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

- - - - - x

Virtual Zoom Investigation

April 15, 2021

10:16 a.m.

TESTIMONY of HAROLD MOORE,
representing the New York Executive
Chamber in the above-entitled action,
remotely held at the above time and place,
taken before SAMUEL HITTIN, a Notary
Public of the State of New York, pursuant
to order and stipulations between Counsel.

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H A R O L D M O O R E, the Witness
herein, having first been duly sworn by
the Notary Public, was examined and
testified as follows:

BY COURT REPORTER:

Q. Please state your name for the
record.

A. Harold George Moore Jr.

MS. KENNEDY PARK: Thank you,
Mr. Hittin.

We have the appearances of
everyone already.

EXAMINATION BY

MS. KENNEDY PARK:

Q. So, Mr. Moore, thank you for
meeting with us today. The New York
Attorney General's office has authorized
my law firm, which is Cleary, Gottlieb,
Steen & Hamilton and Vladeck, Raskin &
Clark, which is Ms. Anne Clark's law firm,
who is also on this Zoom as special
deputies to the first deputy Attorney
General pursuant to New York Investigative
Law, Section 63(8) to conduct an

1 H. MOORE

2 independent investigation into allegations
3 of harassment against Governor Cuomo.

4 Before we begin today, I have a
5 few preliminary comments to make about the
6 rules for the road for today.

7 As you can see, we have a court
8 reporter here. Mr. Hittin needs to take
9 down my questions and take down your
10 answers, so you need to give a verbal
11 response to each question I ask and not
12 just shake or nod your head?

13 Do you understand?

14 A. Understood.

15 Q. Okay. If you don't know the
16 answer to a question, you should just say
17 you don't know. And Zoom is a little bit
18 of a more difficult environment, so please
19 just allow me to finish asking my
20 questions before you answer so that we're
21 not talking over each other, so that
22 Mr. Hittin's job isn't any harder.

23 And if you don't understand a
24 question that I've asked, please let me
25 know and I'll try to ask the question in a

1 H. MOORE

2 different way.

3 Is that okay?

4 A. That's okay. Understood.

5 Q. Okay. If you need a break at
6 any point, please let me know. However,
7 if I've asked a question, please answer it
8 before we take a break.

9 Because this is a subpoena
10 pursuant to the attorney general's
11 investigatory power, you do not have a
12 right to be represented by a lawyer. As a
13 courtesy we've consented to your
14 attorney's appearance at this testimony
15 and you can consult with your attorney
16 about privileged matters; however, your
17 attorney is not permitted to make
18 objections to any questions and we may
19 exclude your attorney from the testimony
20 if he or she's presence becomes
21 disruptive.

22 Do you understand?

23 A. Okay.

24 Q. Okay. You are under oath as
25 you've just heard and that means you have

1 H. MOORE

2 to testify fully and truthfully just as if
3 you were in a court of law sitting before
4 a judge or a jury, and your testimony is
5 subject to the penalty of perjury.

6 Do you understand?

7 A. Understood.

8 Q. Are you recording this?

9 A. I am not.

10 Q. Are any of your counsel using
11 technology to create a record of this
12 proceeding?

13 A. Not that I'm aware of.

14 Q. Okay. You will not get a
15 transcript of this testimony to review;
16 however, if there are any points today
17 which you want clarify the answer you've
18 given to one of my questions, please let
19 me know.

20 A. Okay.

21 Q. Okay. Are you taking any
22 medications or drugs that might make it
23 difficult for you to understand my
24 questions?

25 A. No, I'm not.

1 H. MOORE

2 Q. Have you had any alcohol today?

3 A. No, I have not.

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

7 A. I don't believe there is any
8 reason I shouldn't be able to do that.

9 Q. Great.

10 Can you restate your name and
11 current address?

12 A. My name is Harold George Moore,
13 Jr.

14 Are you asking for my business
15 address or living address?

16 Q. Let's give your living address,
17 please, and then your business address.

18 A. It's [REDACTED],
19 [REDACTED]. Business address is State
20 Capital, Room 237, Albany, New York 12224.

21 Q. Have you ever been known by any
22 other name?

23 A. No, I have not.

24 Q. And how long have you lived at
25 your personal address?

1 H. MOORE

2 A. My personal address, it will be
3 five years this December.

4 Q. Okay. And what was your address
5 prior to that address?

6 A. Prior to that address it was [REDACTED]
7 [REDACTED] [REDACTED], if I remember. It was an
8 apartment [REDACTED]

9 Q. When you say "[REDACTED]
10 [REDACTED] where?

11 A. [REDACTED] [REDACTED]. [REDACTED] [REDACTED]
12 [REDACTED]

13 Q. What is your date of birth?

14 A. It is [REDACTED].

15 Q. Have you ever been deposed
16 before?

17 A. No. This will be my first time.

18 Q. Have you ever given testimony
19 under oath on any occasion?

20 A. No.

21 Q. Other than speaking to your
22 attorney, did you do anything to prepare
23 for your testimony today?

24 A. Other than speaking to my
25 attorney, no I did not.

1 H. MOORE

2 MS. KENNEDY PARK: Can we please
3 put up what I'd like to mark as
4 Exhibit 1, which is the subpoena.

5 [Whereupon, document was marked
6 as Moore Exhibit 1 for identification,
7 as of this date.]

8 Q. We're going to put exhibits on
9 the screen and share our screens. So
10 hopefully this works.

11 Mr. Moore, can you see that?

12 A. Yes, I can.

13 Q. Is this the subpoena you
14 received from our office?

15 A. I did not receive that subpoena
16 from your office.

17 Q. Have you seen this subpoena
18 before?

19 A. No. This is the first time I'm
20 seeing this subpoena with my name on it.

21 Q. Okay. Why don't you take a
22 moment to read the subpoena then?

23 A. Okay.

24 Q. Do you understand that you're
25 here pursuant to that subpoena?

1 H. MOORE

2 A. I understand. Yes.

3 Q. Okay. Can you tell us what your
4 current position is at work?

5 A. I'm currently the chief
6 technology officer for the executive
7 chamber.

8 Q. Please describe your work
9 history.

10 A. I have been with the chamber for
11 several years. Previously I was special
12 technical assistant. I was under the
13 previous chief of computer services at the
14 time.

15 I provide technical support and
16 it's pretty much computer maintenance,
17 making sure the infrastructure for the IT
18 department is solid and sound, safeguards
19 all our data. The usual IT run of the
20 mill.

21 Q. So how long have you been
22 employed by the executive chamber?

23 A. Been employed by the executive
24 chamber for about 17 years.

25 Q. What was your first position in

1 H. MOORE

2 the executive chamber?

3 A. My first position in the
4 executive chamber was in community
5 affairs. I was still in college when I
6 initially started working for the
7 executive chamber.

8 Q. How did you get your role in
9 community affairs?

10 A. Started off as an internship.

11 Q. How did you get the internship
12 in community affairs?

13 A. That was from a guidance
14 counselor in college.

15 Q. And after your role in community
16 affairs, what was your next role?

17 A. My next role is I started with
18 the IT department.

19 Q. What is the official name of
20 that department?

21 A. Computer services is what we
22 label that department.

23 Q. When you say "computer
24 services," is that computer services for
25 the executive chamber of the State of New

1 H. MOORE

2 York?

3 A. Correct.

4 Q. Okay. And what year did you
5 move over to the IT department?

6 A. I believe it was 2003, maybe
7 '04. I can't recollect.

8 Q. And what was your title in 2003
9 or 2004?

10 A. I believe at the time it was
11 administrative assistant.

12 Q. Did your title change from
13 administrative assistant at some point?

14 A. Yes.

15 Q. When was that?

16 A. I believe that was in 2015.

17 There was a statewide revisit to titles
18 and positions, or I should say items by
19 the Department of Civil Services.

20 Q. And what did your title change
21 to?

22 A. Special technical assistant.

23 Q. Okay. What were your roles and
24 responsibilities as a special technical
25 assistant?

1 H. MOORE

2 A. As a special technical
3 assistant, I was responsible for server
4 maintenance, making sure our software was
5 as current as it could be. Again, you
6 know, assisting to safeguard the
7 infrastructure of the technology in the
8 executive chamber.

9 Q. Does that infrastructure include
10 electronic communication devices?

11 A. Correct.

12 Q. Does it include desktop
13 computers and laptops?

14 A. Yes, it does.

15 Q. And at some point you told us
16 you were promoted to the chief technology
17 officer; is that right?

18 A. That is correct.

19 Q. When did that promotion occur?

20 A. That happened January 1st, 2019.

21 Q. And how did that promotion come
22 about?

23 A. The previous head of the
24 department retired.

25 Q. Did you have to interview for

1 H. MOORE

2 the position?

3 A. It was an interview, but yes.

4 Q. And who was that interview with?

5 A. That interview at the time was
6 with Camille Varlack.

7 Q. So why was the interview with
8 Camille Varlack?

9 A. At the time, she was the deputy
10 secretary for technology.

11 Q. And as to technology officer,
12 did you report to the deputy secretary of
13 technology?

14 A. As chief technology officer, I
15 report to the chief of staff.

16 Q. And who is the chief of staff
17 beginning in January 1, 2019?

18 A. At the time, it was Jill
19 DeSrosiers. I should say it is Jill
20 DeSrosiers still.

21 Q. Did you interview with Jill
22 DeSrosiers for the position of chief
23 technology officer?

24 A. I did not interview with Jill.

25 Q. Did you do anything else to

1 H. MOORE

2 secure the position of chief technology
3 officer?

4 A. No, I did not.

5 Q. As special technical assistant,
6 where was your office?

7 A. In the same exact room it is
8 right now, Room 237.

9 Q. And describe for me where Room
10 237 is in the capitol building.

11 A. It is on the second floor in the
12 capitol.

13 Q. Where is it in relation to the
14 Governor's office?

15 A. It is -- I believe we are on the
16 east side of the building, so it's
17 literally on the other side of the
18 building. It's on the opposite side of
19 the floor.

20 Q. When I say the secure side of
21 the floor, do you know what I mean?

22 A. Yes, I do understand.

23 Q. Do you sit on the secure side of
24 the floor?

25 A. I do not.

1 H. MOORE

2 Q. As chief technology officer do
3 you have responsibilities for onboarding
4 new employees from a technology
5 perspective?

6 A. Yes, I do.

7 Q. Describe for me what you do to
8 onboard a new employee?

9 A. When a new employee shows up, we
10 use a packet prepared for them. We kind
11 of give them a run through of paperwork
12 that needs to be signed. We assign a
13 phone to them, we'll sit down with them
14 and answer any questions if they have
15 never used an iPhone for work or whatever
16 device we are using at the time.

17 We usually have the
18 administrative office walk them to their
19 desk. We'll find where they're sitting.
20 After we find out where they're sitting,
21 we'll have them login after all the
22 paperwork is signed. And after that, we
23 just have them follow up with any
24 questions.

25 Q. You said they get a packet of

1 H. MOORE

2 paperwork. What is contained in the
3 packet of paperwork?

4 A. In the packet of paperwork are
5 guidelines in regards to the accessible
6 use of the chamber equipment. You also
7 get a signoff for the account that was
8 created for you and some guidelines for
9 the use of that account.

10 MS. KENNEDY PARK: Can we,
11 Charlotte, please bring up the
12 April 13th material.

13 So we are going to mark this as
14 Exhibit 2.

15 [Whereupon, document was marked
16 as Moore Exhibit 2 for identification,
17 as of this date.]

18 Q. Mr. Moore why don't you take a
19 look at these materials and when you want
20 us to the change the pages, this is a
21 multipage document, just tell us. We can
22 change the page.

23 A. You can go ahead and change the
24 page. I'm familiar with this.

25 You can go ahead and change.

1 H. MOORE

2 You can proceed.

3 Q. Is Exhibit 2 the packet of
4 materials you were just referring to
5 that's used to onboard new employees to
6 the chamber?

