How long was your conversation with
5 Melissa?

6 A. I don't recall.

7 Q. Was anyone else --

8 A. Not that long.

9 Q. Was anyone else on the call?

10 A. Not that I'm aware of.

11 Q. Did she say anything else on the
12 call?

13 A. I don't know. "I can't figure out
14 why this is happening. Why is she doing this?"
15 I said, "Well she's worked" -- you know, "She
16 worked for you."

17 Q. Did you say anything else?

18 A. I said, you know, well -- she just
19 kept saying, "What do you" -- "What's going on?
20 Why is she saying these things? What can this
21 be?" And finally I just said, "Look" -- you
22 know, it was hard to get off the call and I would
23 say -- I'd say ridiculous things. I'd be like,
24 "Look, I have no idea. She worked for you, okay.
25 Maybe she wanted to be -- maybe she wanted your

1 ZEMSKY

2 job. Maybe she wanted to be closer to the
3 Governor." Maybe she, you know, had other
4 issues. I don't know, okay. She wasn't working
5 for me at the time." As a way of getting off the
6 call.

7 Q. Did you have any other calls with
8 Melissa about Lindsey Boylan's allegations?

9 A. Well, whenever the next one -- next
10 article came out she called, you know, "Hey, you
11 know" -- I'm like, "Yeah, what" -- "this is
12 not" -- you know, this is not an article about --
13 this is an article about -- you know, it's not an
14 ESD article, it's not -- "What's going on?" You
15 know, "This is ridiculous. You know, "Do you
16 still keep in touch with her?"

17 I was like, "I'm not. I haven't been
18 in touch with her for a while, you know, I don't
19 feel -- I wouldn't feel comfortable reaching out
20 to her." I didn't want to reach out to Lindsey
21 and, you know, again deal with this -- you know,
22 these -- these issues that were, you know, I
23 think directed at -- elsewhere.

24 Q. Was this a second conversation with
25 Melissa, what you were just describing?

1 ZEMSKY

2 A. Yeah. I don't -- I don't know. You
3 know, she said, "Well, you know, Lindsey's, you
4 know, reaching out to people, you know, reaching
5 out to people, you know, who knew you." I'm
6 like, "You could reach out to every single people
7 at ESD who knows me and they'll give you the same
8 answer," so whatever.

9 Q. And then other than the conference
10 call, did you have any other discussions with
11 Melissa DeRosa about Lindsey Boylan's allegations
12 against the Governor?

13 A. No.

14 Q. Just so I'm clear, Mr. Zemsky, I
15 think you described two calls with Melissa DeRosa
16 about Lindsey Boylan's allegations before the
17 conference call; is that correct?

18 A. Yes.

19 Q. Did you ever speak with the Governor
20 about Ms. Boylan's allegations?

21 A. No.

22 Q. Did you speak with any other current
23 or former member of the Executive Chamber about
24 Ms. Boylan's allegations?

25 A. No.

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Q. And what about any reporters, did you discuss Ms. Boylan's allegations with any reporters?

A. Nope.

Q. I think earlier when you were looking over Ms. Boylan's Medium post there was a reference to her personnel file, are you aware that information about complaints against Ms. Boylan was publicized?

A. Yes. It was -- I had read it.

Q. And is that how you learned about the publicization of that information?

A. Yes.

Q. Were you part of any discussions about disclosing information about complaints against Ms. Boylan?

A. I was not.

Q. When's the last time you had any communication with or from the Governor?

A. In December.

Q. Was that before or after Ms. Boylan's allegations?

A. I don't recall. I saw him at the opening of Moynihan Station in a group and I --

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ZEMSKY

it wasn't a topic of conversation. And it may have been before, it may have been after, but in any case, it was not any topic of conversation in any way.

Q. When's the last time you had any communication with or from a member of the Executive Chamber?

A. Let me think about that for a minute. Well, not at all regarding this matter. It's been very limited, you know, communication over the last half a year. Can I just talk to Boyd for a second?

Q. Sure. We can go off the record.

THE VIDEOGRAPHER: The time is 3:23. We're going off the record.

(A discussion was held off the record.)

THE VIDEOGRAPHER: The time is 3:25. We are back on the record.

A. Can you repeat your question, please?

Q. Yes. My question was when is the last time you've had any communication with or from a member of the Executive Chamber?

A. It's been really quite a while. I

1 ZEMSKY

2 mean, I've been searching my mind for like -- you
3 know, I attend ESD board meetings, but the
4 Executive Chamber is not really involved in
5 those. I haven't been speaking -- communicating
6 directly with Jill or -- you know, other than the
7 conversations with Melissa that I've conveyed to
8 you, seeing the Governor once at, you know, the
9 Moynihan Train Hall. That's what I can recall.
10 I can't recall anything else.

11 Q. Okay. Just to be clear, since the
12 day of the conference call on February 24, 2021,
13 have you heard from Melissa DeRosa?

14 A. No.

15 Q. So before we wrap up, I'll just pause
16 for a moment to give my colleagues a chance to
17 ask any final questions.

18 MR. GRANT: I have none. Thank you.

19 MS. CLARK: I'm good too.

20 MR. KIM: Same here. Thank you.

21 MS. MAINOO: Thank you.

22 MR. KIM: Thank you, Mr. Zemsky.

23 THE WITNESS: Okay, thank you.

24 MS. CLARK: Thank you.

25 Q. Mr. Zemsky, is there anything you

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ZEMSKY

would like to add or any answers you wish to clarify before we finish?

THE WITNESS: Anything?

A. We're good.

Q. Is there anything else you can think of that's relevant to our investigation?

A. I don't think so.

Q. If you'd like to make a brief sworn statement, you may do so now.

A. A brief what?

Q. Sworn statement, a brief statement under oath, you may do so now.

A. Buffalo's great. I want that on the record.

MR. KIM: Noted on the record.

A. Don't forget about us.

Q. Mr. Zemsky, if you have additional documents that are responsive to our subpoena, we'll remind you that you have a continuing obligation to produce them to us. We're now going to conclude this examination. Thank you very much for speaking with us.

A. Okay. Thanks for your time.

MR. KIM: Thank you very much,

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ZEMSKY

Mr. Zemsky.

MR. JOHNSON: Thank you.

THE WITNESS: Thank you.

THE VIDEOGRAPHER: This concludes today's deposition of Howard Zemsky. The number of media units used was two, they'll be retained by Veritext Legal Solutions. We're off the record at 3:28 p.m.

HOWARD ZEMSKY

Subscribed and sworn to before me
this __ day of _____, 2021.

Notary public