7 A. That is correct.

8 Q. Is this the complete set of
9 materials?

10 A. This is not the complete set of
11 materials.

12 Q. What's missing from this set?

13 A. What's missing is -- if you
14 scroll back up, what's missing from the
15 set would be directions of how to access
16 your e-mail remotely.

17 Q. Is there anything else missing
18 from this set?

19 A. You can scroll down again
20 please.

21 I believe that's it.

22 Q. The first page and each page is
23 a set of materials that has the date April
24 13, 2013 on it.

25 Do you know why that is?

1 H. MOORE

2 A. That is because the document is
3 set to automatically generate the date the
4 document is opened.

5 Q. Did you prepare these documents?

6 A. Did I prepare these documents?

7 Q. Yes.

8 A. I don't understand the question.
9 Prepare them?

10 Q. So you said the date -- you said
11 the date is automatically generated when
12 the document is opened.

13 Were you the person who opened
14 documents and generated these on
15 April 13th?

16 A. No. I had one of my staff
17 members send me the document.

18 Q. This training packet of
19 materials or onboarding packet of
20 materials for new employees has it changed
21 during your employment at the chamber?

22 A. During my employment at the
23 chamber, yes.

24 Q. What has changed about the
25 packet over the course of your employment?

1 H. MOORE

2 A. I don't know for the previous
3 chief technical officer; however, for me
4 it has been minor changes in regards to --
5 if you scroll back up, keep going up to
6 the next page, to the previous page.

7 Here the length of the password,
8 that was changed, and the level of
9 security and how you should create your
10 password, that was updated.

11 Then if you scroll down a bit
12 more -- actually, no. Sorry. It's the
13 previous page.

14 The G-drive or the I-drive, that
15 information has changed.

16 Q. What is the G-drive?

17 A. The G-drive is the file share
18 where everyone has access to either a
19 folder directly assigned to them or shared
20 folders that are assigned to departments
21 or groups.

22 Q. Who assigns the shared folders?

23 A. My office handles the assignment
24 of the folders; however, the access rights
25 requests come outside of our office.

1 H. MOORE

2 Q. Who do they come from?

3 A. They come from each department
4 that oversees that segment of the file
5 share.

6 Q. How many shared folders are
7 there currently for the executive chamber?

8 A. Off the top of my head I don't
9 know the answer to that question.

10 Q. Can you approximate for me?

11 A. I would say it's definitely more
12 than 50.

13 Q. Are shared folders something
14 someone from a department in the chamber
15 has to request or is it something that is
16 determined by you to create?

17 A. When you start as an employee,
18 you get access to your own folder. Any
19 additional folders come in with requests.

20 Q. Does the Governor have a shared
21 folder or folder on the G-drive?

22 A. He does not.

23 Q. Does every member of the
24 executive chamber expect the Governor to
25 have a folder on the G-drive?

1 H. MOORE

2 A. I believe so.

3 Q. What is the I-drive?

4 A. The I-drive is a share drive
5 also; however, the core server for that
6 file share lives in the New York City
7 office.

8 Q. Is the I-drive for individuals
9 employed by the executive chamber who
10 primarily work in the New York City
11 office?

12 A. That is correct.

13 Q. And is the G-drive for employees
14 of the executive chamber who primarily
15 work in the Albany office?

16 A. That is correct.

17 Q. Where is the server for the
18 G-drive?

19 A. The server for the G-drive is in
20 Albany.

21 Q. Looking at this first page here,
22 there is a sentence that talks about state
23 business.

24 If you could just make it a
25 little bigger. There we go. Thank you.

1 H. MOORE

2 It says, "Be aware that you
3 should not use personal e-mail for state
4 business."

5 Do you see that sentence?

6 A. Yes, I do.

7 Q. Has that sentence been in these
8 onboarding materials since you have been
9 an employee of the executive chamber?

10 A. I believe so.

11 Q. And what is the definition of
12 "state business"?

13 A. I think any -- I want to give my
14 definition. I'm sure there's a definition
15 in the ethics documents. But I believe
16 state business would be considered to be
17 any business on behalf of the state that
18 you are conducting.

19 Q. You said that there might be a
20 definition in the, I think you said,
21 ethics materials.

22 What ethics materials would have
23 a definition of state business?

24 A. Every year we take an ethics
25 training course provided by the Governor's

1 H. MOORE

2 Office of Employer Relations.

3 Q. Have you taken that training
4 course every year?

5 A. Yes, I have.

6 Q. Is that the only way that
7 members of the employees of the executive
8 chamber are trained on the definition of
9 state business?

10 A. I don't believe it is.

11 Q. What are the other ways that
12 employees of the executive chamber train
13 on the definition of state business?

14 A. I wouldn't be able to answer
15 that question because that's outside of my
16 department. I believe the administrative
17 office would answer -- will be able to
18 answer a question like that.

19 Q. Who in the administrative office
20 would be able to answer that question?

21 A. That would be Lauren Grasso.

22 Q. How is the policy of state
23 business, not using personal devices or
24 personal e-mail for state business
25 enforced?

1 H. MOORE

2 A. How is it enforced?

3 Q. Yes.

4 A. From my department, it's simply
5 guidance. We try to direct people to use
6 the state resources that are -- you know,
7 the equipment, the cell phone, laptops
8 that are provided for them and that's
9 where the measure ends for us.

10 Q. Are there any guidance materials
11 that your department provides besides this
12 document we're looking at?

13 A. There are no additional guidance
14 materials. People usually ask questions
15 and we'll answer them verbally or --

16 Q. Do you recall --

17 A. Say that again.

18 Q. I didn't mean to cut you off.
19 You can finish your answer.

20 A. If people have questions, they
21 can be answered verbally or by e-mail.

22 Q. Has anyone from the executive
23 chamber ever asked you a question about
24 what constitutes state business under this
25 document?

1 H. MOORE

2 A. No.

3 Q. Do you recall if anyone on your
4 staff has been asked a question about what
5 constitutes state business under this
6 document?

7 A. I do not recall.

8 Q. Are there any technical blocks
9 of using personal e-mail on state devices?

10 A. There are no technical blocks
11 for that.

12 Q. So if an employee of the
13 executive chamber wanted to use G-mail on
14 their state device they could?

15 A. Yes, they can.

16 Q. Would that be consistent with
17 this document, guidance?

18 A. I don't understand the question.

19 Q. Is it accessible to use G-mail
20 or Hotmail or personal e-mail on a
21 state-issued device?

22 A. Yes, it is.

23 Q. For what purposes?

24 A. I don't know what people would
25 be doing with access to G-mail or --

1 H. MOORE

2 Q. Are there any limits around the
3 use of accessing personal e-mail on
4 state-issued devices?

5 A. Are there any limits around
6 accessing? No, there are not.

7 Q. Is it possible to --

8 MR. FISHMAN: I'm sorry to
9 interrupt. Do you mean technical
10 limits or legal limits? I just want
11 to be clear what you're asking him.

12 MS. KENNEDY PARK: I'm asking
13 about guidance from his department.
14 So if his department gives anybody any
15 guidance or tells them that they
16 should not be using their personal
17 e-mail on state devices.

18 Q. Is that clear to you, Mr. Moore?

19 A. Yeah, that is clear to me. But
20 this document is -- this document is
21 providing guidance in not using your
22 personal e-mail for state business. This
23 is not guiding you on not accessing your
24 personal e-mail from a state computer.

25 Q. Is there any document that

1 H. MOORE

2 guides people on accessing their personal
3 e-mail on state-issued devices?

4 A. Not provided from my department,
5 no.

6 Q. Is it possible technically to
7 think or automatically forward e-mails
8 someone received on their state-issued
9 e-mail to a personal e-mail account?

10 A. We don't allow forwarding of
11 your e-mail. We don't allow automatic
12 forwarding of your e-mail. You can
13 forward an e-mail; however, we don't have
14 a technical block in place for you to
15 automatically do that. You would have to
16 manually do so.

17 Q. I want to make sure I understand
18 that. So you do not allow automatic
19 forwarding of e-mails on a state e-mail
20 address to a personal e-mail account?

21 A. That is correct.

22 Q. And where is that guidance?

23 A. There is no guidance for that.
24 We just apply that on the technical side.

25 Q. And how do you do that on the

1 H. MOORE

2 technical side?

3 A. There are settings you can
4 configure on the exchange server to not
5 have automatic forwarding set up.

6 Q. Do you do that for every device
7 issued by the executive chamber?

8 A. By default that is configured
9 for every device.

10 Q. Have there been any exceptions
11 granted to that configuration?

12 A. The only exception granted would
13 be for the event accounts, when events are
14 going to occur and a mailbox needs to be
15 monitored.

16 Q. Have there been any exceptions
17 to this rule for any individuals?

18 A. No, there has not. Not to my
19 knowledge.

20 Q. In order to get an exception for
21 an individual, who would someone need to
22 speak to?

23 A. The request would come to my
24 office, but for such an exception we would
25 need to then visit counsel's office to get

1 H. MOORE

2 guidance on that.

3 Q. Anyone in particular in the
4 counsel's office you would have to consult
5 with?

6 A. It would be the -- the first
7 contact would be the counsel with the
8 technology portfolio.

9 Q. Who is that right now?

10 A. Currently that is [REDACTED]

11 [REDACTED].

12 MS. KENNEDY PARK: We can take
13 that document off the screen.

14 Q. We talked about onboarding
15 employees. Can you describe for us the
16 process that happens when an employee
17 departs the chamber?

18 A. When an employee departs the
19 chamber?

20 Q. Yes.

21 A. We would get a notification from
22 the administrative office. That
23 notification will tell us when the last
24 day, the last in-office day of that
25 employee is.

1 H. MOORE

2 On the last day, all technology
3 or any device assigned to that user would
4 be handed in to the administrative office
5 or they can hand it in directly to us.
6 After devices are turned in, we change all
7 passwords and we verify that access has
8 now been disabled for that employee so
9 they can't get access to any other
10 resources they've previously had. And
11 that usually happens at the close of
12 business for that day. You know, the
13 employees last day.

14 The next morning, we then start
15 a process of reviewing for ourselves.
16 We'll first check in our office if there
17 are any litigation holds against this
18 employee's accounts, and then we follow up
19 with counsel's office to make sure that
20 there is no litigation that we are not
21 aware of happening with this person's
22 account before.

23 Once the account is cleared of
24 all of those things, then it is deleted.

25 Q. How do you know that there's a

1 H. MOORE

2 litigation hold for someone?

3 A. We would check in. For us in
4 our office, from the exchange server
5 because we configure the holds, it's very
6 obvious to us because we would go to their
7 account and, you know, you would see that
8 the person's on a hold.

9 There's literally a section on
10 the screen that tells us if a person's on
11 hold or not. Whether they are or are not,
12 again, we always check with counsel's
13 office and [REDACTED] would be the person
14 that we would check in with.

15 And then, if we are not sure how
16 her office works and who they consult
17 with, but that's where our direction would
18 come from. She would give us an answer, a
19 yes or no. If it's a yes, then we hold
20 the information. If it's no, then we
21 proceed.

22 Q. If it's a yes, how do you hold
23 the information?

24 A. If it's a yes, at this point,
25 we -- if it's a yes, usually there's

1 H. MOORE

2 already a hold in place. If it's a yes
3 that we were not aware of, then we would
4 put a hold in place and all of that stuff
5 would just be in stasis until the matter
6 is closed.

7 Q. Describe the steps you take when
8 you become aware that a litigation hold
9 has been put in place for a particular
10 person?

11 A. For a particular person, when it
12 is brought to your attention, what we will
13 do is we will make contact -- when
14 counsel's office brings it to our
15 attention, we will get explicit direction
16 from them as to what steps need to be
17 taken to preserve any documentation.

18 Q. The counsel's office tells you
19 what steps to take?

20 A. Correct. So if it is a hold,
21 they'll explain to us what needs to be
22 placed on hold. If it's the e-mail, text
23 messages, if it's a document, they will
24 explicitly state what we need to preserve.

25 Q. So counsel's office tells you

1 H. MOORE

2 the different formats of information that
3 has to be preserved?

4 A. Correct.

5 Q. Is your team responsible for
6 hard copy document preservation or just
7 electronic document preservation?

8 A. Electronic.

9 Q. Okay. Have you ever been asked
10 to execute a litigation hold for
11 BlackBerry PIN messages?

12 A. Yes, we have. And that's always
13 difficult.

14 Q. Okay. What do you do to execute
15 a hold for BlackBerry PIN messages?

16 A. What we will do is if a person
17 needs to be placed on a hold, we would
18 take their current device from them, make
19 sure that current device does not have any
20 wireless or cellular connection to preserve
21 all the dates on the device, and we would
22 issue them a new device.

23 Q. And why do you do that?

24 A. We do that because retrieving
25 PINs from the devices is almost

1 H. MOORE

2 impossible.

3 Q. How would you go about
4 retrieving the PINs from the device?

5 MS. KENNEDY PARK: Strike that.

6 Q. How do you ensure that the PINs
7 that are on the device are not being
8 deleted after a litigation hold has been
9 put in place?

10 A. If we've collected the device,
11 what we do is, again, make sure there is
12 no wireless or mobile connection to that
13 device, so it's almost putting the device
14 in the airplane mode, and we would turn
15 that device off essentially. So it is in
16 stasis.

17 Q. And why do you do that? Why do
18 you put it essentially into airplane mode?
19 What is the affect of that?

20 A. We do that because the
21 BlackBerrys are essentially designed, you
22 know, especially around security protocol.
23 If they are not checking in for a certain
24 amount of time, then, you know, it could
25 be considered out of compliance with

1 H. MOORE

2 whatever security settings that you have
3 established for your device. And you do
4 not want to have a situation where the
5 server sees a device out of compliance and
6 then wipe it essentially. So you want to
7 isolate the device.

8 Q. On how many occasions have you
9 approximately executed a litigation hold
10 for BlackBerry PIN messages?

11 A. I've only had to do this, where
12 I had to physically retrieve devices from
13 individuals, I've only had to do this
14 once. And it was during the trial for Joe
15 Percoco.

16 Q. On that occasion did you
17 actually have to retrieve -- attempt to
18 retrieve the BlackBerry PIN messages?

19 A. No, I did not.

20 Q. Did you turn the BlackBerry over
21 to someone else to do that process?

22 A. Yes.

23 Q. So to execute a litigation hold,
24 do you make any forensic images or copies
25 of devices?

1 H. MOORE

2 A. No, I do not.

3 Q. In the instance where you
4 transferred the BlackBerry PIN to someone
5 else related to the Joe Percoco trial, you
6 didn't forensically image it or keep a
7 copy of the device somehow?

8 A. No, we did not.

9 Q. So with respect to e-mails, if
10 the counsel's office tells you that e-mail
11 needs to be held for purposes of a
12 litigation hold, how do you accomplish
13 that?

14 A. We operate on an Exchange 13
15 server and there are tools to put the
16 accounts on e-discovery holds. Once an
17 account is placed on e-discovery hold,
18 there is a separate repository that is
19 created to track e-mail for that account.

20 Q. Does that process turn off any
21 auto delete features?

22 A. That process does not
23 automatically disable the auto delete
24 feature.

25 Q. Do you disable auto delete

1 H. MOORE

2 features when executing a litigation hold?

3 A. We usually do.

4 Q. Are there circumstances where
5 you would not?

6 A. Not really.

7 Q. You said you usually do. I'm
8 just trying to understand other occasions
9 in which you wouldn't do it.

10 A. No, there is not an occasion
11 where we wouldn't do it.

12 Q. What about text messages. If
13 you get an instruction from counsel's
14 office that text messages are subject to a
15 litigation hold, how do you implement that
16 instruction?

17 A. So we don't actually allow SMS
18 text messages on our phones. I-messages
19 are the way that we communicate, and with
20 those right now there is no real way that
21 we have used to backup messages.

22 Q. So what does that mean for
23 executing the litigation hold?

24 A. As far as a hold goes, the
25 preservation notice would go out to the

1 H. MOORE

2 individual and this is another example
3 where we would collect the phone and
4 reissue them a new device.

5 Q. Have there been occasions in
6 which you've, for a litigation hold, had
7 to collect text messages and reissue
8 devices in order to do so?

9 A. Not until now, no.

10 Q. When you say "not until now,"
11 what do you mean by not until now?

12 A. Not until the recent collection
13 of devices.

14 Q. Going back to e-mails, are
15 copies of e-mails retained by the e-mail
16 holder repository even if auto deleted or
17 manually deleted by a user who is on a
18 hold?

19 A. That is correct.

20 Q. How does that get done?

21 A. That's automatically done in the
22 exchange server.

23 Q. When counsel has instructed you
24 to execute a litigation hold, how do you
25 do that for documents on the G or the

1 H. MOORE

2 I-drive?

3 A. We would make a copy of the
4 share folder at that time.

5 Q. And does counsel direct you
6 which shared folders to make a copy of?

7 A. Yes. The listed custodian would
8 be a part of that hold request.

9 Q. I want to make sure I understand
10 that.

11 So you get a list of custodians
12 to hold and do you figure out which of
13 those custodians are associated with a
14 particular share drive and then hold that
15 drive or hold that shared folder, I should
16 say?

17 A. That is correct.

18 Q. Okay. So counsel's office
19 doesn't tell you which shared folders --
20 well, what about the group folders? How
21 do you hold group folders?

22 A. We would do the same thing. We
23 would just make a copy of it, just as we
24 would with your personal folder.

25 Q. And how do you know which group

1 H. MOORE

2 folders to hold?

3 A. That would usually come from the
4 history of the request that that person
5 made or -- either that person made and was
6 approved to get access to something or
7 somebody made it on the person's behalf.
8 We tend to keep that history on file.

9 Q. So is that on a custodian basis?
10 So you look for which of the group folders
11 someone has access to, essentially, and
12 then hold that?

13 A. Correct.

14 Q. Okay. What about a C-drive?
15 How do you hold a C drive?

16 A. If the PC needs to be held, we
17 would just take that PC offline and issue
18 a new machine.

19 Q. Are there other times where
20 instead of your taking the PC and giving a
21 person a new PC, someone is asked to
22 retain the documents for a litigation hold
23 on their own?

24 A. I don't understand the question.

25 Q. So instead of -- are there ever

1 H. MOORE

2 occasions when you're implementing a
3 litigation hold when instead of collecting
4 the PC and issuing a new PC someone is
5 just told if you have documents on your
6 C-drive save them?

7 A. I'm not aware of that, no.

8 Q. Are there any other electronic
9 communication devices or platforms that
10 you have had to preserve for a litigation
11 hold that we haven't covered?

12 A. No.

13 Q. Are you aware that there are PCs
14 at the executive mansion?

15 A. Yes, I am.

16 Q. Have you ever had to preserve
17 those PCs for a litigation hold?

18 A. Not to my knowledge, no.

19 Q. Do you have any role in setting
20 up those PCs?

21 A. Yes, we do.

22 Q. Okay. And what did you do to
23 set those PCs up?

24 A. We would set them up as in any
25 standard user PC. We would go in,

1 H. MOORE

2 configure it, make sure it connected to
3 the network, we could see it, and usually
4 set up a printer for that PC to connect
5 to.

6 Q. So the PCs that are in the
7 executive mansion are on the Albany
8 server, the files on the Albany server or
9 is there a separate server for those
10 files?

11 A. Not all the files. Not all the
12 PCs in the mansion are actually connected
13 to the executive chamber. There are PCs
14 that are connected to the executive
15 chamber and to the Office of General
16 Services.

17 Q. How many PCs are there in the
18 executive mansion?

19 A. I do not know the answer to that
20 question. For us, there are two.

21 Q. So you don't know about the ones
22 that are OGS connected?

23 A. I do not.

24 Q. Okay. And for the ones that are
25 in the executive mansion that are part of

1 H. MOORE

2 the executive chamber's responsibly, your
3 responsibility, the server for those is
4 the same server that we were talking about
5 that the G-file exists on?

6 A. That is correct.

7 Q. Is there any other server that
8 the PCs in the executive mansion are
9 connected to?

10 A. Not to my knowledge. There
11 shouldn't be. No, there wouldn't be. To
12 my knowledge, there wouldn't be.

13 Q. Do the PCs in the executive
14 mansion have the ability to save files
15 locally on them on a C-drive?

16 A. Yes, they do.

17 Q. Do all PCs issued by the
18 executive chamber have the ability to save
19 local files on their local drive?

20 A. Yes, they do.

21 Q. Are there any automated
22 retention policies on the files on the
23 server on the G-drive or the I-drive?

24 A. There are no retention policies
25 on the G-drive or I-drives.

1 H. MOORE

2 Q. Are there auto deletion policies
3 for the file servers?

4 A. No, there are not.

5 Q. Are there backup or recovery
6 systems through the file servers?

7 A. Yes, there are.

8 Q. Describe the backup and recovery
9 systems for the file servers.

10 A. The software we use to backup
11 the file server is Backup Exec and it's a
12 product from Symantec.

13 Q. Does it backup everything that
14 is on the file servers?

15 A. It backs up the entire file
16 server; that is correct.

17 Q. How long has that backup
18 software been in use?

19 A. That has been in use as long as
20 I have worked in the executive chamber.

21 Q. Since 2013, has there been any
22 system update to the personal computers
23 issued by the executive chamber?

24 A. Yes, there has been.

25 Q. And did those system updates

1 H. MOORE

2 cause any loss of data?

3 A. Not that I'm aware of.

4 Q. Has there been any replacement
5 of personal computers other than for
6 litigation hold?

7 A. Personal computers, I don't
8 understand the question.

9 Q. PCs, everyone in the chamber
10 gets a PC, right?

11 A. Oh, assigned PCs. I got you.
12 When you say "personal," in my
13 world, personal is personal.

14 Q. Oh, okay. How about I say PC
15 when I'm talking about the assigned
16 computers -- I'll say "assigned computer,"
17 how about that?

18 A. Okay.

19 Q. Have there been any replacements
20 of assigned computers?

21 A. Yes, we have replaced assigned
22 computers. And we did that during 2019.
23 That was my first project, essentially, in
24 my new role to update the machines that we
25 were using at the time.

1 H. MOORE

2 Q. And when you did that update,
3 what instructions were people given about
4 documents that were on their C-drive?

5 A. People were given instructions
6 to save -- actually not to save, but to
7 actually move any documents that they had
8 on their C-drive, to move it to the
9 G-drive.

10 Q. Going back to the file server
11 backups, are file server backups recycled?

12 A. I don't understand what you
13 mean.

14 Q. So how often are you backing up?

15 A. We backup nightly and they get
16 overwritten after -- I think it is
17 48 hours, I believe it is.

18 Q. And for a litigation hold, is
19 there any change to the backup and how the
20 backups are done?

21 A. There is not. For the
22 litigation hold, if we made a copy of the
23 folder so it is potentially in stasis, the
24 copy that we make is in stasis and that is
25 outside of the backup. That gets held on

1 H. MOORE

2 a server that gets replicated.

3 Q. Do you have any role in the
4 technology related to the physical
5 security at the capital or at the
6 executive mansion, meaning security
7 cameras?

8 A. No, I do not.

9 MR. FISHMAN: Hey, Jen, whenever
10 you get to a convenient breaking spot,
11 if we could take five, I would be
12 grateful.

13 MS. KENNEDY PARK: Yeah. This
14 is a fine spot to break.

15 MR. FISHMAN: It sounded like
16 you were good. It sounded like you
17 were starting somewhere else when you
18 started to talk about cameras, so I
19 thought it might be okay.

20 MS. KENNEDY PARK: Yes. So why
21 don't we take five minutes.

22 [Whereupon, a short break was
23 taken at this time.]

24 Q. Mr. Moore, before we took a
25 break, we were talking about backups to

1 H. MOORE

2 the file server, and you said that the
3 backups to the file server are recycled
4 every 48 hours.

5 Is there ever a copy held for
6 longer than 48 hours?

7 A. Not currently, there is not.

8 Q. Was there ever a period in which
9 there was a backup held for longer than
10 48 hours?

11 A. Previously when we used to
12 backup the tape.

13 Q. And when was that?

14 A. That was probably maybe eight or
15 so years ago.

16 Q. And what prompted the change in
17 the way backups were done?

18 A. Backing up to tape was starting
19 to take a little too long, so we moved
20 just to digital backup. And we needed
21 more space because the environment was
22 just getting bigger essentially, so to put
23 in on tape would just take too long. Too
24 much data to copy.

25 Q. And who made the decision that

1 H. MOORE

2 the file server backup would be recycled
3 every 48 hours?

4 A. Actually, I don't know who made
5 that decision.

6 Q. Before we had a break, we had
7 started talking about how departing
8 employees' devices and electronic
9 communications were handled and we had
10 talked about e-mail.

11 Can you tell us what the process
12 is for handling a departing employee's
13 documents on the G or the I-drive?

14 A. On the G or the I-drive?

15 Q. Yes.

16 A. Before the employee leaves, if
17 files need to be retained due to ongoing
18 projects or a transition needs to happen
19 with the person that's possibly going to
20 be replacing them, we would work with that
21 individual to get files transported over
22 to the -- you know, to the individual that
23 should have access to them. If no
24 instruction is given in regards to
25 retaining anything, it is deleted.

1 H. MOORE

2 Q. How long after the employee's
3 last day are the files on the G or the
4 I-drive deleted?

5 A. It's usually about -- we usually
6 give it about a week out. There is
7 nothing in practice that says we need to
8 wait that long, but I like to do the
9 courtesy thing. You know, people -- not
10 everything occurs to you right at that
11 moment, so we like to give people a bit of
12 a grace period.

13 Q. A little, just in case, right?

14 A. It's just in case, yes.

15 Q. And what about documents that
16 are on devices, so laptops, iPhones,
17 BlackBerrys?

18 A. Usually the devices will be
19 wiped before they are reassigned.

20 Q. And how long after the departed
21 employee's last day are the devices wiped?

22 A. We usually give it the same
23 grace period for the same exact reasons,
24 you know.

25 Q. So about a week; is that right?

1 H. MOORE

2 A. About a week, yes.

3 Q. So there are occasions in which
4 you talked to someone about making sure
5 that their file server can be accessed by
6 someone else after their departure.

7 Does that ever happen for
8 e-mail, the making sure a departing
9 employee's e-mail or folders in someone's
10 e-mail are transferred over to someone
11 else upon their departure?

12 A. That does happen in e-mail
13 sometimes, and, you know, our guidance
14 would be for the departing employee to
15 save it in a specific folder in their
16 e-mail. And what my office would do is
17 copy that folder out and then add that
18 folder to the new employee, or whoever
19 needs access to the dataset, we would add
20 it to their account.

21 Q. Do departing employees get any
22 instructions about how to make any of
23 these decisions that you and I are talking
24 about?

25 A. They usually -- most people,

1 H. MOORE

2 when they know they're leaving, they come
3 and pay me a visit. It's never usually
4 anything in writing or, like, a cast list
5 of what to do. But, you know, I've been
6 around for some time, so I know what you
7 should start thinking about when you're
8 going to depart. So I will a run them
9 through that.

10 Q. I know before I had asked you --
11 we had covered e-mail, we had covered file
12 servers, we had covered C-drive, we
13 covered devices that have text-messaging
14 capabilities. And I asked you if there
15 are any other forms of electronic
16 communication utilized by the executive
17 chamber. You said no.

18 I just want to make sure we're
19 clear. There are no sort of collaborative
20 systems that are utilized by the executive
21 chamber, like, Slack or Teams or chat
22 functions?

23 A. There is no Slack, Team or any
24 chat function like that, but there is a
25 collaborative platform, SharePoint. We do

1 H. MOORE

2 have SharePoint sites that are maintained
3 by ITS but administered by us.

4 Q. Who is ITS?

5 A. ITS is the Information
6 Technology Office for the State of New
7 York.

8 Q. And what is on the SharePoint
9 site?

10 A. They're usually project sites
11 and they're used because if you are off
12 our network, you do not have access to our
13 share drives. So it's a collaborative
14 space for executive and chamber employees
15 who need to work with agencies on
16 projects. It's a resource for them to,
17 you know, save files that they need access
18 to.

19 Q. How does an employee of the
20 executive chamber get access to a
21 SharePoint say?

22 A. Usually a request for a site
23 would come and in that request they would
24 explain to me what they need the site for,
25 and then they would give us the list of

1 H. MOORE

2 individuals who should have access to that
3 site. And as the list gets bigger, it's
4 always going to be referenced from the
5 initial requester who wanted the
6 SharePoint site. If that requester is
7 departed, there is usually another, you
8 know, staff member, just like with the
9 shared folders, you know, who is going to
10 take over the responsibility for that.

11 Q. How are the SharePoint sites
12 backed up?

13 A. They're in the Cloud, so
14 Microsoft Cloud. So I guess the direct
15 answer to that is Microsoft.

16 Q. And when an employee is
17 departing the executive chamber and they
18 had access to a SharePoint site, how is
19 that handled?

20 A. Their access rights would just
21 be removed from the site.

22 Q. If they were the initial
23 requester, how is that handled?

24 A. It would be the same procedure.
25 Their access would just be removed from

1 H. MOORE

2 the site. Just because their access goes
3 away doesn't mean the site does.

4 Q. What about for a litigation
5 hold? How are SharePoint sites handled
6 for a litigation hold?

7 A. I don't believe we've ever come
8 across a situation where a SharePoint site
9 was a part of the litigation hold. But in
10 that circumstance, the most direct thing
11 that I would do, not saying this is the
12 process that everybody undertakes, but we
13 would just copy the files out and put them
14 in stasis just like we would do for a
15 shared folder.

16 Q. But you've never had the
17 occasion to do that?

18 A. No, I have not.

19 Q. And does that mean that
20 counsel's instruction on executing a
21 litigation hold have never included
22 SharePoint sites?

23 A. Not to my knowledge.

24 Q. And are there history or log
25 files to determine who had access at any

1 H. MOORE

2 point to a SharePoint site, even if it was
3 someone who has departed?

4 A. Access rights are trackable, but
5 that would be by ITS, that wouldn't be by
6 my office.

7 Q. Let's talk about the actual
8 e-mail for a little bit.

9 So what current program is used
10 for e-mail by the executive chamber?

11 A. So on the back end of things,
12 our current environment was, or I should
13 say is under a change. We're in what's
14 called a hybrid configuration mode.

15 We have a 0365 environment
16 setup, and our on-premise environment is
17 Exchange 2013 CU23, and the client PCs use
18 Outlook 2016.

19 Q. When did the move to the hybrid
20 model start?

21 A. The move to the hybrid model
22 started last year. It started last June.

23 Q. Why don't you go through sort of
24 before June of 2020. What was the e-mail
25 environment?

1 H. MOORE

2 A. It was just Exchange 2013 CU23.

3 Q. And in making the transition
4 from Exchange 2013 to I think you said
5 0365 or Outlook 2016 was there any data
6 loss?

7 A. So funny thing about that
8 question is the transition has really not
9 happened yet. You know, the other
10 projects that we are dealing with with
11 Covid have delayed migrations, so our main
12 environment is still on premise and is
13 still Exchange 2013. The only thing in
14 the Cloud are test accounts.

15 Q. When did Exchange 2013 start to
16 be used by the executive chamber?

17 A. I believe, if memory serves me
18 right, I want to say about maybe 2015 or
19 around that time.

20 Q. And what was the e-mail platform
21 before 2015, before you were using the
22 Exchange 2013?

23 A. Exchange 2007.

24 Q. Does the data from the Exchange
25 2007 platform still exist?

1 H. MOORE

2 A. No, it does not.

3 Q. There's no archive of it?

4 A. No. Because during that move
5 everything was migrated to 2013.

6 Q. Okay. And who managed the data
7 migration?

8 A. It was overseen by [REDACTED] [REDACTED]
9 and [REDACTED] [REDACTED], former employees of the
10 executive chamber at that time.

11 Q. What is [REDACTED] [REDACTED] title?

12 A. He was the chief of computer
13 services.

14 Q. And what was [REDACTED] [REDACTED]
15 title?

16 A. I think he was the same as mine,
17 special technical assistant.

18 Q. And was the migration process
19 handled centrally or were users given
20 instruction?

21 A. It was handled centrally. We
22 got it down to a point where users
23 wouldn't have to do anything but close the
24 client and reopen the client. I think we
25 did run into some -- yeah, I think

1 H. MOORE

2 that's -- yeah. That was after many,
3 many, many months of testing, I think
4 that's what we got it down to.

5 Q. And was there any data loss in
6 that migration?

7 A. There was no data loss.

8 Q. The current e-mail. So on the
9 current e-mail platform are there any
10 limits on e-mail retention in terms of
11 size, number or duration?

12 A. No. There are no current -- the
13 only limitation e-mails had in terms of
14 separate policies being applied to
15 different user account was just the size
16 of your accounts. We've had a quota size
17 of 15 gigs for some time, which is kind of
18 why we're moving to the Cloud, capacity
19 issue.

20 Q. And what about auto deletion.
21 Are there any auto deletion policies for
22 e-mail?

23 A. Not currently being applied.

24 Q. Were they ever applied?

25 A. Yes.

1 H. MOORE

2 Q. And when were they applied?

3 A. We do not have a general auto
4 deletion policy. Users can make a request
5 for an auto deletion policy.

6 Q. Is that true today?

7 A. Not during this time period.
8 Not as of March 1st.

9 Q. So as of March 1st, no one can
10 make a request for auto delete?

11 A. No one can make a request and no
12 auto deletion policies are being applied.

13 Q. And is that because of the
14 litigation hold?

15 A. That is correct.

16 Q. Okay. So prior to March 1st,
17 2021, a user could request auto delete?

18 A. That is correct.

19 Q. Okay. Were there any
20 restrictions on what kind of auto delete
21 could be implemented for an individual
22 user?

23 A. The restriction would not be
24 determined by myself, that would be
25 determined by counsel's office.

1 H. MOORE

2 Q. And who in the counsel's office?

3 A. That would be [REDACTED] [REDACTED]
4 would be my contact.

5 Q. Do you maintain a list of what
6 users auto delete requests have been and
7 how they have been implemented or any
8 documents related to that?

9 A. Can you ask me that again.

10 Q. Sure. So do you have a list or
11 any documents that would show you which
12 users have requested an auto delete?

13 A. That is correct, yes.

14 Q. And that is a list you maintain?

15 A. That's a list that -- yes. My
16 office maintains those.

17 Q. And I asked before. To make
18 sure we're clear, I said are there any
19 limits on auto delete.

20 So can someone request you for
21 an auto delete every 48 hours or are there
22 rules on what the period for auto delete
23 can be?

24 A. So there are no rules. You can
25 make a request, but your request is not

1 H. MOORE

2 going to always be what you want, all
3 right? Because you want something doesn't
4 mean you're going to get it, which is
5 where counsel's office comes in.

6 You can request anything of me,
7 right? You can do that, but I pass that
8 request along. You send a request to me
9 and I pass it along to the counsel's
10 office and then they will make the
11 appropriate measure. But just because you
12 requested something doesn't mean you will
13 get it.

14 Q. Okay. Can users request -- I
15 guess they can request anything, but just
16 to make sure.

17 Can a user request only
18 particular portions of their mailbox have
19 auto delete, such as their inbox or just a
20 particular folder or their calendar?

21 A. When we apply the policy, we try
22 not to have it break down to a specific
23 folder, right, which is we try to keep it
24 at the level of the inbox. So it's going
25 to be your inbox and any subfolders that

1 H. MOORE

2 are contained under that.

3 Q. What about the calendar?

4 A. The calendar can be a part of
5 that, yes.

6 Q. Have you made any exception to
7 that such that someone has auto delete at
8 a level beneath the inbox or just at a
9 folder level?

10 A. No, we have not. And I try to
11 stay away from any customized requests
12 like that.

13 Q. Okay. What's the shortest time
14 period for auto deletion that you know was
15 in use before March 1st?

16 A. 30 days.

17 Q. I'm going to ask you a question
18 you probably don't know the answer to, but
19 who had the 30-day deletion prior to
20 March 1st?

21 A. I would have to reference the
22 document. I don't know that off the top
23 of my head.

24 Q. What happens to a deleted e-mail
25 once the auto delete policy is affected.

1 H. MOORE

2 Is it gone forever?

3 A. Say that one more time.

4 Q. So when the auto delete rule is
5 executed, is the e-mail that's deleted
6 gone forever?

7 A. When the auto rule is executed
8 and it is in play, it will go into a
9 deleted item and then once it's removed
10 from your deleted items, it will then be
11 gone.

12 Q. So is it automatically removed
13 from deleted items if there is an auto
14 delete in place?

15 A. Yes. A part of the auto delete
16 instruction is to empty the recycle bin
17 essentially.

18 Q. Okay. And then once the recycle
19 bin is empty is the e-mail gone?

20 A. Yes, once they're recycled.
21 Because then that's considered a double
22 delete essentially. Two affirmatives and
23 then, you know, it's meant to be gone.

24 Q. Okay. And is that true if
25 someone does not have auto delete but puts

1 H. MOORE

2 something into the recycle bin and then
3 empties their recycle bin, it's gone? The
4 e-mail's then gone?

5 A. Yes. We do have a retention
6 policy in place for our databases that
7 will empty our recycle bins after
8 48 hours.

9 Q. That's in place for everybody?

10 A. That's in place for everyone.
11 And we do that because of capacity issues.

12 Q. And when did that rule go into
13 place?

14 A. That has always been in place
15 since the inception of the Exchange
16 environment.

17 Q. If someone is on auto delete but
18 wants to preserve something for longer
19 than the auto delete period, how do they
20 do that in the e-mail environment?

21 A. In the e-mail environment, we
22 would have them create a folder, or if
23 they want to just save an individual
24 e-mail, we would have them move that
25 subject matter to the G-drive.

1 H. MOORE

2 Q. Does the executive chamber have
3 a default auto delete time period for
4 everyone?

5 A. No, we do not.

6 Q. Did the executive chamber ever
7 have a default auto delete for everyone?

8 A. Yes. I think up until 2015,
9 maybe, or 2014 somewhere -- yeah, a few
10 years ago.

11 MS. KENNEDY PARK: Okay. If we
12 can pull up the next exhibit, the memo
13 on 90-day auto deletion.

14 [Whereupon, document was marked
15 as Moore Exhibit 3 for identification,
16 as of this date.]

17 Q. Mr. Moore, if you could just
18 take a look at this document and let us
19 know when you've finished looking at.

20 A. I actually did read through this
21 document yesterday when I received the
22 binder.

23 Q. Okay. Was yesterday the first
24 time you had seen this memorandum?

25 A. Yesterday was the first time

1 H. MOORE

2 I've seen this memorandum.

3 Q. Okay. So this memorandum, I
4 know yesterday was the first time you saw
5 it. But this memorandum described a
6 90-day auto delete policy; is that
7 correct?

8 A. That is correct.

9 Q. And I think you just told me
10 that this policy is referenced in this
11 memo regarding the 90-day auto delete
12 ceased in 2015; is that right?

13 A. I believe that is correct.

14 Q. Okay. And what's the reason the
15 policy changed?

16 A. I don't know the intimate
17 details of the policy change itself
18 because I was not a decisionmaker at this
19 time. But what I know in the general
20 sense of the environment of what was
21 happening, there were a lot of good
22 government groups at the time that they
23 thought it was -- the period was too
24 short, and I know some of the agencies in
25 the state were pushing back in regards to

1 H. MOORE

2 the time period.

3 MS. KENNEDY PARK: We can take
4 the document off the screen.

5 Q. So in 2015, what did the policy
6 change to for the executive chamber?

7 A. I do not know what the policy
8 changed to, but we were made aware that
9 90-day deletion would be disabled.

10 Q. And was it disabled for the
11 executive chamber?

12 A. Yes, it was.

13 Q. So today you're not aware of any
14 policy regarding auto deletion for the
15 executive chamber?

16 A. No, I'm not.

17 Q. It's all done on an ad hoc
18 basis?

19 A. That is correct.

20 Q. And there are individuals who
21 have auto deletion less than 90 days?

22 A. Yes, there are.

23 Q. Going back to e-mail, do users
24 have the ability to create local mail
25 stores like PSTs?

1 H. MOORE

2 A. No, they're not. We disabled
3 that.

4 Q. When was that disabled?

5 A. That has always been disabled.

6 Q. Are there group e-mail boxes?

7 A. Yes, there are. There are
8 shared mailboxes, yes. We wouldn't call
9 them group, but shared, yes.

10 Q. Okay. And what is the shared
11 mailbox?

12 A. A shared mailbox would
13 essentially be used for either an event or
14 an initiative or, you know, they're kind
15 of purpose-driven mailboxes designed for a
16 reason. And it's usually because we don't
17 sometimes want people replying directly to
18 the employee if it's an initiative, so we
19 create a mailbox for that purpose.

20 Q. Is that actually creating a
21 mailbox or just creating an e-mail address
22 and then the e-mails go to the individuals
23 that are part of the group? Is there an
24 actual separate mailbox?

25 A. There's an actual separate

1 H. MOORE

2 mailbox; that is correct.

3 Q. Okay. And when an employee
4 departs, how do you handle shared
5 mailboxes?

6 A. Our shared mailboxes are
7 usually -- they have a life span. They
8 are not usually created and they're going
9 to be used for a forever situation. And
10 again, this goes back to capacity reasons.

11 Q. And what is the life span of a
12 shared mailbox?

13 A. It depends on what the purpose
14 was built for. It could be from two days
15 to a week to a year. There's no set
16 standard as to how long it will live for.
17 They don't usually go beyond a few months
18 but, again, it depends on what it was
19 designed for.

20 Q. And what about for a litigation
21 hold. How do you handle shared mailboxes
22 for litigation holds?

23 A. If a shared mailbox is included
24 in a litigation hold, it would be handled
25 just like how we would handle a user and

1 H. MOORE

2 it would be put into a discovery mode so
3 nothing is lost.

4 Q. Have you ever had a direction
5 from counsel to hold a shared mailbox for
6 a litigation hold?

7 A. Not that I can recall.

8 Q. Does the executive chamber have
9 any archiving system to your e-mail?

10 A. No, we do not.

11 Q. Are users able to implement
12 their own archiving system?

13 A. No, they are not.

14 Q. Does that system -- is there a
15 rule that prevents them from doing that?

16 A. Yes.

17 MR. FISHMAN: Jen, when you say
18 a rule, do you mean, like, something
19 written down or the kind of rule,
20 like, electronic rule, which is
21 different, right?

22 MS. KENNEDY PARK: Good point.
23 I meant a technology rule, like, you
24 can't actually do it, like, the
25 computer stops you.

1 H. MOORE

2 Q. Is that, Mr. Moore, what you
3 meant?

4 A. Yes, that is correct. It is the
5 same rule that prevents you from creating
6 a PST, they're one in the same.

7 Q. Do you or anyone else in the
8 executive chamber have access to the
9 Microsoft Search and Compliance Center?

10 A. That is in the Cloud, so the
11 answer to that question is yes and no
12 because there are no accounts up there.

13 Q. So there is no one at the
14 executive chamber who has an account that
15 is yet on -- at the Search and Compliance
16 Center in the Cloud?

17 A. Actually, no, that's incorrect.
18 My account's in the Cloud. I consider
19 myself one of the biggest tech users
20 because we have to know how things work.
21 So outside of myself, no.

22 Q. Do you know if other state
23 agencies are using that system, the Search
24 and Compliance Center?

25 A. Yes. I am aware that ITS uses

1 H. MOORE

2 that. They are on 0365.

3 Q. Okay. And how long have they
4 been on 0365?

5 A. That -- I can't answer that
6 question.

7 MS. KENNEDY PARK: Let's pull up
8 the next exhibit which is for the
9 record retention policies for 2020.

10 [Whereupon, document was marked
11 as Moore Exhibit 4 for identification,
12 as of this date.]

13 Q. Mr. Moore, just let us know when
14 you've had a chance to look through this
15 document.

16 A. Okay.

17 Q. Have you seen this document
18 before?

19 A. Yes, I have.

20 Q. When did you see it?

21 A. I was introduced to this
22 document for the first time yesterday.

23 Q. Before yesterday, you had never
24 seen this document?

25 A. No, I have not.

1 H. MOORE

2 Q. Do you have any role in ensuring
3 that this record retention schedule is
4 complied with?

5 A. That's -- clarify that question
6 please.

7 Q. What didn't you understand about
8 the question?

9 So do you have any roles or
10 responsibilities for ensuring that this
11 records retention, that this disposition
12 schedule is complied with?

13 A. So the larger document states
14 compliance in regards to user creation --
15 user account creation and user account
16 deletion. And, yes, my department is
17 responsible for that section of the
18 document; that is correct.

19 Q. Are there any other sections of
20 the document that your department is
21 responsible for complying with?

22 A. Not to my knowledge.

23 Q. How did you become aware that
24 your department was responsible for
25 compliance with the user account and

1 H. MOORE

2 deletion user account section of this
3 document?

4 A. Outside counsel brought the
5 document --

6 MR. FISHMAN: Let me stop you.
7 Let me stop. If it didn't happen in
8 the normal course of work unrelated to
9 this, Jen, I don't think it's -- it's
10 probably not an answer that he can
11 give, is my guess.

12 MS. KENNEDY PARK: Totally fine.

13 MR. FISHMAN: I'm happy to
14 consult with him to find out -- to
15 find out what he is about to say,
16 but --

17 Q. Other than conversations with
18 Mr. Fishman or his colleagues, did you
19 ever talk to anyone in the executive
20 chamber about the need to comply with the
21 user account and deletion of user account
22 section of this document?

23 A. So not in technical detail but
24 the essence of the document essentially
25 was -- our policies were essentially set

1 H. MOORE

2 in tone by the previous chief of computer
3 services, yes.

4 Q. Sorry. I don't understand that
5 answer. So what did the previous chief of
6 technology services tell you about
7 complying with the records retention and
8 disposition of the schedule in the
9 executive chamber?

10 A. Essentially the procedure we
11 follow in regards to when we are going to
12 remove a departed employee's account, the
13 steps that we needed to take essentially,
14 you know, going through to make sure there
15 are no litigation holds and things of that
16 nature.

17 Q. As part of that process when you
18 have a departing employee, do you talk to
19 the departing employee about whether they
20 have any records as is defined in this
21 document?

22 A. No, I do not.

23 Q. Is there anyone in the executive
24 chamber that you know who has the
25 responsibility for talking to departing

1 H. MOORE

2 employees about retaining records as their
3 records are defined in this document?

4 A. I do not know the answer to that
5 question.

6 Q. What about for onboarding an
7 employee, do you know who has the
8 responsibility for explaining to new
9 employees of the executive chamber how to
10 comply with this records retention and
11 disposition schedule?

12 A. I actually don't know the answer
13 to that question, no. I don't know if
14 it's a specific individual's
15 responsibility. I don't know.

16 MS. KENNEDY PARK: If you could
17 flip to what's Bates stamped
18 Footnote 9.

19 Q. Can you see that, Mr. Moore?
20 Can you see Footnote 9?

21 A. Yes, I can.

22 Q. Prior to yesterday, in meeting
23 with your counsel have you ever seen
24 Footnote 9?

25 A. No, I have not.

1 H. MOORE

2 Q. Has anyone ever talked to you
3 about the contents of Footnote 9 in
4 substance?

5 A. No.

6 Q. Have you ever instructed
7 employees of the executive chamber that
8 e-mails should be deleted after messages
9 and attachments are opened and records
10 have been saved in appropriate electronic
11 or paper file?

12 A. No, I have not.

13 Q. Did you or any member of the
14 group that you were a part of have any
15 role in drafting this document or
16 consulting on Footnote 9?

17 A. No.

18 Q. And is that true for previous
19 iterations of this document?

20 A. That is true for previous
21 iterations of this document.

22 Q. And would all of my questions --
23 just to save us some time, would all of my
24 questions about this document be true
25 about previous iterations of this

1 H. MOORE

2 document, that you had not seen them
3 before yesterday?

4 MR. FISHMAN: If I can object
5 just for a second. I don't know if
6 you're assuming that he knows that
7 there are previous iterations. I
8 think the question as you phrased it
9 is incapable really of an answer.

10 Maybe you could just ask him if
11 he's seen any other iterations.

12 MS. KENNEDY PARK: Sure. I'm
13 just trying to shortcut this.

14 MR. FISHMAN: I appreciate that,
15 but --

16 MS. KENNEDY PARK: Sure.

17 Q. Have you seen any other
18 iterations of this document?

19 A. No, I have not.

20 MS. KENNEDY PARK: Okay. We can
21 take the document down.

22 Q. Do you have any role in
23 responding to freedom of information law
24 requests?

25 A. My responsibility would be to

1 H. MOORE

2 assist the FOIL office in any responsive
3 searches that they need to provide.

4 Q. And does the FOIL office direct
5 you as to which searches to conduct in
6 response to a FOIL request?

7 A. Yes.

8 Q. Do you have any discretion in
9 conducting those searches?

10 A. No, I do not. They need to be
11 very specific.

12 Q. Is there a FOIL officer for the
13 executive chamber or someone responsible
14 for FOIL requests from the executive
15 chamber?

16 A. Yes, there is.

17 Q. And who is that person?

18 A. I believe the head of the FOIL
19 office is [REDACTED].

20 Q. Can you spell the last name.

21 A. I believe it's [REDACTED]

22 Q. How long has [REDACTED] been in
23 that role?

24 A. I do not know the answer to that
25 question.

1 H. MOORE

2 Q. Do you recall interacting with
3 someone in that role prior to [REDACTED] [REDACTED] ?

4 A. Yes.

5 Q. And who was that?

6 A. That would be Lauren Grasso.

7 Q. Anyone else in that role you
8 interacted with prior to Ms. Grasso?

9 A. No.

10 Q. Let's talk BlackBerrys for a few
11 minutes.

12 Your LinkedIn profile says that
13 your specialties include BlackBerry
14 Enterprise Server Management.

15 What does that mean?

16 A. Essentially a server -- the
17 server that runs -- any server that runs a
18 phone is called a mobile device management
19 server. And essentially my responsibility
20 would be configuring that server, any
21 policy settings that apply to the devices
22 themselves, managing that environment.

23 Q. Are there members of the
24 executive chamber who still have
25 BlackBerrys?

1 H. MOORE

2 A. Yes, there are.

3 Q. Are there members of the
4 executive chamber that transitioned from
5 iPhones to BlackBerrys at some point?

6 A. Yes.

7 Q. And when did that transition
8 begin from iPhones to BlackBerrys -- I
9 mean, from BlackBerrys to iPhones?

10 A. That transition started towards
11 the end of 2019.

12 MR. FISHMAN: I'm sorry. I
13 think you asked whether they
14 transitioned from one to the other and
15 then asked the opposite question. I
16 could be wrong, but --

17 MS. KENNEDY PARK: I misstated
18 it and then I fixed it. So I asked --
19 I fixed it with transition from
20 Blackberry to iPhone. You're correct.
21 I fixed it.

22 MR. FISHMAN: Okay.

23 Q. And that started happening at
24 the end of 2019.

25 Why were individuals in the

1 H. MOORE

2 executive chamber not transitioned from
3 BlackBerry to iPhone?

4 A. Why were they not transitioned
5 from BlackBerry to iPhones?

6 Q. Yes.

7 A. We had a meeting with senior
8 staff members and the decision was made
9 that some senior staff members would
10 retain their devices.

11 Q. Approximately when was that
12 meeting?

13 A. It might have been during late
14 summer of 2019.

15 Q. Who was at this meeting?

16 A. So there was Jill, Richard
17 Azzopardi, Melissa was involved. There
18 were at least three other people. I'd
19 have to reference my records. I can't
20 remember everyone off the top of my head.
21 But it would be the senior leadership of
22 the administration.

23 Q. Was the Governor there?

24 A. No, he was not.

25 Q. And when you say reference your

1 H. MOORE

2 records to determine who exactly was
3 there, what records do you mean?

4 A. I might still have either a memo
5 or calendar appointments.

6 Q. Did you say memo?

7 A. Yes. I might still have a memo
8 or a calendar appointment.

9 Q. And what is the memo?

10 A. The memo would be describing my
11 reasons for why we should transition to
12 the iPhone away from the BlackBerry.

13 Q. Did you write that memo before
14 this meeting?

15 A. Yes, I did.

16 Q. And just for the record, when
17 you say Jill, what is Jill's last name?

18 A. Jill DeSrosiers.

19 Q. And Melissa, what is her last
20 name?

21 A. Melissa DeRosa.

22 Q. Okay. And what was discussed at
23 this meeting in the late summer of 2019?

24 A. What was discussed was the
25 benefits that he would get out of moving

1 H. MOORE

2 from the BlackBerry to the iPhone and the
3 need to actually make the move because of
4 some deprecation in network services to
5 the BlackBerry itself.

6 Q. And what was discussed at that
7 meeting about why some members of the
8 executive chamber would retain
9 BlackBerrys?

10 A. There wasn't an exact discussion
11 of why they would be retaining it. I
12 don't want to make any assumptions for
13 anyone, but it would be clear that the
14 staff members that retained their devices
15 would be communicating with the Governor.

16 Q. And why would they need the
17 BlackBerrys in order to communicate with
18 the Governor?

19 A. That is the device he uses.

20 Q. Was there any discussion about
21 why the Governor would not be
22 transitioning from a BlackBerry to an
23 iPhone?

24 A. No, there was not.

25 Q. What is your understanding of

1 H. MOORE

2 why the Governor did not transition from a
3 BlackBerry to an iPhone?

4 A. I couldn't answer that question.
5 I didn't have any assumptions walking away
6 from that conversation.

7 Q. Were you involved in any
8 conversations related to the use of
9 BlackBerry PIN messages as a reason that
10 members of the senior staff wanted to
11 retain their BlackBerrys?

12 A. Ask that question again.

13 Q. Sure. Were you involved in any
14 discussions regarding BlackBerry PIN
15 messages being the reason members of the
16 senior staff of the executive chamber
17 wanted to retain their BlackBerrys?

18 A. No. I was not involved in any
19 direct discussions.

20 Q. But you said that your
21 understanding was that the reason the
22 senior staff wanted to retain their
23 BlackBerrys was to communicate with the
24 Governor.

25 An iPhone can communicate with a

1 H. MOORE

2 BlackBerry, right?

3 A. For text message, which is
4 something that we disabled. So the answer
5 to that question would be no.

6 Q. Text messages are disabled on
7 the iPhone?

8 A. Yes.

9 Q. And what is the BlackBerry
10 equivalent of a text message?

11 A. There is no equivalent. A text
12 message is an SMS message, so that's,
13 like, a clear-type message that could be
14 sent from any phone.

15 Q. And what is the difference
16 between that and a BlackBerry PIN message?

17 A. The difference between that and
18 a BlackBerry PIN message is the PIN
19 message is a proprietary technology to the
20 BlackBerry and they are specifically
21 designed to go from BlackBerry to
22 BlackBerry, a BlackBerry device to a
23 BlackBerry device.

24 Q. Does the Governor communicate
25 using BlackBerry PIN messages?

1 H. MOORE

2 A. Yes, he does.

3 Q. And do BlackBerry PIN messages
4 reside in the server?

5 A. No, they do not.

6 Q. If a BlackBerry PIN message is
7 deleted by a user is it recoverable?

8 A. No, it is not.

9 Q. Are BlackBerry PINs backed up or
10 saved in the Cloud?

11 A. No, they are not, to my
12 knowledge.

13 Q. Does the executive chamber have
14 any rules, not technical rules, written
15 rules, regarding the use of BlackBerry PIN
16 messages?

17 A. Not that I'm aware of.

18 Q. Have you ever assisted the
19 Governor with his BlackBerry?

20 A. Yes, I have.

21 Q. Okay. Tell us about that
22 assistance.

23 A. That assistance usually comes in
24 when he's changing his phone. I have been
25 asked to assist with changing his phone

1 H. MOORE

2 before, which is not super technical.
3 It's mostly transferring a SIM card to
4 another phone.

5 Q. And how many times have you
6 assisted the Governor with changing his
7 phone?

8 A. I do not know the answer to that
9 question off the top of my head. It's not
10 regular, but it has happened.

11 Q. More than once?

12 A. Yes.

13 Q. And is that since you've been
14 the chief technology officer?

15 A. Yes, it has.

16 Q. Any approximation of how many
17 times the Governor has changed his phones
18 since you have been the chief technology
19 officer?

20 A. Maybe twice -- two or three
21 times.

22 Q. Were there any conversations
23 between you and the Governor about why he
24 was changing his phone?

25 A. No.

1 H. MOORE

2 Q. Any conversations between you
3 and any member of the executive chamber
4 about why the Governor was changing his
5 phone?

6 A. No.

7 Q. Any other assistance you have
8 given to the Governor regarding his phone?

9 A. No.

10 Q. Have you ever been to the
11 executive mansion?

12 A. Yes, I have.

13 Q. And on what occasions were you
14 at the executive mansion? Why were you
15 there?

16 A. Technical support or either
17 setup or breakdown or moving of equipment.

18 Q. And when you say setup,
19 breakdown or moving equipment, are you
20 talking about the PCs, executive chamber
21 PCs that are in the executive mansion?

22 A. No, not just the PCs. We have a
23 network switch in the basement of the
24 mansion and some fiber connections that
25 come into that building.

1 H. MOORE

2 We also -- oh, no, that actually
3 was replaced. It just occurred to me a
4 network battery, but that's nowhere here
5 or there.

6 Q. The PC's that are in the
7 executive mansion, have they been changed
8 out?

9 A. Not recently, no. Not for some
10 time.

11 Q. When was last time they were
12 changed?

13 A. The last time they were changed?
14 Probably over four years maybe.

15 Q. Any other assistance you've
16 provided to the Governor?

17 A. No.

18 In what sense, technical issues?

19 Q. Well, any assistance, I guess,
20 but in your role as chief technology
21 officer.

22 A. No.

23 Q. How often do you interact with
24 the Governor?

25 A. Our interactions are actually

1 H. MOORE

2 very rare. I'm the wallflower in the
3 background to make sure things work.

4 Q. Let's talk about the litigation
5 hold for the matter that brings us
6 together today.

7 So when was the first day on
8 which you learned that there would be a
9 litigation hold for this matter?

10 A. I believe it was, I want to say,
11 around March 2nd maybe.

12 Q. And who communicated that to
13 you?

14 A. Beth Garvey.

15 Q. Did Beth Garvey give you
16 instructions for whose devices and
17 documents to hold?

18 A. She didn't give me instructions.
19 We had a discussion on which custodians
20 that we want to place a hold on, and
21 during this discussion --

22 MR. FISHMAN: Let me stop him
23 for a second. I think to be safe, I
24 think if you ask him what he did as a
25 result of that discussion. But I

1 H. MOORE

2 think the substance of the
3 conversation may involve
4 communications with counsel. And so
5 it may be a safer way to proceed
6 without having any privilege
7 implications.

8 MS. KENNEDY PARK: Sure. I'm
9 happy to ask it that way.

10 Q. So what did you do after a
11 conversation with Ms. Garvey to execute
12 the litigation hold?

13 A. Provide a list of custodians
14 that were already under Omnibus hold.

15 Q. Anything else you did?

16 A. Not at the time, no.

17 Q. So there were no additional
18 custodians that were added other than
19 those already on Omnibus hold?

20 A. No.

21 Q. And on Omnibus hold covers, as
22 we talked about before, e-mail, correct?

23 A. Correct. So I consider it
24 Omnibus because there is no definition in
25 it so it's just a complete account hold.

1 H. MOORE

2 Q. For e-mail?

3 A. Yes.

4 Q. After your conversation with
5 Ms. Garvey, did you do anything with
6 respect to the G or I-drive?

7 A. We have a copy of the G-drive.

8 Q. When did you make that copy of
9 the G-drive?

10 A. That copy of the G-drive
11 incrementally was updated yesterday.

12 Q. Can you explain what that means?

13 A. That means we do what's called a
14 Xcopy and that takes some time. And there
15 are times where it might error out, so we
16 do what's called an incremental update to
17 the file that we create to make sure
18 nothing is missing.

19 Q. Okay. When was the first day in
20 which you created a copy of the G-drive?

21 A. The complete G-drive was copied
22 yesterday.

23 Q. That was the first time?

24 A. Yes, that was the first time.

25 Q. What about the I-drive?

1 H. MOORE

2 A. The I-drive has a backup copy
3 that is actually currently running.

4 Q. Meaning the first time you made
5 a copy of the I-drive was today?

6 A. Correct.

7 Q. In response to after your
8 conversation with Ms. Garvey did you
9 collect any devices?

10 A. Yes. We started the device
11 collection.

12 Q. When did the device collection
13 begin?

14 A. Off the top of my head, I
15 couldn't tell you the answer to that
16 question.

17 Q. Do you have an approximation?

18 A. I want to say maybe around the
19 14th or 15th of March, but I would have to
20 reference my records.

21 Q. When you say "device
22 collection," what devices began to be
23 collected after the 14th or 15th of March?

24 A. That would be the BlackBerrys
25 assigned to senior staff members.

1 H. MOORE

2 Q. What about PCs?

3 A. PCs? We only collected one PC
4 so far.

5 Q. Whose PC is that?

6 A. That would be Melissa DeRosa's.

7 Q. What about SharePoint files?

8 A. We have only collected one
9 SharePoint file.

10 Q. And what SharePoint file is
11 that?

12 A. It was a SharePoint file being
13 used by Judy Mogul.

14 Q. Have you collected any iPhones?

15 A. I have not collected any
16 iPhones.

17 Q. What about the computers at the
18 executive mansion, have you collected any
19 documents from those?

20 A. I have not.

21 Q. Did you issue any instructions
22 to anyone in the executive chamber after
23 your conversation with Ms. Garvey?

24 A. Issue any instructions to?

25 Q. Any members of the executive

1 H. MOORE

2 chamber?

3 A. In what context? I don't
4 understand the question.

5 Q. So for example -- let's give you
6 an example. You've told me there are
7 people in the executive chamber who are on
8 auto delete.

9 Did you issue any instruction to
10 turn off auto delete?

11 A. No, I did not.

12 Q. Did you issue any instructions
13 to anyone to preserve any information that
14 was on their phone?

15 A. No, I did not.

16 Q. Are you aware of anyone issuing
17 any such instructions?

18 A. Yes. Beth Garvey sent out
19 instructions. She sent out a document in
20 preservation to all staff members.

21 Q. Did that document in
22 preservation instruction have any
23 instructions about auto delete or turning
24 off auto delete?

25 A. That document, it did not have

1 H. MOORE

2 those instructions. No.

3 MS. KENNEDY PARK: Can we bring
4 up the March 9th document, please.

5 [Whereupon, document was marked
6 as Moore Exhibit 5 for identification,
7 as of this date.]

8 Q. I think this is Exhibit
9 Number 5.

10 Have you seen this document
11 before?

12 A. The first time I saw this
13 document was yesterday.

14 Q. Did anything -- were you given
15 any instructions after March 9th that were
16 different than the instructions you told
17 me you were given on or around March 1st
18 regarding the litigation hold for this
19 matter?

20 A. The only instruction given was
21 verbally, and that was the discussion of
22 disabling any retention policies.

23 Q. You said that instruction was
24 given verbally. What do you mean by
25 verbally?

1 H. MOORE

2 A. I don't know if it's privileged
3 or not.

4 MR. FISHMAN: Do you want to
5 give us a second?

6 MS. KENNEDY PARK: It's time for
7 a break anyway. So why don't we take
8 five.

9 MR. FISHMAN: Okay. Thanks.

10 [Whereupon, a short break was
11 taken at this time.]

12 Q. So, Mr. Moore, I understand
13 there are some points of clarification
14 you'd like to make about the topic of
15 litigation hold for this matter that we
16 have been discussing.

17 So please clarify.

18 A. It was going back to the
19 question you asked me if I directed anyone
20 in regards to preservation. I answered
21 that question no because I couldn't direct
22 people to do so; however, I provided our
23 First Counsel, Beth Garvey, with
24 instructions on how to direct people to
25 save the messages that were on their

1 H. MOORE

2 iPhone.

3 So I drafted instructions for
4 her and then she disseminated that to
5 everyone. So instructions did go out
6 regarding preservation of messages on your
7 mobile devices.

8 Another thing I wanted to
9 clarify in regards to the G-drive and the
10 I-drive. I think I used the word backup
11 when and I should use copy, all right? So
12 we run our nightly backups but a separate
13 copy essentially has been made of the
14 G-drive and the I-drive.

15 However, when I use the term
16 incremental, I did that because we can't
17 keep multiple copies of the G-drive and
18 the I-drive separately because they are so
19 massive, which is a capacity issue for us.
20 So we don't really have a place to store
21 all of that data. So that becomes kind of
22 a cross-burden trying to figure that out.

23 And then the devices that we
24 collected were all the BlackBerry devices
25 being used by the users. The reason why

1 H. MOORE

2 those were collected is because we can't
3 really -- there's no real way, to my
4 knowledge, to retrieve the PINs from the
5 devices. So they have to physically be
6 collected as opposed to the iPhones. The
7 iPhones are a little more flexible in what
8 you can pull from an iPhone.

9 So I just wanted to clarify
10 those points.

11 MS. KENNEDY PARK: If we can go
12 off the record a second.

13 [Discussion held off the
14 record.]

15 MS. KENNEDY PARK: We're back on
16 the record now.

17 Q. Mr. Moore, I apologize for that
18 interruption. Please continue your
19 answer.

20 A. Okay. So the point of
21 clarification is a copy of the drives
22 themselves. One was made in March;
23 however, you know, as I stated,
24 incremental copies are being made to those
25 because we can't keep multiple copies of

1 H. MOORE

2 the entire tier drive essentially, all
3 right? It's too massive. There's not
4 enough space.

5 And, then, you know, the devices
6 we collected, we have over, like, 200
7 iPhones. I think it's around 261 or 265,
8 and to replace all of those would be
9 burdensome, essentially, which is why
10 instructions were sent out directing
11 people to preserve them because then, you
12 know --

13 And, then, it's kind of the same
14 thing with the PCs. You know, we have
15 over 300-and-some PCs and if we took
16 everyone's PC that would be -- yeah.

17 MS. KENNEDY PARK: Okay. So
18 whoever is typing, we can very loudly
19 hear the typing. So if someone can
20 stop, that will be appreciated.

21 Q. With respect to the G and the
22 I-drive, what was the date in March upon
23 which a copy was made of those drives?

24 A. I would have to go back and take
25 a look at the initial copy, but it was

1 H. MOORE

2 definitely after the 1st. It was not on
3 the 1st.

4 Q. Okay. And the incremental copy,
5 is that meant to capture material between
6 the date in March when the copy was made
7 and whatever today or yesterdays date is
8 that the new copy is being made?

9 A. That is correct.

10 Q. And the copy that was made in
11 March, on which date you're not certain,
12 was that both of the G-drive and the
13 I-drive?

14 A. That was the G-drive and the
15 I-drive I believe was the following day,
16 yes.

17 Q. But you don't recall which days
18 those were?

19 A. No, I don't.

20 Q. The instruct --

21 MR. FISHMAN: I believe he can
22 check, if you'd like him to do that.

23 MS. KENNEDY PARK: Yeah.

24 Q. With respect to the instructions
25 that you gave to Ms. Garvey on how to save

1 H. MOORE

2 messages on mobile devices, did those
3 instructions cover both iPhone and
4 BlackBerry?

5 A. No, they did not cover iPhone
6 and BlackBerry. They just covered the
7 iPhones.

8 Q. Okay. And what were those
9 instructions?

10 A. Those instructions were
11 essentially how to set your iMessages to
12 stay on the phone forever. Previously
13 they were set to 30 days.

14 Q. So chamber-issued iPhones have
15 auto delete of 30 days?

16 A. Correct.

17 Q. Were you part of the process of
18 ensuring that that instruction was
19 complied with?

20 A. I was -- essentially there is a
21 technical assistance for anyone that could
22 not apply the instruction.

23 Q. So to the extent someone
24 couldn't do it themselves based on the
25 instructions, they could reach out to you

1 H. MOORE

2 to ask how to do it?

3 A. Correct.

4 Q. Did you do anything to ensure
5 that anyone had followed that instruction?

6 A. I did not.

7 Q. Are you aware if anyone else did
8 anything to ensure that that instruction
9 was followed?

10 A. I presume most people followed
11 the instruction. It's not an option that
12 can be managed from our server, so I
13 wouldn't know who did or did not.

14 Q. Right. But I'll reask my
15 question.

16 Are you aware of anyone who
17 ensured that the instruction was followed?

18 A. No, I'm not.

19 Q. Before we went on a break, we
20 were talking about verbal instructions
21 that you provided regarding disabling auto
22 delete.

23 What verbal instructions did you
24 provide regarding disabling auto delete?

25 A. It wasn't a verbal instruction

1 H. MOORE

2 set that I gave to Beth. We discussed the
3 preservation notice going out and the fact
4 that auto delete needed to be disabled.

5 Q. Auto delete for phones, for
6 e-mail or both?

7 A. For e-mail.

8 Q. And how did you ensure that auto
9 delete was ceased for e-mail?

10 A. For e-mail, I went in and
11 changed that on the server side.

12 Q. For everyone in the executive
13 chamber?

14 A. For everyone. All accounts.

15 Q. For all accounts?

16 A. For all accounts. I use the
17 phrase "all accounts," because that also
18 includes -- you remember I explained
19 earlier that if you delete something, it
20 sits in your deleted items for 48 hours.
21 That instruction change included the
22 dumpster.

23 So that does not automatically
24 happen anymore. You actually have to
25 physically double-delete something to get

1 H. MOORE

2 rid of it. But everything was disabled.

3 There is nothing that automatically

4 happens including the recycle bin.

5 Q. But an individual user can still
6 double-delete?

7 A. Yes. If you are not on a
8 discovery hold.

9 Q. If you are on a litigation hold,
10 double-delete is disabled?

11 A. Yes. You can't -- it will be
12 gone to the user, but it's actually not
13 gone.

14 Q. And that verbal instruction
15 about auto delete, what date was that
16 conversation?

17 A. I can't recall the date of that
18 conversation. I just know it was shortly
19 after the 1st.

20 Q. Shortly after March 1st.

21 A. Correct.

22 Q. You said you had as part of the
23 litigation hold for this matter collected
24 one SharePoint folder for Judy Mogul.

25 What was the folder?

1 H. MOORE

2 MR. FISHMAN: So that's
3 something that I think he can't answer
4 on the grounds that it's probably
5 privileged or work product. We're
6 happy to discuss that with you at
7 another time, but for the moment, I
8 think I have to instruct him not to
9 answer that question.

10 MS. KENNEDY PARK: Okay. We'll
11 discuss it at another time then.

12 Q. On the BlackBerrys, can users
13 create their own backups of content on the
14 BlackBerrys?

15 A. On our BlackBerrys? No, they
16 cannot. Not to my knowledge.

17 Q. And what about iPhones, can
18 users create their own backups on iPhones?

19 A. I believe they can backup
20 certain aspects of the iPhone.

21 Q. What aspects of the iPhones can
22 they backup?

23 A. I'd have to do more homework on
24 that. I know you can backup your
25 pictures, that's a simple one. Anything

1 H. MOORE

2 else, I would have to do some more
3 homework to tell you. I don't have --

4 Q. Would that include iMessages in
5 iCloud, do you know?

6 A. No. We don't allow users to use
7 iCloud. It's not an option that's turned
8 on. So --

9 Q. Can a user turn it on or is
10 there some technical thing you do to stop
11 it from being turned on?

12 A. We technically disable that.

13 Q. Okay. I think you told us that
14 you have had infrequent interactions with
15 the Governor.

16 How often would you say you
17 interact with the Governor?

18 A. Yeah. I honestly couldn't think
19 of a frequency in which that happens.
20 Outside of having to do technical press
21 conference setups, it's not very frequent.

22 Q. When was the last time you saw
23 the Governor?

24 A. The last time was last Thursday
25 for a National Governor's Association

1 H. MOORE

2 meeting.

3 Q. Has the Governor ever touched
4 you?

5 A. No.

6 Q. Has the Governor ever kissed
7 you?

8 A. No.

9 Q. Has the Governor ever hugged
10 you?

11 A. Yes. And that was yes.

12 Q. When was that?

13 A. That was the first Christmas
14 party of his administration.

15 Q. Where were you?

16 A. In the Red Room in the capital.

17 Q. And describe how the hug came
18 about.

19 A. It was more of a handshake, half
20 hug, I guess. What do you call it? Bro
21 hug? I don't know.

22 We were talking about cars. And
23 I can't recall the joke that I made, but
24 it was about his Mustang.

25 Q. You made a joke about his

1 H. MOORE

2 Mustang?

3 A. Yes.

4 Q. You don't remember the joke?

5 A. Yeah. I can't remember the
6 details of the joke. I just remember it
7 was about his car.

8 Q. And it was after the joke that
9 he gave you a bro hug; is that right?

10 A. Yeah.

11 Q. And by that kind of hug you mean
12 a one-armed hug?

13 A. Yes. Like, a bro hug. I don't
14 know how to replicate that.

15 Q. He shook your hand and leaned in
16 and hugged you with his other arm; is that
17 right?

18 A. Correct. Yes.

19 Q. I'm just trying to describe it
20 for the record.

21 Has the Governor ever -- any
22 other occasion in which the Governor has
23 hugged you?

24 A. No.

25 Q. Okay. Has the Governor ever

1 H. MOORE

2 made sexually suggestive remarks to you?

3 A. No.

4 Q. Has he ever made sexually
5 suggestive jokes to you?

6 A. No.

7 Q. Has the Governor ever yelled at
8 you?

9 A. No.

10 Q. Have you ever seen the Governor
11 kiss anyone?

12 A. No, I have not.

13 Q. Have you ever seen the Governor
14 hug anyone?

15 A. Yes, I have.

16 Q. On what occasions?

17 A. This was years ago. And, again,
18 it was a half bro hug. I think a leader's
19 meeting for the legislators.

20 Q. Who was he hugging?

21 A. I think it was Carl Hastie.

22 Q. Can you say the last name again?

23 A. Carl Hastie.

24 MR. FISHMAN: H-A-S-T-I-E, I
25 believe.

1 H. MOORE

2 Q. Anyone other occasions when
3 you've seen the Governor hug someone?

4 A. No.

5 Q. Have you ever overheard or heard
6 the Governor make sexually suggestive
7 remarks to someone?

8 A. No.

9 Q. Have you ever heard or overheard
10 the Governor make sexually suggestive
11 jokes to anyone?

12 A. No.

13 Q. Has the Governor ever asked
14 about your personal relationship?

15 A. No.

16 Q. Has the Governor ever asked
17 about your sex life?

18 A. No.

19 Q. Have you ever heard or overheard
20 him ask someone about their personal
21 relationship?

22 A. No.

23 Q. Have you ever heard or overheard
24 him ask anyone about their sex life?

25 A. No.

1 H. MOORE

2 Q. Has the Governor ever commented
3 upon your appearance?

4 A. Yes, he has.

5 Q. What has he said?

6 A. "You have hair now." Telling
7 everybody in the room I had hair --

8 Q. I can't hear.

9 So what has the Governor said
10 about your appearance?

11 A. The comment was "You have hair
12 now." Before the pandemic, I didn't have
13 hair. I always kept my very, very
14 shiny -- head shined.

15 Q. And did you say anything in
16 response?

17 A. I said, "Yes, I do."

18 Q. Did he say anything after that?

19 A. No.

20 Q. Any other occasions in which the
21 Governor has commented on your appearance?

22 A. No.

23 Q. Any occasions on which the
24 Governor had comments on your clothing?

25 A. No.

1 H. MOORE

2 Q. Any occasions in which you've
3 heard or overheard him commenting on
4 someone else's appearance?

5 A. No.

6 Q. Any occasions on which you've
7 heard or overhead him commenting on
8 someone else's clothing?

9 A. No.

10 Q. Any occasions on which any
11 member of the Governor's senior staff has
12 yelled at you?

13 A. No.

14 Q. Any occasions on which the
15 Governor or any members of his senior
16 staff have used curse words with you?

17 A. No.

18 Q. Do you personally know Lindsey
19 Boylan?

20 A. No, I do not.

21 Q. Have you had any communications
22 with her?

23 A. Recently, in the past, when she
24 worked there?

25 Q. Fair point.

1 H. MOORE

2 A. Yes, I have. I have provided
3 technical assistance to her, yes.

4 Q. Okay. Any other communication
5 with Lindsay other than providing her
6 technical assistance?

7 A. No.

8 Q. Do you know Charlotte Bennett?

9 A. Professionally, yes.

10 Q. Did you have conversations with
11 her or provide her with technical
12 assistance?

13 A. Yes.

14 Q. Did you have conversations about
15 her with anything else other than
16 technical assistance?

17 A. No. It was always work.

18 Q. Do you know Kaitlin [REDACTED] ?

19 A. I know of her. I can't remember
20 her, to be honest.

21 Q. I'll take that to mean that you
22 don't remember any conversations with her?

23 A. No. She mostly worked in New
24 York City, so, no.

25 Q. Do you know Alyssa McGrath?

1 H. MOORE

2 A. Yes, I do.

3 Q. And what is your -- have you had
4 communications with her?

5 A. Yes, I have.

6 Q. Have you had communications with
7 her other than about technical assistance?

8 A. Yes, I have.

9 Q. And what's the nature of those
10 communications?

11 A. It falls along the guidelines of
12 technical assistance, but it was mainly
13 trying to help her buy a laptop.

14 Q. Ever talk to her about the
15 Governor?

16 A. No.

17 Q. Ever talk to her about her
18 interactions with members of the senior
19 staff of the executive chamber?

20 A. No.

21 Q. Do you know Anna Liss?

22 A. I do not actually.

23 Q. Do you know Brittany Commisso?

24 A. Yes, I do.

25 Q. Have you had any conversations

1 H. MOORE

2 with Ms. Commisso other than providing her
3 technical assistance?

4 A. Again, this would be another do
5 I get this phone or that phone. It's
6 mostly that type of conversation.

7 Q. Any conversations about the
8 Governor?

9 A. No.

10 Q. Any conversations about members
11 of the senior staff of the executive
12 chamber?

13 A. No.

14 Q. Okay.

15 MS. KENNEDY PARK: I think if we
16 could just take, like, a two-minute
17 break we might be at the conclusion.

18 [Whereupon, a short break was
19 taken at this time.]

20 MS. KENNEDY PARK: We are ready
21 to go back on and conclude.

22 Q. So, Mr. Moore, that concludes
23 the examination for today.

24 Is there anything you would like
25 to add to your answers or you would wish

1 H. MOORE

2 to clarify before we conclude?

3 A. I think one thing I probably
4 should clarify, and it goes along with the
5 frequency of meeting the Governor. I
6 don't want to leave the impression that
7 every time we replaced -- I assisted in
8 the replacing his phone, that he was
9 there. This was always done by his EAs.
10 You know, I'd get a phone call to get
11 assistance. So that kind answers, you
12 know, in regards to frequency.

13 Q. Okay.

14 A. I just wanted to make sure that
15 was clear.

16 Q. So you would come to learn that
17 the Governor wanted to get a new phone
18 from an executive assistant of the
19 Governor?

20 A. Correct. Correct.

21 Q. And which executive assistant
22 was that?

23 A. It would usually be Stephanie
24 Benton would reach out to me.

25 Q. Anything else you'd wish to

1 H. MOORE

2 clarify?

3 A. And I definitely want to clarify
4 to make sure that it's clear, and I think
5 the messages on the iPhones, you know, I
6 don't want to leave you with the
7 impression that we are not doing
8 everything we possibly could. But it's
9 hard because we can't do it from the
10 server side to enforce the fact that
11 everyone has set their, you know, messages
12 to forever.

13 You know, somebody could set it
14 and there's no real way of verifying it
15 unless we actually physically have the
16 phones. You know, so that's going for 261
17 phones, essentially, to look and verify
18 that it was actually done. Unfortunately
19 that's one sticking point that's it's hard
20 to enforce.

21 Q. With respect to the instructions
22 that you put together in order to stop
23 auto delete on mobile devices, did those
24 include personal mobile devices that may
25 have been used for state business?

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H. MOORE

A. I would have to reference Beth's e-mail, but the instruction applies to any iPhone.

Q. And have you ever tried to take a remote copy of someone's iTunes account?

A. No, I have not.

[Continued on the next page to allow for signature line and jurat.]

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Q. Okay. So I'll just remind you that you have a continuing obligation under the subpoena. So there may come a time when we wish to ask you additional questions, and, if so, we would contact Mr. Fishman and your other counsel if we did.

So with that, I think we can conclude our examination, but thank you for being here today. We very much appreciate it.

A. Thank you. Nice meeting you.

[TIME NOTED: 2:08 p.m.]

HAROLD MOORE

Subscribed and sworn to before me

this __ day of _____, 2021.

Notary Public

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CERTIFICATION

I, Samuel Hittin, a Notary Public for
and within the State of New York, do
hereby certify:

That the witness whose testimony as
herein set forth, was duly sworn by me;
and that the within transcript is a true
record of the testimony given by said
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 25th day of April, 2021.



SAMUEL HITTIN